

SUSTAINABILITY TRACKING SYSTEM (STS) SUBSCRIPTION AGREEMENT

THIS AGREEMENT (hereinafter, "Agreement"), with an effective date of Aug 1, 2018 ("Effective Date") is made by and between Wisconsin Energy Conservation Corporation, a non-profit corporation with its principal business address at 431 Charmany Dr., Madison, WI 53719 (hereinafter, "WECC"), and the City of La Crosse, Wisconsin, with its principal business address at 400 La Crosse Street, La Crosse, Wisconsin 54601 (hereinafter, "Customer"), hereafter collectively referred to as the "Parties" and individually as a "Party".

WHEREAS, Customer desires to obtain and WECC desires to provide certain services for Customer described in paragraph 1 below;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

- 1. STS Service.** Customer desires to have WECC provide, and WECC agrees to provide, the services associated with the Sustainability Tracking System web portal ("STS"). For purposes of this Agreement, "Service" means the specific edition of WECC's online software which is accessible via the Internet at the designated URL, website, or IP address, provided to Customer and its users by WECC, to which Customer and its users are being granted access under this Agreement and as set forth in the Acceptable Use Policy, attached as Exhibit A, which is incorporated herein and is part of this Agreement. WECC may revise features and functions of the STS Service at any time by removing non-material features and/or functions or by adding features and/or functions. WECC reserves the right to provide the STS Service from any location, in its sole discretion, worldwide.
- 2. System Access.** Subject to the provisions of this Agreement, including the Acceptable Use Policy, as well as the payment of all applicable subscription fees by Customer for the term of such subscription, WECC grants to Customer and its users, and Customer hereby accepts, a limited, nonexclusive, nontransferable, worldwide right to use the STS Service, solely for Customer's and its users' own internal business purposes. All rights not expressly granted to Customer and its users are reserved by WECC. Any access granted under this Agreement is conditioned on Customer and its users remaining in compliance with all terms of this Agreement, including Customer's full and continued payment of all fees and costs under this Agreement and any related agreements.
- 3. No Software License.** Customer acknowledges that WECC has no delivery obligation and will not ship or otherwise provide copies of any software programs, whether in a physical or downloadable format, to Customer or any of its users as part of the STS Service. Customer agrees that it does not acquire under this Agreement any license to any software programs. Upon the termination or expiration of this Agreement (or the Service provided hereunder) or any related license agreements, Customer's and its users' right to access and use STS Service shall terminate.
- 4. Term of Agreement.** The initial Term of this Agreement shall begin on the Effective Date and will continue for a period of twelve (12) months thereafter (the "Initial Term"). Upon completion of the Initial Term, this Agreement will automatically renew for additional periods of twelve (12) months (the "Renewal Term"), unless this Agreement is otherwise amended or terminated earlier in accordance with the provisions of this Agreement. **UPON THE EXPIRATION OF THE INITIAL TERM OR ANY SUBSEQUENT TERM, RENEWAL FOR THE FOLLOWING SUBSEQUENT TERM OF TWELVE (12) MONTHS SHALL OCCUR AUTOMATICALLY UNLESS EITHER CUSTOMER OR WECC SENDS WRITTEN NOTICE OF NON-RENEWAL TO THE OTHER PARTY ON OR BEFORE SIXTY (60) DAYS PRIOR TO THE END OF THE THEN CURRENT TERM. SUCH NOTICE OF NON-RENEWAL MUST AFFIRMATIVELY STATE THAT THE**

Customer
Initials:

TK

SENDER OF THAT NOTICE ELECTS NOT TO RENEW THE THEN CURRENT TERM. ALL AGREEMENT PROVISIONS REGARDING INCREASES OR CHANGES IN FEES WILL CONTINUE TO BE IN EFFECT DURING THE AUTOMATIC RENEWAL PERIODS. CUSTOMER ACKNOWLEDGES THAT IT HAS BEEN GIVEN SUFFICIENT OPPORTUNITY TO CONSIDER THE AGREEMENT AND THE RENEWAL PROVISIONS PURSUANT TO WIS. STAT. §134.49 (RENEWALS AND EXTENSIONS OF BUSINESS CONTRACTS), THAT IT SIGNS THIS AGREEMENT VOLUNTARILY, AND THAT NO PROMISES OR INDUCEMENTS HAVE BEEN MADE OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

5. **Commencement.** This Agreement and the terms herein shall become binding when executed by the authorized signatories of the Customer and WECC. This Agreement supersedes all other contracts, discussions, agreements, negotiations, oral statements or representations between the Parties related to the Service.
6. **Termination.** Either Party may terminate this Agreement upon sixty (60) days' prior written notice to the other Party provided, however, such notice must be given at least sixty (60) days prior to the completion of the Initial Term or any Renewal Term. Once notice of termination is properly and timely given, such termination shall become effective at the completion of the Initial Term or Renewal Term, as the case may be.
7. **Suspension of Service.** WECC may, directly or indirectly, and by use of a disabling device or by any other lawful means, suspend, terminate or otherwise deny Customer's or any other person's access to or use of all or any part of the STS Service, without incurring any resulting obligation or liability, if: (a) WECC receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires WECC to do so; or (b) WECC believes, in its sole discretion, that: (i) Customer has failed to comply with, any term of this Agreement, or accessed or used the STS Service beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of WECC; (ii) Customer has been involved in any fraudulent, misleading, or unlawful activities; or (iii) this Agreement expires or is terminated. This Section does not limit any of WECC's other rights or remedies, whether at law, in equity, or under this Agreement and shall not excuse Customer from any obligation to make payment(s) under this Agreement or any other agreement still in effect.
8. **Data Storage.** WECC makes no guarantees about retaining any data stored on the STS Service or its systems or servers following expiration or termination of this Agreement. WECC may, but is not required to, delete such data following termination of this Agreement. Customer and its users will not have access to data stored on the STS Service or WECC's systems or servers during a suspension of the STS Service or following termination or expiration of this Agreement.
9. **Provisions Not Affected by Termination.** Any termination shall not affect the provisions of this Agreement relating to indemnity, warranties made herein by the Parties, warranties implied by law, or remedies for breach of the Agreement, either by contract or by common law.
10. **Payment, Fees and Expenses.** Customer agrees to pay an annual subscription fee based on the number of supplier companies that it creates in the STS. The subscription fee schedule is attached to this agreement as Exhibit B. The fee will pay for the subscription for the year starting on the date of execution of this agreement. Customer may choose to add supplier companies in the STS in excess of the number of supplier companies allowed by the subscription level for which it has paid. If Customer exceeds the number of supplier companies permitted by its subscription level, WECC will invoice Customer for the additional cost of the subscription level required by the increased number of supplier companies it has created. The cost of the higher subscription level will be pro-rated based

on the number of days remaining in the active subscription agreement at the time that Customer exceeded the number of allowed supplier companies.

WECC reserves the right to adjust subscription pricing in any manner and at any time as WECC may determine following email notification to Customer. WECC will provide no less than a 60 day notice to Customer prior to the effective date of a change to the pricing structure and levels described in Exhibit B. Changes to the rates described in Exhibit B will become effective for Customer as of the date of subscription renewal.

To terminate the subscription at the end of the one-year subscription term, Customer must send written notice of intent to terminate to stsadmin@weccusa.org at least 30 days prior to the end of the current subscription term. This subscription agreement will automatically renew for an additional one-year term if WECC does not receive notice of Customer's intent to terminate the subscription at least 30 days prior to the end of the current subscription term. In the event of subscription renewal, WECC will invoice Customer at the updated subscription rate, based on the number of supplier companies associated with Customer in the STS on the last day of Customer's previous subscription term. Customer understands and agrees that failure to pay the fee by the due date may result in suspension and/or cancellation of its STS subscription.

11. **Records.** WECC shall keep accurate accounts and records pertaining to all fees, costs and expenses for which it is reimbursed hereunder in accordance with Generally Accepted Accounting Principles and Practices. Customer shall, upon reasonable notice to WECC, have the right, during normal business hours and at its sole cost and expense, to inspect and audit all records and invoices of WECC relating to the performance of service under this Agreement throughout the period ending one (1) year following termination of this Agreement.
12. **Temporary Interruptions.** WECC shall not be liable for any temporary delay, outages, or interruptions of the STS Service or for any delay or failure to perform its obligations under this Agreement where the delay or failure results from (a) scheduled maintenance; (b) acts or omissions of Customer or any user; (c) failure in Customer's or third party or a user's equipment or telecommunication lines connecting Customer and its users to the STS Service; or (d) any Force Majeure event.
13. **User Activity.** Customer and its users voluntarily engage in the activity of Internet use and bear the risks associated with that activity. WECC exercises no control over and expressly disclaims any obligation to monitor Customer, its users and other customers and users with respect to breaches of this Agreement or any information made available for distribution via the STS Service, including without limitation any information passing through WECC's host computers, network hubs, and points of presence, or the Internet. In no event will WECC have any liability to any Customer, user, or any third party for unauthorized access to, or alteration, theft, or destruction of information distributed or made available for distribution via the STS Service through accident or fraudulent means or devices.
14. **Intellectual Property and Confidential Information.**
 - (a) Customer acknowledges and agrees that WECC's confidential information and trade secrets, the STS Service, and any WECC-created visual and audio information, documents, data, information, graphics, software, products, processes, and services made available to Customer and its users by WECC in the course of using the STS Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. All right, title, and interest in and to the STS Service and underlying source code, including, but not limited to, patent, copyright, trademark and trade secret rights and further including all right, title, and interest in and to any images,

photographs, animations, video, audio, text, user interface, APIs, and "applets" incorporated into the STS Service are owned by WECC.

(b) WECC has not agreed to and does not agree to treat as confidential any information, suggestions, or ideas for improving or otherwise modifying any of WECC's products or services that Customer, its users, Customer's customers, users' customers, or other users provide to WECC, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict WECC's right to use, profit from, disclose, publish, keep secret, or otherwise exploit such information, suggestions, or ideas without compensating or crediting Customer, its users, Customer's customers, users' customers, or other user providing such suggestions or ideas.

(c) If WECC and Customer have entered into a separate Non-Disclosure Agreement (NDA), WECC and Customer agree that the Non-Disclosure Agreement, if applicable between the parties dated [_____] remains in full force and effect and is hereby ratified and affirmed and incorporated herein by reference.

- 15. WECC DOES NOT GUARANTEE THAT THE SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT WECC WILL CORRECT ALL SERVICE ERRORS. CUSTOMER ACKNOWLEDGES THAT WECC DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. WECC IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.**

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, WECC MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SERVICE. WECC DOES NOT REPRESENT OR WARRANT AND DISCLAIMS ALL WARRANTIES THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (B) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CUSTOMER, USERS, OR THEIR CUSTOMERS THROUGH THE SERVICE WILL MEET CUSTOMER'S, USERS', OR THEIR CUSTOMERS' REQUIREMENTS OR EXPECTATIONS; (E) ERRORS OR DEFECTS WILL BE CORRECTED; OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO CUSTOMER AND ITS USERS STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY WECC.

THE PARTIES INTEND THAT THE LIMITATIONS, LIMITED REMEDIES, AND DISCLAIMERS CONTAINED IN THIS SECTION SHALL BE VALID AND ENFORCED EVEN IF THEY FAIL OF THEIR ESSENTIAL PURPOSE.

- 16. Indemnification.** Customer agrees that to the fullest extent permitted by law, it shall indemnify, defend, and hold harmless WECC from and against all claims, suits, damages, losses, and expenses (including without limitation attorneys' fees, back wages, liquidated damages, penalties or interest) arising directly or indirectly out of any (a) claims arising out of Customer and its users' use of the STS

Service; (b) use by Customer, Supplier Companies associated with Customer, Customer's users, or Supplier Companies' users' of or connection to or the inability to use or connect to the STS Service; (c) information transmitted or stored through or on the STS Service; (d) acts or omissions in connection with either (a), (b), and (c) above; or (e) breach of this Agreement by Customer or any of its users; provided, however, that WECC shall have the right to approve, in its reasonable discretion, the selection of attorneys engaged by Customer to settle or defend such claims or suits and Customer shall not settle any claim or suit without the prior written approval of WECC. This indemnity shall survive the termination or expiration of this Agreement.

17. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE AND REGARDLESS OF WHAT CAUSE OF ACTION OR CLAIM FOR RELIEF IS ASSERTED, IN NO EVENT SHALL WECC BE LIABLE FOR ANY (I) DIRECT DAMAGES IN EXCESS OF THE ACTUAL SERVICE FEE PAID BY CUSTOMER IN THE MONTH DURING WHICH THE CLAIM AROSE; (II) ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, LOSS OF DATA, LOST TIME, LOST SAVINGS OR OTHER BENEFITS, LOST CONFIDENTIAL OR OTHER INFORMATION, LOSS OR IMPAIRMENT OF GOODWILL, LOSS OF USE, BUSINESS INTERRUPTION, DAMAGE TO EQUIPMENT, CLAIMS AGAINST CUSTOMER OR ANY USER BY ANY THIRD PERSON, OR FOR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SERVICE WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF WECC OR ITS RELATED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; (III) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY WECC TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND WECC'S REASONABLE CONTROL; OR (IV) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST WECC MORE THAN ONE YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

18. **Communications and Notices.** Any notice given pursuant to this Agreement must be in writing and shall be effective when delivered personally or by a reputable delivery service to the address set forth below or such other address as a Party may designate for itself in accordance with this Section:

If to Customer:	If to WECC:
City of La Crosse Attn: Darin Streeck 200 Marco Drive La Crosse, WI 54601	Wisconsin Energy Conservation Corporation Attn: Dan Streit 431 Charmany Drive Madison, WI 53719

19. **Headings.** The headings in this Agreement are included only as reference and shall not limit or alter the meaning of any of the terms and conditions herein.

20. **Force Majeure.** Except for monetary obligations hereunder, neither party shall be liable for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by a Force Majeure event. The delayed party must notify the other party promptly upon the occurrence of any such event and inform the other party of its plans to resume performance. "Force Majeure" means utility or transmission failures, communications failures, software failures, electronic failures, mechanical failures, power failures, strikes or other labor disturbances, third-party supplier failures, acts of God, acts of war or terror, floods, sabotage, fire, natural or other disasters, explosion, embargo, government requirement, civil or military authority, government regulation, acts or omissions of carriers, or other similar causes beyond the reasonable control of a party or its contractors, agents, or suppliers.

21. **Severability.** The provisions of this Agreement are severable, and the invalidity or unenforceability of any one or more provision(s) shall not affect or limit the validity of the remaining provisions. Should any particular provision be held to be unreasonable or unenforceable for any reason, then such provision shall be given effect and enforced to whatever extent would be reasonable and enforceable under the applicable law.
22. **Entire Agreement.** This Agreement is the entire agreement between the Parties pertaining to the services to be provided hereunder, and there are no other understandings, agreements, or representations between them pertaining to services to be provided hereunder.
23. **Waiver.** Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.
24. **No Third-Party Beneficiaries.** No provision of the Agreement or schedules is intended or shall be construed to be for the benefit of any third party.
25. **Relationship.** No joint venture, partnership, employment, or agency relationship exists between Customer or its users, and WECC as a result of this Agreement. Each party shall have sole responsibility for payment to its employees and its subcontractors, including all tax payments and report obligations and shall indemnify the other party for all such expenses and obligations.
26. **Assignment.** Except as otherwise provided in this Agreement, Customer may not assign or transfer this Agreement or access to the STS Service to a third party without WECC's consent, which shall not be unreasonably withheld, conditioned, or delayed. Any merger that involves Customer, any sale or transfer of more than fifty percent (50%) of its voting stock or any sale of all or substantially all of the assets of Customer shall be considered a prohibited assignment of this Agreement. WECC is permitted to assign or otherwise transfer this Agreement to any third party without the consent of Customer. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective representatives, successors, and permitted assigns.
27. **Survival Clause.** All duties and responsibilities of any party, which, either expressly or by their nature, extend into the future, shall extend beyond and survive the end of the contract Term or cancellation of this Agreement. In addition, the expiration or earlier termination of this Agreement shall not relieve either party of obligations incurred prior to the termination date.
28. **Waiver of Right to Jury Trial.** EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE SUCH WAIVERS, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (III) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SUBSECTION.
29. **Alternative Dispute Resolution.** Except for actions to seeking injunctive relief to protect intellectual property rights or Confidential Information, in the event of a dispute between the parties arising

under or in connection with this Agreement, both parties agree to first use their best efforts to settle the dispute through negotiation. Each party shall make available an officer or representative, who shall have authority to bind his or her respective party, to consult and negotiate with each other in good faith to resolve the dispute. If the dispute cannot be settled through such negotiation within 30 days, then, upon notice of either party to the other party, the parties shall engage in mediation for the outstanding issues prior to any lawsuit being filed by either party. Mediation shall take place in person in Dane County, Wisconsin.

30. Governing Law, Venue and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without reference to conflict of law principles. Venue and jurisdiction for any federal or state court litigation or any alternative dispute resolution including mediation and arbitration shall be Dane County, Wisconsin. All alternative dispute resolution shall be conducted in person in Dane County, Wisconsin.

31. Additional Terms and Conditions. The City of La Crosse's Standard Terms and Conditions for Service Agreements (as modified) are hereby incorporated into this Agreement as Exhibit C.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives.

Customer Name

By: Timothy Kelt

Name: TIMOTHY KALT

Title: MAYOR

07/30/2018

Date

Wisconsin Energy Conservation Corporation

By: Mary Woolsey Schlaefer by

Name: Mary Woolsey Schlaefer

Title: President and CEO

08/09/2018

Date

Doug Brannick
EW

Exhibit A - Acceptable Use Policy

SUSTAINABILITY TRACKING SYSTEM (STS) ACCEPTABLE USE POLICY

Introduction. This acceptable use policy (the "Policy") sets out the rules governing:

- (a) the use of the website at <http://apps.weccusa.org/STS/> any successor website, and the services available on that website or any successor website (the "Service"); and
- (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Service ("Content").
- (c) References in this Policy to "you" are to any customer for the Service and any individual user of the Service (and "your" should be construed accordingly); and references in this Policy to "us" are to Wisconsin Energy Conservation Corporation, and its successors, assigns, or designees ("WECC") (and "we" and "our" should be construed accordingly).
- (d) By using the Service, you agree to the rules set out in this Policy.
- (e) We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Service.
- (f) You must be at least 18 years of age to use the Service; and by using the Service, you warrant and represent to us that you are at least 18 years of age.

2. General Usage Rules.

- (a) You must not use the Service in any way that causes, or may cause, damage to the Service or impairment of the availability or accessibility of the Service.
- (b) You must not use the Service:
 - i. in any way that is unlawful, illegal, fraudulent or harmful; or
 - ii. in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- (c) You must ensure that all Content complies with the provisions of this Policy.
- (d) The purpose of the website is to collect, retain and report on corporate sustainability information and you agree to use the site only for purposes stated in this Policy. Use that is in violation of the purposes stated in this Policy can result in action by WECC up to and including termination of the software subscription without penalty to WECC. You aver to the veracity of the information that you submit while using the Service. WECC takes no responsibility for the effect of the misuse of the platform.
- (e) You shall not: (i) allow third parties to access or use the Service except as specifically authorized by this Agreement; (ii) provide passwords or other log-in information to any third party, except as specifically authorized by this Agreement or WECC; or (iii) share non-public features of the Service with any third party. In the event that it suspects any breach of the requirements of this section, including, without limitation, by users, WECC may suspend Customer's and any user's access to the Service without advance notice, in addition to such other remedies as WECC may have.

- (f) Except as expressly authorized by WECC, You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, grant access to, or otherwise commercially exploit or make available to any third party the Service, login credentials, or passwords in any way; (ii) modify or make derivative works based upon the Service; (iii) reverse engineer the Service, or (iv) access the Service in order to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions, or graphics of the Service, or (3) copy any code, features, functions, ideas, text, or graphics of the Service.
- (g) You may use the Service only for Your internal business purposes and You shall not: (i) copy, modify, publish, sell, export, distribute, transfer or perform, or prepare derivative works of, reverse engineer, decompile or otherwise attempt to extract the source code or source data from the Service; (ii) attempt to disable, circumvent, or breach any security mechanisms used by the Service or otherwise attempt to gain unauthorized access to any portion or feature of the Service; (iii) use the Service in any way that infringes or violates any intellectual property rights or publicity/privacy rights; (iv) use the Service in violation of applicable laws; (v) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material violative of third party intellectual property rights or privacy rights; (vi) send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (vii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (viii) attempt to gain unauthorized access to the Service or its related systems or networks; (ix) use or make the Service available on a service bureau or time sharing basis; or remove, replace, alter, or obscure any WECC service marks or trademarks, any user agreement, warranty or disclaimer notices from the Service, system views, or user interfaces on which the Service is viewed or accessed or any related materials without WECC's express written consent; or (x) permit any User or other third party to do any of the foregoing.
- (h) You are responsible for all activity occurring under your user account and You shall abide by all applicable local, state, national, and foreign laws, treaties and regulations in connection with Your use of the Service, including those related to data privacy, international communications, and the transmission of technical or personal data.
- (i) You shall: (i) notify WECC immediately and use your best efforts to stop, and provide assistance to WECC to stop, any actual or threatened breach of the prohibitions provided in this policy; (ii) notify WECC immediately of any unauthorized use of any password or account or any other known or suspected breach of security and shall use Your best efforts to stop such breach; (ii) report to WECC immediately and use Your best efforts to stop immediately any copying or distribution of content that is known or suspected by You and (iii) not impersonate another user or provide false identity information to gain access to or use the Service.
- 3. Personal Information.** Information provided to WECC by our corporate customers is collected by those customers under their own privacy policies. This section does not apply to practices that WECC does not own or control, or to individuals that WECC does not employ or manage. WECC has the right to access and use any content provided by you, in conformance with the terms of this Policy. By using the Service, you agree to the data practices described in this Policy and you expressly consent to the collection, use and disclosure of your Personal Information (as hereinafter defined) in accordance with this section.

WECC may collect personal information, such as the user name and other personal information ("Personal Information"). If you purchase services from WECC, we will invoice you for any services

that you purchase. Information about your computer hardware and software may be automatically collected by WECC. This information can include, without limitation: your IP address, browser type, domain names, access times, data content and referring website addresses. This information is used for the operation of the Service, to maintain and to improve the quality of the Service, and to provide general statistics regarding the use of the Service.

WECC collects and uses your company Information to deliver the Service. WECC may also use company Information to inform users of other products or services available from and through WECC. WECC may also contact users via surveys to conduct research about user opinions of current services or of potential new services that may be offered. WECC does not sell, rent or lease company Information to third parties. WECC may share usage data or integrate with trusted partners to help perform statistical analysis of usage or to provide customer support (i.e., Key Survey). All such third parties are prohibited from using a user's company Information except to provide these services to WECC, and they are required to maintain the strict confidentiality of user information.

WECC may keep track of the websites and pages you visit while using the Service, in order to improve your experience and for statistical purposes.

Other than any information or data that is subject to a confidentiality undertaking between WECC and you, any material you transmit or post to this Site shall be considered non-confidential and non-proprietary. You acknowledge that certain non-confidential and non-proprietary information that you provide during the course of using the Service may be viewed by other users of the Service with whom you are associated. Such associations may include a) other users within your company; b) users affiliated with a company that is a Supplier Company to your company in the Service; c) users affiliated with a company that is a Lead Company for your company in the Service; and d) users affiliated with WECC, or its sub-contractors. Without prejudice to the generality of the foregoing, WECC reserves the right to aggregate any data submitted to the Site for the purpose of compiling and publishing global, country or sector analyses PROVIDED that no individual, company or organization will be identified, either directly or indirectly, in any such analyses.

You agree that other than personally identifiable data you submit that is requested by WECC all data will be automatically shared with organizations with whom your organization may or may not have direct or indirect commercial relationships. With the exception of supplier company revenue information disclosed in the Service, such data will not include financial data other than that which previously has been made publicly available.

You accept that you are acting as a duly authorized representative of an organization and are responsible for the data which you provide related to the subscription to which you have access rights on behalf of Your organization and grant WECC full data sharing rights subject to this clause 3 of the Acceptable Use Policy.

- 4. Service Statistics.** WECC may compile statistical information related to the performance of the Service, and may make such information publicly available, provided that such information does not incorporate or identify Customer's or its users' confidential information. Further, WECC may collect, use, and disclose information and data regarding how the Service are used, processes information, and otherwise performs, as well as information and data for statistical, performance, usage, and quality assurance purposes. WECC has the right to access and monitor the use of the Service and other actions and data within the Service and the use of the Service by users and You hereby consent to the collection and use of such information and data as described herein. All information collected by WECC may be shared with third parties in the aggregate without any identifying Person Information.

- 5. Compelled Disclosure.** WECC may disclose your Personal Information to the extent compelled by law to do so, provided that WECC gives you prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at your cost, if you wish to contest the disclosure. If WECC is compelled by law to disclose your Personal Information as part of a civil proceeding to which you are a party, and you are not contesting the disclosure, you will reimburse WECC for its reasonable cost of compiling and providing secure access to that Personal Information.

6. Unlawful Content

- (a) Content provided by you in relation to the Service must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).
- (b) Content must be appropriate, civil and tasteful, and in accord with generally accepted standards of etiquette and behavior on the internet.

7. Marketing and Spam

- (a) You must not use the Service for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.
- (b) Content must not constitute or contain spam, and you must not use the Service to store or transmit spam, which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.
- (c) You must not send any spam or other marketing communications to any person using any email address or other contact information made available through the Service or that you find using the Service.

- 8. Hyperlinks.** You must not link to any material using or by means of the Service that would, if it were made available through the Service, breach the provisions of this Policy.

9. Harmful Software

- (a) The Content must not contain or consist of, and you must not promote or distribute by means of the Service, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.
- (b) The Content must not contain or consist of, and you must not promote or distribute by means of the Service, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

10. Service Availability

- (a) WECC strives to keep the Service up and running; however, all online services require maintenance and may suffer occasional disruptions and outages, and WECC is not liable for any disruption or loss you may suffer as a result. In the event of an outage, you may not be able to retrieve Content that you have stored. We recommend that you keep a separate record of any information that you submit to Service. Disruptions or outages

that occur outside of Business Hours will be addressed on the next business day.
"Business Hours" means Monday to Friday 8am to 5:00pm Central Time each working day;

- (b) Service Notifications. When there is something important to tell you about the Service or a service you use, we will send you service notifications to the email associated with your STS subscription.
- (c) Maintenance. WECC shall provide maintenance services to all customers who maintain an active account in the Service. WECC shall where practicable give you reasonable notice of scheduled maintenance services that are likely to affect the availability of the Service or are likely to have a material negative impact upon the Service, without prejudice to WECC's other notice obligations under this Policy. WECC shall give you reasonable notice of the application of an upgrade to the Service. WECC shall give you written notice of the application of any security update to the Service and reasonable notice of the application of any non-security update to the Service.
- (d) WECC shall provide maintenance services with reasonable skill and care and outside of Business Hours when practicable. WECC may suspend the provision of maintenance services if any amount due to be paid by you to WECC under this Policy is overdue or if WECC suspends or terminates your account under the terms of this agreement. You agree and acknowledge that WECC has no obligation to retain your data and that such data may be irretrievably deleted in the event that your subscription for the Service is suspended.
- (e) Suspension and Termination. WECC may suspend or terminate a Customer's account if the Customer violates the terms of this agreement, or if the Customer does not access the Service during a period of 365 consecutive days. WECC is not required to notify the Customer prior to suspending or terminating the account.

11. Software Subscription

- (a) The software is accessed, not sold, and WECC reserves all rights to the software not expressly granted by WECC. This subscription does not give you any right to, and you may not:
- i. circumvent or bypass any technological protection measures in or relating to the software or Service;
 - ii. disassemble, decompile, decrypt, hack, emulate, exploit, or reverse engineer any software or other aspect of the Service that is included in or accessible through the Service, except and only to the extent that the applicable copyright law expressly permits doing so;
 - iii. separate components of the software or Service for use on different devices;
 - iv. publish, copy, rent, lease, sell, export, import, distribute, or lend the software or the Service, unless WECC expressly authorizes you to do so;
 - v. transfer the software, any software subscriptions, or any rights to access or use the Service;

- vi. use the Service in any unauthorized way that could interfere with anyone else's use of them or gain access to any service, data, account, or network;
- (b) Use of the Service is only permitted by employees of organizations that have been authorized to use the Service. Authorization to use the Service is limited to organizations with a current subscription agreement and the supplier \companies that it has invited to use the Service.
- (c) Customer may provide access to the Service to users within its organization. Customer agrees to designate at least one Company Administrator for the Service. The Company Administrator may invite additional staff within the organization to create user profiles in the Service and utilize system functionality. Customer acknowledges that it is responsible for deactivating users who are terminated by, or separate from, the organization, as well as users who no longer have a valid business interest in using the system. Customer acknowledges that it is responsible for ensuring that all active users of the Service are active employees or consultants with a valid business interest in using the Service.

12. Quality Assurance. Customer acknowledges that each Supplier Company is responsible for ensuring that data and documents that it enters into the Service comply with the data and document standards described within the system. A customer who has a Subscription Agreement with WECC as a Lead Company may engage WECC under a separate agreement to conduct quality assurance measures to validate information provided by Supplier Companies associated with Customer. Customer acknowledges that WECC's responsibility for ensuring the accuracy of information entered into the Service by supplier companies is limited to the information subject to Customer's separate quality assurance agreement with WECC.

13. Records. Customer understands that, if Customer discontinues use of the Service, or if WECC suspends or terminates Customer's use of the Service, WECC may, but is not required to, retain indefinitely the information (including, but not limited to: data, documents, user profiles, and supplier profiles) that Customer provides to the Service, as well as information that Supplier Companies associated with Customer provide to the Service. Upon termination, Customer will be unable to access any data in the Service or that was collected through the Service.

14. Warranties. WECC, AND OUR AFFILIATES, RESELLERS, DISTRIBUTORS, AND VENDORS, MAKE NO WARRANTIES, EXPRESS OR IMPLIED, GUARANTEES OR CONDITIONS WITH RESPECT TO YOUR USE OF THE SERVICES. YOU UNDERSTAND THAT USE OF THE SERVICES IS AT YOUR OWN RISK AND THAT WE PROVIDE THE SERVICES ON AN "AS IS" BASIS "WITH ALL FAULTS" AND "AS AVAILABLE." YOU BEAR THE ENTIRE RISK OF USING THE SERVICES. TO THE EXTENT PERMITTED UNDER YOUR LOCAL LAW, WE EXCLUDE ANY IMPLIED WARRANTIES, INCLUDING FOR MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, AND NON-INFRINGEMENT. YOU MAY HAVE CERTAIN RIGHTS UNDER YOUR LOCAL LAW. NOTHING IN THESE TERMS IS INTENDED TO AFFECT THOSE RIGHTS, IF THEY ARE APPLICABLE. YOU ACKNOWLEDGE THAT COMPUTER AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND OCCASIONAL PERIODS OF DOWNTIME OCCUR. WE DO NOT GUARANTEE THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR THAT CONTENT LOSS WON'T OCCUR, NOR DO WE GUARANTEE ANY CONNECTION TO OR TRANSMISSION FROM THE COMPUTER NETWORKS.

15. Limitation of Liability. If you have any basis for recovering damages (including breach of this Policy), you agree that your exclusive remedy is to recover, from WECC or any affiliates, resellers, distributors, Third-Party Apps and services providers, and vendors, direct damages up to an amount equal to your Service fee for the month during which the breach occurred. You cannot recover any other damages or losses, including direct, consequential, lost profits, special, indirect, incidental, or

punitive. These limitations and exclusions apply even if this remedy does not fully compensate you for any losses or fails of its essential purpose or if we knew or should have known about the possibility of the damages. To the maximum extent permitted by law, these limitations and exclusions apply to anything or any claims (including claims for special, indirect or consequential damages or loss) related to these Terms, the Service, or the software related to the Service.

16. Governing Law and Venue. This Policy and the rights and duties of you and WECC shall be governed by and construed, enforced and performed in accordance with the laws of the state of Wisconsin without regard to principles of conflicts of law. Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Policy. The sole and exclusive venue for any disputes, claims or causes of action, legal or equitable, shall be the courts located in Dane County, Wisconsin and each Party irrevocably submits to the jurisdiction thereof. This section 16 and its requirement shall survive the term or any extension terms of this Policy.

17. Waiver. Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

18. No Third-Party Beneficiaries. No provision of the Policy or schedules is intended or shall be construed to be for the benefit of any third party.

19. BY ACCESSING OR USING THE SERVICE, OR ATTEMPTING TO DO ANY OF THESE, YOU ACCEPT THESE TERMS. IF YOU DO NOT ACCEPT THEM, YOU HAVE NO RIGHT TO AND MUST NOT ACCESS OR USE THE SERVICE. THE SERVICE AND ALL INTELLECTUAL PROPERTY RIGHTS WITH RESPECT THERETO ARE THE SOLE AND INDIVIDUAL PROPERTY OF WECC. ANY ATTEMPT TO INFRINGE UPON OR CIRCUMVENT THESE RIGHTS WILL BE PROSECUTED.

Exhibit B - Subscription Fee Schedule

Customer will pay the Subscription Fee amount that corresponds to the number of suppliers who are associated with it in the STS as of the last day of the preceding billing cycle.

	Subscription Level		
	Basic 0-20 supplier	Medium 21-200 suppliers	Premium 201+ suppliers
Annual Subscription Fee	\$1,800	\$3,000	\$7,200

Exhibit C – City of La Crosse 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 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 at least equal to the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services. Contracting Party agrees to abide by all applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.
3. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under all applicable state and local laws and any other applicable laws or regulations to perform the services.
4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in, and reasonably inferable from, this Agreement, including without limitation materials, equipment, supplies, and incidentals. The scope of services to be performed shall include, without limitation, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.
5. **CHANGE OF SCOPE.** The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement. . Scope may not be fully definable during initial phases, and as the project progresses, facts discovered may indicate that the scope must be redefined. Contracting Party agrees to make any and all changes, furnish necessary materials, and perform the work that La Crosse may require, without nullifying this Agreement, at a reasonable addition to, or reduction from, the total cost of the project. Under no circumstances shall Contracting Park make any changes, either as additions or deductions, without the written consent of La Crosse, and La Crosse shall not pay any extra charges made by Contracting Party that have not been agreed upon in advance in writing. Disputed work shall be performed as ordered in writing by La Crosse, and the proper cost or credit breakdowns therefor shall be submitted without delay by Contracting Party to La Crosse.
- ~~6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingences set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices must be itemized to identify labor costs and the Contracting Party’s direct expenses, including subcontractor and supplier costs. In addition, such invoices shall show the hours worked by the Contracting Party’s staff and the amount of work completed as a percentage of the work to be performed. The final payment of the balance due the Contracting Party for the completed service shall not be made until La Crosse, in its sole discretion, determines the work is complete and accepts the services performed by the Contracting Party under this Agreement.~~
7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions

required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.

8. **TERMINATION FOR CAUSE.** If, through any cause, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, both as determined by La Crosse in its sole discretion, La Crosse shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date. ~~In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of La Crosse, become the property of La Crosse.~~ Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to La Crosse for damages sustained by by virtue of the Contracting Party's performance of this Agreement, and La Crosse may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to La Crosse from the Contracting Party is determined.

9. **TERMINATION FOR CONVENIENCE.** La Crosse may terminate this Agreement for convenience at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by La Crosse.

10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.

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

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 employers 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 the City 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 City.
- d. *Required Provisions.* The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
- i. La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of Contracting Party; products and completed operations of Contracting Party; premises occupied or used by Contracting Party; and vehicles owned, leased, hired or borrowed by Contracting Party. The coverage shall contain no special limitations on the scope of protection afforded to La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of La Crosse.
 - ii. For any claims related to this Agreement, Contracting Party's insurance shall be primary insurance with respect to La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by La Crosse, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
 - iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to La Crosse, its elected and appointed officers, employees or authorized representatives or volunteers.
 - iv. Contracting Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - v. Each insurance policy required by this Agreement shall state, or be endorsed so as to the state, that coverage shall not be canceled by the insurance carrier or the Contracting Party, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to La Crosse.
 - vi. Such liability insurance shall indemnify La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, Contracting Party for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
 - vii. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.

- viii. All of the insurance shall be provided on policy forms and through companies satisfactory to La Crosse, and shall have a minimum AM Best's rating of A- VIII.
- e. *Deductibles and Self-Insured Retentions.* Any deductible or self-insured retention must be declared to and approved by La Crosse. At the option of La Crosse, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.
- f. *Evidences of Insurance.* Prior to execution of the Agreement, Contracting Party shall file with La Crosse a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.
- g. *Sub-Leases.* In the event that Contracting Party employ other lessees (sub-lessees) as part of this Agreement, it shall be the Contracting Party's responsibility to require and confirm that each sub-lessee meets the minimum insurance requirements specified above.
- h. *Amendments.* La Crosse may amend its requirements for insurance upon sixty (60) days written notice. Contracting Party shall procure updated insurance to comply with the new requirements of La Crosse. Contracting Party may appeal any requirement to amend the insurance coverage to La Crosse's City Council who may, in its sole discretion, mutually agree to waive such changes.

14. **INDEMNIFICATION.** To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, La Crosse, its elected and appointed officials, committee members, officers, employees 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.

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, 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. The indemnifying party's obligations under this Agreement are further conditioned upon the following: (i) the indemnified party shall promptly notify the indemnifying party in writing of any such claims, demands, liabilities, damages, costs and expenses within five days of discovery; (ii) the indemnifying party 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 the indemnifying party except as required by law. 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. Notwithstanding the above, neither party shall be liable for indirect or consequential damages of any other party, including, without limitation, any lost profits or revenue.

15. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of La Crosse have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claim any such personal liability.

16. **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.

17. **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.

18. **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.

19. **NOTIFICATION.** Contracting Party shall:

(1) As soon as possible and in any event within a reasonable period of time after the occurrence of any event of default by either party, notify La Crosse in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contracting Party to cure or mitigate the default.

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

(3) Notify La Crosse, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Contracting Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contracting Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contracting Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

20. **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.

21. **ASSIGNMENT, SUBLET, AND TRANSFER.** Contracting Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of La Crosse. This Agreement shall be binding on the heirs, successors, and permitted assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of request to assign, sublet or transfer any services provided under this Agreement. The decision to allow an assignment by Contracting Party rests solely with La Crosse, in its discretion.

22. **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.

23. **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.

24. **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

25. **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.

26. **POLITICAL ACTIVITIES.** Contracting Party shall not engage in any political activities while in performance of any and all services and work under this Agreement.

27. **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.

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

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

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

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

32. NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City: Attn. City Clerk
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

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

33. INCORPORATION OF PROCEEDINGS AND EXHIBITS. All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by La Crosse, including but not limited to adopted or approved plans or

specifications on file with La Crosse, and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Contracting Party whether or not herein enumerated.

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

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

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

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

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

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

40. **GOOD STANDING.** Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is

duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

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

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

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

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