

PROFESSIONAL SERVICES CONTRACT

PART I - AGREEMENT

THIS AGREEMENT, entered into this 17th day of February, 2021, by and between the City of La Crosse, hereinafter called the "Owner" acting herein by Bernard Lenz, P. E., Utilities Manager, and Strand Associates, Inc.®, hereinafter called the "Consultant" acting herein by Joseph M. Bunker duly authorized.

WITNESSETH THAT:

WHEREAS, the Owner desires to update their Stormwater Management Plan and Modeling in accordance with the Wisconsin Department of Natural Resources guidance and Municipal Separate Storm Sewer System permit requirements.

NOW THEREFORE, the parties do mutually agree as follows:

- 1. Scope of Services
Part II, Scope of Services, is hereby incorporated by reference into this Agreement.
- 2. Time of Performance – The services of the Consultant shall commence on February 15, 2021. All the services required and performed hereunder shall be completed no later than October 15, 2021. The following table includes project tasks and the anticipated order and timing. Both Consultant and the Owner agree to advise the other as early as possible regarding scheduling or completion date revisions.

<u>Tasks</u>	<u>Anticipated Date of Completion</u>
Project Commencement	February 15, 2021
Baseline/Existing Condition Modeling Complete	June 1, 2021
Alternatives Analysis Modeling Complete	July 19, 2021
Draft Stormwater Management Plan Complete	August 18, 2021
Final Stormwater Management Plan Complete	October 15, 2021

- 3. Access to Information – It is agreed that all information, data, reports and records and/or other information as is existing, available and necessary for the carrying out of the services outlined above shall be furnished to the Consultant by the Owner and its agents. No charge will be made to the Consultant for such information and the Owner and its agents will cooperate with the Consultant in every way possible to facilitate the performance of the services described in the Agreement. The Consultant may rely upon the information provided by the Owner and will notify the Owner of discrepancies within the information.
- 4. Ownership of Work Products – All work products and models created during the course of this Agreement shall be considered property of the Owner and made available to the Owner to use and share as deemed appropriate by the Owner. The Consultant shall not withhold any data or work product from the Owner or ask for additional compensation to provide said work product to the Owner, except for actual costs associated with gathering, packaging, or sending requested information not called out as provided in this Agreement. The Owner's reuse of any documents prepared by the Consultant for purposes unrelated to this Agreement shall be at the Owner's sole risk and without liability to the Consultant.
- 5. Compensation and Method of Payment – The maximum amount of compensation and reimbursement to be paid hereunder on an hourly rate basis plus expenses shall not exceed One Hundred Seventeen Thousand, Four Hundred and Ninety dollars (\$117,490.00). Interim payment to the Consultant shall be based on monthly services completed.

A breakdown of the compensation is attached as Part III to this Agreement as an indication of **Consultant's** anticipated hours and fees for the services. The breakdown of the actual hours, expenses, and total compensation for the services may vary from that shown, but the estimated fee indicated herein shall not be exceeded unless agreed to in accordance with this Agreement.

The **Owner** shall pay the **Consultant** within 45 days of receipt of an acceptable invoice from the **Consultant** for services rendered in the previous month.

Nonpayment 60 days after receipt of an acceptable invoice may, at the **Consultant's** option, result in suspension of services upon 10 calendar days' notice to the **Owner**. Upon receipt of payment in full of all undisputed invoice amounts, the **Consultant** will resume services with no liability to the **Owner** for such a suspension related to compensation. The **Consultant** shall be entitled to an extension equivalent of the duration of the suspension.

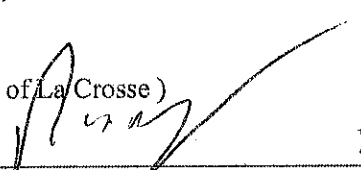
6. Miscellaneous Provisions

1. This Agreement shall be construed under and in accord with the laws of the State of Wisconsin and all obligations of the parties created hereunder are performable in La Crosse County, Wisconsin.
2. This Agreement may be amended by mutual agreement of the parties hereto in writing to be attached to and incorporated into this Agreement.
3. If performance of the **Consultant's** obligations are delayed through no fault of the **Consultant**, the **Consultant** will discuss an extension of time and additional compensation with the **Owner**.
4. Force Majeure: The **Consultant** shall not be responsible to the **Owner** if the services are delayed or prevented by wars, acts of enemies, strikes, fires, floods, acts of God, industry-wide shortages, or any other cause not within the control of the **Consultant**.
5. Setoff: Should the **Owner** exercise any setoff against the **Consultant**, the **Owner** shall notify the **Consultant** of such setoff and provide the **Consultant** the opportunity to cure such setoff within a timeframe defined by the **Owner**.

7. Terms and Conditions – This Agreement is subject to the provisions titled, "Part IV Modified Terms and Conditions" and attached hereto and incorporated by reference herein.

IN WITNESSETH HEREOF, the parties have hereunto set their hands and seals as of the date first affixed above.

(City of La Crosse)



Bernard Lenz, P. E.
Utilities Manager

2-17-21

(Strand Associates, Inc.®)



Joseph M. Bunker
Corporate Secretary

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PART II - SCOPE OF SERVICES

The **Consultant** shall provide the following scope of services:

1. Data Gathering
 - a. Provide a data request to the **Owner** requesting information identified under **Owner's** Responsibilities.
2. Watershed and Internal Drainage Area Delineation
 - a. Delineate watershed to major outfalls and modeled stormwater best management practices (BMPs) within the **Owner's** municipal separate storm sewer system (MS4) boundary that will be included in the existing condition modeling.
 - b. Prepare an exhibit defining the watershed delineations and naming convention.
 - c. Prepare an exhibit defining the internally drained areas within the **Owner's** MS4 Boundary.
 - d. Prepare a geographic information systems (GIS) shapefile of watersheds that can be incorporated into the **Owner's** GIS mapping platform and provide the shapefile to the **Owner**.
3. WinSLAMM Source Area Data Updates
 - a. Create a WinSLAMM standard land use shapefile within the **Owner's** MS4 boundary from **Owner-provided** zoning and land use mapping.
 - b. Prepare a WinSLAMM Standard Land Use exhibit.
 - c. Provide an exhibit defining soils (sandy, silty, clayey) within the **Owner's** MS4 boundary.
 - d. Provide an electronic copy of the final updated WinSLAMM model source area data input files to the **Owner**.
4. Field Inventory of Stormwater BMPs
 - a. Provide up to three eight-hour days of field topographic survey and inventory of existing stormwater BMPs.
5. Baseline and Existing Conditions WinSLAMM Modeling
 - a. Prepare stormwater quality modeling in accordance with the final version of the Wisconsin Department of Natural Resources' November 24, 2010, Developed Urban Areas Performance Standard and the 20 percent and 40 percent Reduction (recertified on September 30, 2019). Modeling will be performed in Windows Source Load and Management Model (WinSLAMM) for total suspended solids (TSS) and total phosphorus (TP).
 - b. Incorporate up to 68 BMPs into the existing condition WinSLAMM modeling. If requested by the **Owner**, additional BMPs will be incorporated into the existing condition modeling at a rate of \$330 per BMP. This cost would be above and beyond the current Agreement limit and would require a written amendment signed by both parties.
 - c. Provide an exhibit defining baseline and existing condition loadings to each delineated drainage area.
 - d. Provide an electronic copy of the final updated WinSLAMM baseline and existing condition model files, including the supporting data that was used to create the models, to the **Owner**.

6. Alternatives Analysis (20 Percent TSS Reduction Goal)
 - a. Evaluate up to three alternatives to assist in achieving the MS4 20 percent TSS standard. The alternatives will consist of a combination of the following potential implementation methods: more stringent ordinance standards for TSS and TP reduction for redevelopment, structural management practices, operational management practices, and streambank stabilization.
 - b. Prepare a figure, analysis, narrative, and opinion of probable cost for each alternative.
 - c. Provide an electronic copy of the final WinSLAMM alternatives analysis (20 percent) model files to the **Owner**.
7. Alternative Analysis (40 Percent TSS Reduction Goal)
 - a. Evaluate up to three alternatives to assist in achieving a theoretical citywide 40 percent TSS standard. The alternatives will consist of a combination of the following potential implementation methods: more stringent ordinance standards for TSS and TP reduction for redevelopment, structural management practices, operational management practices, and streambank stabilization.
 - b. Prepare a figure, analysis, narrative, and opinion of probable cost for each alternative.
 - c. Provide electronic copy of final WinSLAMM alternatives analysis (40 percent) model files to the **Owner**.
8. Water Quality Trading Alternatives Analysis
 - a. Prepare a written section in the stormwater report discussing the mechanism to assist in wastewater treatment plant (WWTP) phosphorus compliance through water quality trading and watershed adaptive management.
 - b. Develop a concept-level opinion of probable cost to assist in WWTP phosphorus compliance through water quality trading and watershed adaptive management for comparison with compliance costs for WWTP upgrades (equipment, chemical, and run time).
9. Stormwater Management Report
 - a. Prepare and submit a draft stormwater report summarizing the results on the analysis, project narrative, potential alternatives, and corresponding exhibits in digital format to **Owner** for review.
 - b. Prepare and submit a final stormwater management report. Provide four hard copies and one digital copy of the final report to the **Owner**.
 - c. Provide GIS layers, in digital format, created for analysis and reporting.
10. Meetings and Presentation to Council
 - a. Participate in up to four meetings including one kickoff meeting, one existing conditions progress meeting, one alternative analysis progress meeting, and one presentation to City Council.

Owner's Responsibilities

In addition to those listed in the Scope of Services, **Owner** shall be responsible for providing ENGINEER with the information listed below.

1. Owner assumes that all inlets shown on the city GIS mapping have 18-inch or greater sumps. Provide a stormwater inlet inventory of each stormwater inlet/catch basin on **Owner's** property that does not have a sump. Provide the maintenance schedules for inlets with sumps. This information will be used to provide **Owner** full credit for the inlets that have sumps in them. **Owner** shall provide a map of the locations of inlets with sumps.

2. Provide information relative to existing stormwater management practices including stormwater BMPs, street sweeping, and catch basin cleaning. The **Owner** shall provide a list of **Owner's** BMPs to be modeled that includes the BMP name, construction date (before or after October 1, 2004), reason for construction, and determination if BMP is constructed in accordance with their respective construction plan. The **Owner** shall also provide all stormwater utility credit applications and corresponding application information.
3. Provide list, location, design drawings (grading plans and details), and stormwater management reports for all known existing stormwater BMPs (including privately owned) and practices which stormwater quality credit is pursued.
4. Provide available existing soil borings at dry detention basins, infiltration basins, and other stormwater facilities.
5. Provide the most recent version of the following maps in digital format, as available.
 - a. Stormwater System Map including locations of grass-lined swales and outfalls.
 - b. Municipal Boundary
 - c. Existing Land Use
 - d. Zoning
 - e. Streets
 - f. Parks, recreational lands, open space map
 - g. Wetlands
 - h. Most recent aerial photography
 - i. Most recent contours
 - j. CAD and GIS files
6. Provide **Owner's** Pavement Surface Evaluation and Rating database for **Owner's** streets.
7. Provide traffic control, if necessary, during the surveying phase of the project.
8. Obtain permissions from property owners, if necessary, to survey stormwater BMPs located on private property.

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PART III - COMPENSATION

Scope Item	Total Estimated Hours	Total Fee
1. Data Gathering	28	\$ 4,020
2. Watershed and Internal Drainage Area Delineation	58	\$ 7,640
3. WinSLAMM Source Area Data Updates	33	\$ 4,970
4. Field Inventory of Stormwater BMPs	88	\$ 11,330
5. Baseline and Existing Conditions WinSLAMM Modeling	137	\$ 18,500*
6. Alternatives Analysis (20 Percent TSS Reduction Goal)	90	\$ 12,460
7. Alternatives Analysis (40 Percent TSS Reduction Goal)	90	\$ 12,460
8. Water Quality Trading Alternatives Analysis	60	\$ 11,600
9. Stormwater Management Report	144	\$ 21,180
10.1. Meeting No. 1–Kickoff Meeting (Invite Wisconsin Department of Natural Resources)	24	\$ 3,710
10.2. Meeting No. 2–Progress Meeting (Existing Conditions Discussion)	19	\$ 3,090
10.3. Meeting No. 3–Progress Meeting (Alternatives Analysis Discussion)	15	\$ 2,610
10.4. Meeting No. 4–Final Report Presentation to City Council	23	\$ 3,920
Totals	809	\$117,490

* Scope Item 5 (Baseline and Existing Conditions WinSLAMM Modeling) incorporates the use of up to 68 BMPs in the modeling. At completion of the existing conditions modeling services, an amendment to the agreement will be processed to adjust the cost for the actual number of BMPs modeled at a rate of \$330 per BMP.

PROFESSIONAL SERVICES CONTRACT
PART IV - MODIFIED TERMS AND CONDITIONS

MODIFIED 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 Use 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, stipulations of this Agreement, La Crosse shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of La Crosse, become the property of La Crosse. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to La Crosse for damages sustained by La Crosse by virtue of this Agreement by the Contracting Party, and La Crosse may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to La Crosse from the Contracting Party is determined.
 9. **TERMINATION FOR CONVENIENCE.** La Crosse may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by La Crosse.
 10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.
 11. **DELAYS.** If performance of La Crosse's obligations is delayed through no fault of La Crosse, La Crosse shall be entitled to an extension of time equal to the delay.
 12. **OPINIONS OF COST.** Any opinion of costs prepared by La Crosse is supplied for general guidance of Contracting Party only. La Crosse cannot guarantee the accuracy of such opinions as compared to actual costs to Contracting Party.
 13. **USE OF LA CROSSE PROPERTY.** Any property belonging to La Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement.
 14. **INSURANCE.** Contracting Party shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:
 - 1) Commercial General Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage;
 - 2) Automobile Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury and property damage covering all vehicles to be used in relationship to this Agreement;
 - 3) Umbrella Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage in excess of coverage carried for commercial general liability and automobile liability;
 - 4) Professional Liability Insurance of not less than \$1,000,000.00 per claim and annual aggregate; and
 - 5) To the extent that Contracting Party employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Wisconsin statutory limits.On the certificate of insurance, La Crosse shall be named as an additional insured on any General Liability Insurance, Automobile insurance, and Umbrella Liability Insurance. The certificate must state the following: The City of La Crosse, its officers, agents, employees, and authorized volunteers shall be Additional Insureds. Prior to execution of the Agreement, Contracting Party shall file with La Crosse, a certificate of insurance signed by the Insurers representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the Insurers 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 other authorized representatives or volunteers, from any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel or legal fees), costs and expenses arising from completion of the Agreement hereunder and in any manner directly caused by or contributed to in whole or in part, by reason of any omission, fault, negligent act 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.
16. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner, or employee of La Crosse have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claim any such personal liability.
 17. **INDEPENDENT CONTRACTORS.** The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.
 18. **GOVERNING LAW.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.
 19. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
 20. **NOTIFICATION.** Contracting Party shall:
 - 1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify La Crosse in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contracting Party with respect thereto.
 - 2) Promptly notify La Crosse of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contracting Party contained in this Agreement to be untrue.
 - 3) Notify La Crosse, and provide copies, immediately, upon receipt of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Contracting Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contracting Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contracting Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.
 21. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

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

23. **NO WAIVER.** The failure of any party to insist, in any one or more 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 approval by the La Crosse Common Council. La Crosse's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. La Crosse cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

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

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

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

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

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

To the City: Attn. City Clerk Copy to: Attn. City Attorney
City of La Crosse City of La Crosse
400 La Crosse Street 400 La Crosse Street
La Crosse, WI 54601 La Crosse, WI 54601

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

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

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

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

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

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

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

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

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

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

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

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

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

Revised: July 2011

