

**Process
Equipment
Repair
Services, Inc.**

5991 Division Road

West Bend, WI 53095

**262-629-1059 phone/FAX * 414-412-4403 mobile * PERSLaMont@aol.com **

PROPOSAL for PROFFESIONAL SERVICES #15-123

Date: May 7, 2015
Sheet 1 of 4

Mr. Jarred Greeno-Supt.
LaCrosse Wastewater Treatment Utility
905 Houska Park Drive
LaCrosse, WI 54601

Work Location: Wastewater Treatment Utility
La Crosse, WI

Site Telephone: 608-789-7323

Scope of Services

We hereby propose to furnish the services necessary for Project Management and technical services necessary for the rehabilitation on-site project Management for one (1) 74 foot diameter (PFT) *Envirex* Spiral Guided Gas Holder Cover furnished under original contract with the City and PFT in approximately 1952 as explained in the cover letter and the detailed specifications for the rehabilitation of the equipment.

Labor Fees:

Approximately fourteen (14) weeks, including all expenses as described in our "terms and conditions"

Estimate (not to exceed): **\$ 70,000.00**

Note: The above estimate does not include the cost for replacement components or materials.

All work is guaranteed to be as specified, and the above work shall be performed in accordance with, or to exceed, the manufacturer's specifications for above work, and completed in a substantial workmanlike manner with payments to be made Net 45 Days from the Date of Invoice.

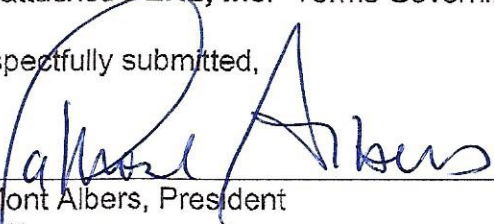
City of La Crosse Standard Terms and Conditions shall apply to this work.

City of La Crosse shall be billed for actual labor hours only, travel, living expenses charged as per "Terms" material expenses at cost plus (+) 20%.

Owner to carry fire, natural disaster and other necessary insurance upon above work. Worker's Compensation, Professional, Pollution, and Public Liability Insurance on above service work to be the responsibility of **Process Equipment Repair Services, Inc.**

Read, Sign and Return one copy of the Proposal cover with a signed copy of the attached **PERS, Inc.** "Terms Governing Customer Services".

Respectfully submitted,



LaMont Albers, President
Process
Equipment
Repair
Services, Inc.

Note: This proposal may be withdrawn if not accepted within 90 days.

The above prices, specifications, and attached Service Terms of the Proposal are satisfactory, and are hereby accepted. **Process Equipment Repair Services, Inc.** is authorized to do the work as specified. Payment will be made as outlined above.

Signature: Tim Kolt Date: 07/24/2015

Print Name: TIM KOLT - Mayor

Signature: Teri Lehrke Date: 7/24/15

Print Name: TERI LEHRKE - CITY CLERK

Process Equipment Repair Services, Inc.

TERMS GOVERNING CUSTOMER SERVICES , City of LaCrosse 1/1/15

1. **Service Rates:** Services of Process Equipment Repair Services, Inc.(PERS, Inc.) representative for Operation and Maintenance, Equipment Services as specified in this proposal are furnished by PERS, Inc. at the following rates:
 - A. For all Mechanical Services and Equipment Services including proposal estimates and administrative costs, within the continental limits of the United States; \$100.00 per hour, \$800.00 per eight (8) hour day, Monday through Friday inclusive. Overtime Monday through Friday and Saturday work is charged at time and one-half. Time worked on Sunday shall be charged double time; time worked on U.S. Holidays shall be charged double time. Services performed under hazardous conditions that require the use of special breathing apparatus and/or protective gear will be charged at twice the standard rate. PERS, Inc. shall guarantee that no lien will be placed on any City or Utility property.
 - B. Traveling, living and incidental expenses at cost, (not to exceed \$150.00 per day per person) Personal and corporate vehicles will be charged at a rate of \$1.50 per mile.
 - C. Travel time shall be charged to and from the Client's job site at the standard hourly rate for the Services being performed. Weekend and holiday travel requests, if required by the Client, shall be charged at overtime rates.
 - D. There are no charges for telephone consultations unless Services are performed at the Client's request. Rates shown above apply to services performed within 90 Days from the Date of Quotation. Services performed after that time may be subject to then current rates.
2. **Cancellation:** In the event of cancellation, Client agrees to compensate PERS, Inc. for all work performed up to the date of cancellation, unless cancellation is due to default on the part of PERS, Inc.
3. **Performance and Warranty:** PERS, Inc. agrees to perform the services and work ["Services"] described in the Scope of Services on the front side hereof, within the limits prescribed by the Client, on a good faith basis under the terms and conditions set forth herein. PERS, Inc. shall exercise reasonable skill and judgment in providing such Services. PERS, Inc.'s responsibility is limited to Services specifically performed by PERS, Inc. for the Client. PERS, Inc. shall not be responsible for acts or omissions of the Client, it's officers, directors, employees or agents, or any third parties. Except for The direct acts or omissions of PERS, Inc. representatives, the responsibility for proper operation and maintenance of the equipment shall be the Client's. **Failure by the Client to properly operate and maintain the equipment shall void any and all warranty claims and remedies that may result.** PERS, Inc. warrants that Services shall be of excellent quality in all respects. Services shall be performed, findings obtained, and recommendations prepared in accordance with generally and currently accepted industry standards, principles and practices. The Services of PERS, Inc. employees shall be free of defects in workmanship FOR A PERIOD OF ONE (1) YEAR from the date of completion and acceptance by the Client.

Remedy: All warranty claims in connection with the Services to be performed hereunder shall be made promptly by the Client in writing and received by PERS, Inc. within one year after PERS, Inc. last performed substantial and related work at the job site. PERS, Inc. shall repair or replace Services proven to be defective in workmanship or, upon consent of client, refund the cost of services
4. **Safety:** Services shall be performed only under safe conditions. PERS, Inc. shall not have any obligation to work or to continue working in a hazardous environment. PERS, Inc. has the right to discontinue or terminate operations if, in its sole discretion, such discontinuation or termination is necessary for safety and/or health reasons. Charges, as set forth above and below, shall be made for safety and security measures required by hazardous job conditions.
5. **Independent Contractor:** PERS, Inc. shall be considered a Professional Services provider, independent agent, representative or contractor; not an employee or joint venturer of Client. PERS, Inc. shall determine the time, manner, means and method of providing the Services and shall furnish all labor and tools necessary to perform such Services unless otherwise specified in writing; provided, however, PERS, Inc. shall not be responsible for negligence of Client or any other person or entity in the design or selection of a specific manner, means, method or technique which is required by the Client.
6. **Information:** PERS, Inc. is entitled to and shall rely upon information supplied by Client, or Client's engineers or consultants, or information available from generally accepted sources, without independent verification. PERS, Inc. assumes no responsibility for the accuracy of such information and shall not be liable to Client for any inaccuracies contained therein. Client agrees to provide PERS, Inc. with such specifications, plans, studies, documents or the information on conditions as shall be reasonably required by PERS, Inc. for proper and timely performance of Services. All designs, data or other technical information relating to the Services will remain the Client's property.

7. **Delays and Extensions of Time:** If PERS, Inc. is delayed at any time in the progress of the Services by any act or negligence of the Client, including its employees or agents, separate contractor employed by the Client, changes ordered in the Scope of Services, labor disputes, fire, unusual delay in transportation, adverse safety conditions, adverse weather conditions not reasonably anticipated, unavoidable casualties, or any causes beyond the PERS, Inc.'s reasonable control (i.e. force majeure), or by delay authorized by the Client, then the time to complete the Services shall be extended. Additional charges may be made to cover any unforeseen or unusual circumstances not anticipated by PERS, Inc. and the Client, when agreed to by both parties in writing.
8. **Changes, Delays and Unusual Costs:** If the Client requests or causes changes to be made in the Scope of Services, or if the Client delays the progress of work covered by the quotation, PERS, Inc. shall adjust the contract price to reflect any increase or decrease.
9. **Insurance:** PERS, Inc. shall assume responsibility for workers compensation coverage of PERS, Inc. employees only. PERS, Inc. shall provide General and Professional liability coverage of \$2,000,000, and \$1,000,000 Automobile liability Coverage for all Field Services. All other insurance coverage and necessary permits to accomplish project shall be provided by the Client.
10. **Non-waiver:** The failure of PERS, Inc. or The City of LaCrosse to insist upon strict performance of any of the terms or conditions stated herein shall not be considered a continuing waiver of any such term or condition or any of its rights, nor shall it imply a course of performance between the parties.
11. **Complete Agreement:** The complete agreement and all attendant components are Copyright © 2015 by **Process Equipment Repair Services, Inc.** All rights reserved including the right of reproduction, the use of proprietary techniques, procedures, and intellectual property in whole or in part, in any form, without the written permission of PERS, Inc. The complete agreement between PERS, Inc. and the Client is contained herein and no additional or different term or condition shall be binding unless mutually agreed to in writing. If any term of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity of all other terms hereof shall no way be affected thereby. This Agreement shall take effect upon acceptance and execution by the Client and PERS, Inc.

This proposal shall become a contract only when accepted by the Client and accepted by Process Equipment Repair Services Inc., through respective signatures by authorized personnel.

Proposal submitted by: Process Equipment Repair Services Incorporated

Date: _____

Accepted by Client:

CITY OF LA CROSSE
Client Affiliation

By: Tim Kabit

Print Name: TIM KABAT - Mayor

Date: 07/24/2015

Accepted by PERS, Inc.

By: Laymont Albers
Laymont Albers, President

Date: 7-27-15

Jeri Lehrke
City Clerk
7/24/15

STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.** In this section "Contracting Party" shall mean any party that is entering into this Agreement with the City of La Crosse. "La Crosse" shall mean the City of La Crosse. These definitions shall apply only to this section titled "Standard Terms and Conditions" and shall not replace, modify or supersede any definitions used in other sections of this Agreement.
2. **STANDARD OF PERFORMANCE.** Contracting Party agrees that the performance of the services, pursuant to the terms and conditions of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services. Contracting Party agrees to abide by all applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.
3. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.
4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carry out in a satisfactory, timely, and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement, including without limitation materials, equipment, supplies, and incidentals. The scope of services to be performed shall include, without limitation, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.
5. **CHANGE OF SCOPE.** The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement, including, if applicable, information supplied by Contracting Party. Scope may not be fully definable during initial phases. As projects progress, facts discovered may indicate that the scope must be redefined. Parties shall provide a written amendment to this Agreement to recognize such change.
6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingencies set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices must be itemized to include labor costs and the Contracting Party's direct expenses, including subcontractor costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement.
7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.
8. **TERMINATION FOR CAUSE.** If, through any cause, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, La Crosse shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of La Crosse, become the property of La Crosse. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to La Crosse for damages sustained by La Crosse by virtue of this Agreement by the Contracting Party, and La Crosse may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to La Crosse from the Contracting Party is determined.
9. **TERMINATION FOR CONVENIENCE.** La Crosse may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by La Crosse.
10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.
11. **DELAYS.** If performance of La Crosse's obligations is delayed through no fault of La Crosse, La Crosse shall be entitled to an extension of time equal to the delay.
12. **OPINIONS OF COST.** Any opinion of costs prepared by La Crosse is supplied for general guidance of Contracting Party only. La Crosse cannot guarantee the accuracy of such opinions as compared to actual costs to Contracting Party.
13. **USE OF LA CROSSE PROPERTY.** Any property belonging to La Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement.
14. **INSURANCE.** Contracting Party shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:
 - 1) Commercial General Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage;
 - 2) Automobile Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury and property damage covering all vehicles to be used in relationship to this Agreement;
 - 3) Umbrella Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage in excess of coverage carried for commercial general liability and automobile liability;
 - 4) Professional Liability Insurance of not less than \$1,000,000.00 per claim and annual aggregate; and
 - 5) To the extent that Contracting Party employs any employees or as otherwise required by law, Workers' Compensation and Employers' Liability Insurance with Wisconsin statutory limits.

On the certificate of insurance, La Crosse shall be named as an additional insured on any General Liability Insurance, Automobile Insurance, and Umbrella Liability Insurance. The certificate must state the following: The City of La Crosse, its officers, agents, employees, and authorized volunteers shall be Additional Insureds. Prior to execution of this Agreement, Contracting Party shall file with La Crosse, a certificate of insurance signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Contracting Party shall provide La Crosse with a thirty (30) day notice prior to termination or cancellation of the policy. La Crosse reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement.
15. **INDEMNIFICATION.** To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, La Crosse, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Contracting Party, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on La Crosse. Contracting Party's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as La Crosse waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.
- Contracting Party shall reimburse La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contracting Party's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers.
16. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of La Crosse have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claim any such personal liability.
17. **INDEPENDENT CONTRACTORS.** The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.
18. **GOVERNING LAW.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.
19. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
20. **NOTIFICATION.** Contracting Party shall:
 - (1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify La Crosse in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contracting Party with respect thereto.
 - (2) Promptly notify La Crosse of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contracting Party contained in this Agreement to be untrue.
 - (3) Notify La Crosse, and provide copies, immediately, upon receipt, of any notices, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Contracting Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contracting Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contracting Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.
21. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Revised: July 2011