



CITY OF LA CROSSE

LA CROSSE UTILITIES OFFICE

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August 11, 2015

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Mr. Erik Granum
Trilogy Consulting, LLC
231 East Buffalo Street
Suite 306
Milwaukee, WI 53202

SUBJECT: Sewer Connection fee study

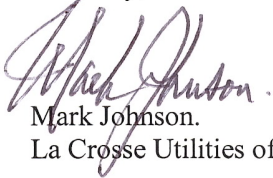
Dear Erik:

As we discussed on the phone this morning, enclosed are two copies of your proposal, including the required Terms and Conditions, for the La Crosse Sewer Connection Fee Study. Your proposal was approved by the City's Board of Public Works last week.

The City's DPW has signed the copies on Page 12 of the proposal. Would you please sign both copies and return one fully-signed copy to me? Once the signatures are in-place, we should be good to go with this work.

Many thanks for your efforts so far. If you have any questions related to this, please feel free to contact me by phone or email.

Sincerely,



Mark Johnson.
La Crosse Utilities office

Enclosures



Proposal

City of La Crosse—Sewer Connection Fee Study



Submitted by Trilogy Consulting, LLC

July 20, 2015



Firm Overview



Trilogy Consulting, LLC works with local governments and utilities to offer sound, independent, objective, long-range financial, economic, and planning consulting. Specifically, our services include sewer and water rates; municipal planning; funding for capital improvement plans; economic feasibility studies; intergovernmental cooperation studies and agreements; funding mechanisms such as impact fees; economic development programs such as tax incremental finance districts; and specialized economic and policy analysis.

Our specialized expertise includes complying with revolving loan fund requirements; developing new rate structures; financial analysis and negotiations for utility mergers and acquisitions; and successfully defending or challenging rates if they are contested.

Trilogy Consulting is a registered Municipal Advisor with the Municipal Securities Rulemaking Board and the U.S. Securities and Exchange Commission. We provide recommendations on the timing and magnitude of potential financing, but are not involved with any debt issuance. As such, we do not receive any fees as the result of the implementation of any particular financing scheme, offering truly independent municipal consulting services.

What sets us apart?

Long-term outlook - With our backgrounds, we have the expertise to develop long-term projections and we understand the importance of policies that are adaptable to changing situations. We carefully consider the long-term implications of alternatives to make sure they will work both now and in the future.

Sound recommendations based on detailed, thorough analysis – Analysis of multiple data sources—trend analysis of several years of historical data, staff interviews, benchmarks from comparable communities, and broad economic trends—not only forms the basis of sound future projections but also provides valuable information to our clients.

Comprehensive approach — Our in-depth knowledge on a wide range of municipal policy issues allows us to take a comprehensive approach to your project. The ability to draw from experience working with many municipalities on issues as varied as complex water rate proceedings, library funding, and land use planning helps you:

- Consider a wide range of funding sources to meet your objectives
- Understand how a proposed policy or implementation tool fits in with other policies
- Draw from practical experience in other communities
- Get an accurate, detailed picture of the impacts of a proposed policy

Contact Info

231 E. Buffalo St., Suite 306
Milwaukee, WI 53202
Phone: 262-470-2277
Fax: 262-436-2102
www.trilogy-llc.com

Study Overview



The City of La Crosse owns and operates a water supply system and wastewater collection and treatment facilities that serve the City as well as wastewater treatment for four other municipal customers on a wholesale basis. The City's water and sewer utilities have never charged an upfront fee for connection to the water or sewer systems and the sewer utility currently operates debt-free, meaning the existing customers of the utility have paid for the construction of the full capacity of the collection and treatment facilities. However, the facilities' capacity is such that there is currently excess capacity to connect additional customers without the need for expensive capacity expansions.

The City has requested this proposal in order to determine an appropriate method for calculating a fee for new customer communities to connect to the La Crosse water supply and wastewater treatment and conveyance systems on either a wholesale or retail basis. The purpose of this fee is to allow new customer communities to pay their fair share of the existing capacity of the system that existing customers have paid for to date.

Key issues for this study will include:

- Establishing the basis for fees for outside City customers that would apply to any new service area outside the City.
- Ensuring any new connection fees maintain consistency with existing wastewater treatment service contracts with outside City customers.
- Identifying the specific facilities that are used by outside City customers and determining the capacity in those facilities.
- The potential for incorporating any cost estimates for facilities that have not yet been built.
- Establishing the definitions of demand per Residential Equivalent User (REU) to ensure the basis of the REU reflects actual water usage and actual capacity in the water and sewer systems.
- Consideration of the method of charging the fees.
- Commenting on potential implementation issues, such as ensuring the fees collected are used in an appropriate manner.

Our general approach to this project is designed to provide a guide that the City can use to determine how to implement the fees in a cost-effective manner, to use an approach and methodology that is straightforward to understand and update in the future, and to use our knowledge of water and sewer assessments, impact fees and user charge practices to comment on equity and ease of administration.

Study Overview



Specifically, our proposed approach will:

- Use the City’s detailed asset spreadsheets to compute the existing infrastructure component of the fees. This will provide a structure that is familiar to City staff, making the report that will be provided to the City as part of this project easier to understand and update in the future.
- Rely on our extensive knowledge and experience with sewer and water assessment and connection fees to provide recommendations regarding treatment of fee revenues for budgeting, user charge rate -setting and procedures for recovering fees from new service area connections or expansions.
- It is expected that, since capital improvement plans are in place, there will be no additional engineering review required. Most of the information for the study will be obtained from the City’s asset spreadsheets and from studies and reports previously completed. However, since some of the information from prior reports may need to be validated or interpreted, our experience includes working closely with engineering firms and analyzing engineering reports for use in studies of this nature.

Scope of Work



We propose the following Scope of Services for this study:

1. Gather and Review Background Information
 - a. We will request and/or review (for items we already have copies) the following information:
 - i. Consumption Information (3-5 years' history if available)
 1. Sewer and water billing records from 2011 through the present, including total number of customers by meter size and billed usage by customer class for all City and wholesale customers - ***This information will be used to ensure that the basis for the REU and the method for calculating the fees are consistent in terms of the capacity of the system facilities.***
 - ii. Facility and Capital Improvement Information
 1. Wastewater Treatment Plant influent flows and loadings for last 3-5 years
 2. Water System Pumping data for the last 3-5 years
 3. Copies of the most recent water and sewer system plans and any available capital improvement plans
 - iii. Financial and Budgetary Information
 1. The most recent year's utility financial statement
 2. Detailed list of existing sewer and water utility assets—updated for year-end 2014
 - iv. We have copies of the following information from the City's current rate consultant:
 1. Water and sewer consumption and revenues through the end of 2013.
 2. Sewer asset detail through the end of 2013.
 3. Most recent sewer rate model and study report (which will be used for information regarding the users of the various types of sewer facilities) and all supporting data.
 4. City 2014-2018 Capital Improvement and Capital Equipment Plans.
 5. High-strength surcharges for industrial customers during 2013.
 6. Existing wholesale customer contracts.
 - b. Data will be reviewed for completeness to identify any additional information or follow up questions.
 - c. A teleconference will be conducted with City staff after the data is reviewed. The purpose of this meeting will be to ask additional follow up questions as needed and to discuss the study methodology in detail.
2. Calculate the Recommended Sewer Connection Fees
 - a. Determine value of existing assets
 - b. Determine system capacity
 - c. Calculate recommended schedule of fees
 - d. Prepare recommendations for collection and use of fee revenues
 - e. Determine fees on a basis of Residential Equivalent Units (REUs)
3. Report Preparation
 - a. Prepare a draft report summarizing the fee calculations and supporting documentation.
 - b. Review the draft report with City staff and make any edits as necessary.
 - c. Prepare a final written report and submit up to 10 bound copies of the report to the City, as well

Scope of Work



as an electronic PDF version.

4. Meetings and Deliverables

- a. Teleconferences as necessary throughout the study.
- b. An electronic copy of a draft report for review and comment from City staff.
- c. A final written report and all supporting documentation and analysis, in electronic form and up to 10 bound copies, as requested by the City.
- d. The City may request additional in-person meetings or presentations to City officials—these will be charged at our standard hourly rate of \$110 / hour.

Christine A. Cramer

Principal / Senior Consultant

231 E. Buffalo St., Suite 306
Milwaukee, WI 53202
Phone: 262-470-2277
Fax: 262-436-2102
Email: ccramer@trilogy-llc.com



Christy has been a consultant to local governments and utilities since 1997, providing analysis and advice on a wide variety of planning, economic and fiscal issues. While her work experience varies widely—from setting utility rates and impact fees, to downtown and corridor redevelopment plans, municipal consolidation studies, utility mergers, and economic impact analyses—the common theme is a focus on helping local governments and utilities develop fair and equitable long-term plans and policies. Christy’s strengths include not only sound, detailed and accurate analysis, but also the ability to explain her recommendations in terms that are easy to understand.

Christy has also served on a subcommittee of the Wisconsin Water Association that has explored options for providing Wisconsin utilities the ability to implement rates for investing in distribution system infrastructure.

Education:

- Master’s of Urban Planning, University of Wisconsin—Milwaukee, 1997
- Bachelor of Science, Physics, Carroll College, 1994

Professional Affiliations:

- American Planning Association, Wisconsin Chapter
- American Water Works Association, Wisconsin Chapter

Experience & Expertise

- Water and Sewer Rate Studies
- Cost-of-Service Rate Studies
- Specialized Rate Design, including Conservation Water Rates and High-Strength Sewer Rates
- Capital Infrastructure Cost Allocations
- Storm Water Utility Rate Studies and Development
- Public Facilities Needs Assessments and Impact Fee Studies
- Utility Creation and Acquisition Feasibility Studies
- Redevelopment, Site and General Planning Services
- Long-Term Capital Infrastructure Planning and Financial Analysis
- Tax Incremental Financing Planning and Analysis
- Expert Witness Testimony and Litigation Support
- Specialized Economic and Statistical Analysis
- Public Policy Research and Analysis
- Ordinance Drafting, Review and Updating
- Fiscal Impact Analysis
- Analysis of New Funding Methods
- Grant Funding Research and Preparation of Applications
- Landfill Siting Analysis & Negotiations

Christine A. Cramer, M.U.P.

Recent Projects



Sewer Connection Fee and Water Impact Fee Update—River Falls, WI

In 2014, Trilogy completed a study assisting the City of River Falls to update the fees they charge new connections to their sewer and water systems. The fees were established 10 years ago and had been updated periodically as system capital plans and development projections have changed. A major goal of the study is to simplify how the fees are charged to property developers and streamline the process for calculating and tracking the fees.

Reserve Capacity Assessment Update—Sussex, WI

In 2012, the Village hired Trilogy to update the Village's Sewer and Water Reserve Capacity Assessments (RCAs). The Village initially adopted the RCA fees in 1976 and has performed several updates since that time. The primary reasons for updating the study were to incorporate the actual costs for several major sewer and water projects that were completed since the last study update, incorporate future projects into the fee calculation, examine water and sewer usage statistics and recast projections if needed, and work with Village Staff to incorporate RCA fees into annual budget projections.

Impact Fee Update—Mukwonago, WI

Trilogy Consulting updated the impact fees for the Village of Mukwonago, including fees for sewer, water, police, fire protection, and library facilities. The fees were initially imposed in 2002 and 2003, and development projections and plans for public infrastructure have changed since the fees were adopted. Christy Cramer and Erik Granum worked with the Village to document expenditures for projects completed since the fees were adopted; update development projections and costs for future facilities; prepare the report required under Wisconsin Statutes 66.0617; update the impact fee ordinance; present the recommendations to the Village Board and provide support for the public hearing.

An important part of the project was determining the implications for public facilities needs of significant changes in population and development projections. The 2002/2003 studies were based on projections of three-fold growth of the Village by 2020 through annexations. Current projections assume growth of about 40 percent between 2000 and 2030.

Community Buildout Analysis—Richfield, WI

In anticipation of updating its Comprehensive Plan, the Village of Richfield retained Trilogy Consulting to undertake a community buildout analysis study to facilitate a community discussion about the long-term fiscal impacts of different types of land uses. Specifically, this study examined the impacts on future revenues, expenses and tax rates of allowing more nonresidential development in certain areas, versus more residential development. Christy served as the project manager for this study, which included conducting a workshop with the Village Board and Plan Commission to prepare alternative land use scenarios, and presenting the final study at a joint Village Board/Plan Commission meeting.

Consulting Services—Dousman, WI

Since the fall of 2012, Christy has been consulting with the Village of Dousman to identify financing sources, prepare a funding plan, and develop preliminary estimates of impacts on tax rates and sewer and water rates for a \$6.0 million Main Street reconstruction project. Christy is currently working with the Village to prepare an application to the Wisconsin Public Service Commission to increase the Village's water rates.

Christine A. Cramer, M.U.P.

Presentations and Papers



“Straight Talk About Water Finance” - Wisconsin Water Association Annual Conference, September 2013

“Balancing Declining Revenues and Increasing Costs” - Wisconsin Water Association Management Seminar, August 2013

“Managing the State Budget Crisis at the Local Level” – League of Wisconsin Municipalities Annual Conference, October 2011

“Doing More With Less: Collaborative Leadership for Service Delivery Workshop” – Local Government Institute of Wisconsin, April 2011

“Storm Water Utilities – Lessons Learned” - Waukesha County Storm Water Management Workshop, March 2011

“Tax Incremental Finance Basics” – Wisconsin Government Finance Officers Association, December 2010

“Racine Revenue Sharing Program” – Wisconsin Legislative Council, Special Committee on Local Service Consolidation, November 2010

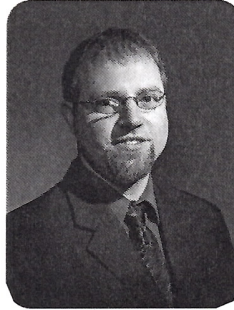
“Managing Impact Fees” – Wisconsin Municipal Clerks and Treasurers Institute, UW-Green Bay Local Government Education, July 2010

“A New Model for Fiscal Regionalism: Greater Racine’s Plan for Overcoming Fiscal Disparity”, Government Finance Review, February 2004

Erik A. Granum

Principal / Senior Consultant

231 E. Buffalo St., Suite 306
Milwaukee, WI 53202
Phone: 920-723-2169
Fax: 262-436-2102
Email: egranum@trilogy-llc.com



Erik has been working in the field of municipal and utility consulting since 2007, performing a wide variety of financial, economic and planning-related consulting services. His philosophy to municipal consulting is to provide an objective, fair and independent perspective for the client, while recognizing the political difficulties in public policy decision-making. He excels in developing alternative scenarios that meet the objectives of the municipality, while being reasonable and defensible for government decision makers that are held accountable to the residents and businesses in their communities.

Erik believes in providing local government officials and decision-makers recommendations that are based on the best available information so that public policy is sound, fair and logical. His passions lie in using available data and interpreting it into something that is understandable and has a positive real impact on communities.

Education:

- Master's of Urban Planning, University of Wisconsin—Milwaukee, 2009
- Bachelor of Business Administration, Marketing & Operations Management, University of Wisconsin—Whitewater, 2004

Professional Affiliations:

- American Planning Association, Wisconsin Chapter
- American Water Works Association, Wisconsin Chapter

Experience & Expertise

- Water and Sewer Rate Studies
- Cost-of-Service Rate Studies
- Specialized Rate Design, including Conservation Water Rates and High-Strength Sewer Rates
- Capital Cost Allocation
- Storm Water Utility Rate Studies and Development
- Public Facilities Needs Assessments and Impact Fee Studies
- Utility Creation and Acquisition Feasibility Studies
- Land Use Planning Services
- Long-Term Capital Planning and Financial Analysis
- Geographic Information Systems (GIS) - Mapping & Spatial Analysis
- Tax Incremental Financing Planning and Analysis
- Expert Witness Testimony and Litigation Support
- Specialized Economic and Statistical Analysis
- Public Policy Research and Analysis
- Ordinance Review and Updating
- Fiscal Impact Analysis
- Life Cycle Cost Analysis
- Analysis of New Funding Methods
- Grant Funding Research and Preparation of Applications

Erik A. Granum

Recent Projects



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In 2014, Trilogy completed a study assisting the City of River Falls to update the fees they charge new connections to their sewer and water systems. The fees were established 10 years ago and had been updated periodically as system capital plans and development projections have changed. A major goal of the study is to simplify how the fees are charged to property developers and streamline the process for calculating and tracking the fees.

Sewer Rate Study—Town of Beloit, WI

In March 2014, Trilogy completed a sewer rate study for the Town of Beloit sewer utility. Erik served as project manager on the study, which included determining adequate rates to fully fund the sewer utility's capital needs, including a significant upgrade to its wastewater treatment facility. Additionally, the utility serves customers in the neighboring Town of Rock on a wholesale basis.

Impact Fee Update—Mukwonago, WI

Trilogy Consulting updated the impact fees for the Village of Mukwonago, including fees for sewer, water, police, fire protection, and library facilities. The fees were initially imposed in 2002 and 2003, and development projections and plans for public infrastructure have changed since the fees were adopted. Christy Cramer and Erik Granum worked with the Village to document expenditures for projects completed since the fees were adopted; update development projections and costs for future facilities; prepare the report required under Wisconsin Statutes 66.0617; update the impact fee ordinance; present the recommendations to the Village Board and provide support for the public hearing.

An important part of the project was determining the implications for public facilities needs of significant changes in population and development projections. The 2002/2003 studies were based on projections of three-fold growth of the Village by 2020 through annexations. Current projections assume growth of about 40 percent between 2000 and 2030.

Water and Sanitary Sewer Rate Study—Cary, IL

In 2012, Trilogy Consulting completed a comprehensive water and sanitary sewer user rate study. The Village last performed a utility rate study in 2006 and is planning to implement several capital improvements in the next five years to both the sewer and water utilities. For these reasons, the Village decided to perform a utility rate study to calculate user rates for all customer classes for the current fiscal year, as well as project user rates over the next five fiscal years due to the planned capital improvements.

Customer Demand Study—Milwaukee Water Works, WI

In 2013 and 2014, Trilogy completed a study for the Milwaukee Water Works on demand characteristics of its various customer classes including wholesale customers, which included historical data analysis, preparing samples of customers within those classes and analyzing sample daily and hourly water consumption data that was collected during 2012 and 2013.

Project Budget



We propose to complete the above scope of work under the following estimated budget and labor hours (we do not anticipate any extra materials costs to be necessary):

Task	Hours	Rate / Hour	Budget
Information Gathering			
Data gathering and review	4	\$110	\$440
Review wholesale service contracts	4	\$110	\$440
Review conference call with City staff	2	\$110	\$220
Analysis			
Value of existing assets and functional analysis	15	\$110	\$1,650
Determine system capacity	15	\$110	\$1,650
Calculate recommended fees / REU	2	\$110	\$220
Report Preparation			
Draft report	10	\$110	\$1,100
Review conference with City staff	3	\$110	\$330
Prepare final report	3	\$110	\$330
Subtotal	58		\$6,380
Materials Costs			
Total Not-to-Exceed Cost			\$6,380

Requested In-Person Meetings or Presentations

\$110 / hour

Approved by Board of Public Works
8/3/2015
Wally DeWitt, P.E.
Director Public Works
Chad
Principal, Trilogy Consulting, LLC
8/14/2015

STANDARD TERMS AND CONDITIONS

Trilog Consulting, LLC

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

- 1) Commercial General Liability Insurance of not less than \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage;
- 2) Automobile Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury and property damage covering all vehicles to be used in relationship to this Agreement;
- 3) Umbrella Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage in excess of coverage carried for commercial general liability and automobile liability;
- 4) Professional Liability Insurance of not less than \$1,000,000.00 per claim and annual aggregate; and
- 5) To the extent that Contracting Party employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Wisconsin statutory limits.

On the certificate of insurance, La Crosse shall be named as an additional insured on any General Liability Insurance, Automobile Insurance, and Umbrella Liability Insurance. The certificate must state the following: The City of La Crosse, its officers, agents, employees, and authorized volunteers shall be Additional Insureds. Prior to execution of the Agreement, Contracting Party shall file with La Crosse, a certificate of insurance signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Contracting Party shall provide La Crosse with a thirty (30) day notice prior to termination or cancellation of the policy. La Crosse reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement.

15. **INDEMNIFICATION.** To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, La Crosse, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, reasonable 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 to the extent caused or contributed to in whole or in part, by reason of any by any negligent act, omission, or fault or negligence, whether active or passive of Contracting Party, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on La Crosse. Contracting Party's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as La Crosse waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Contracting Party shall reimburse La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contracting Party's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

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

17. **INDEPENDENT CONTRACTORS.** The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

18. **GOVERNING LAW.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.

19. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

20. **NOTIFICATION.** Contracting Party shall:

- (1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify La Crosse in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contracting Party with respect thereto.
- (2) Promptly notify La Crosse of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contracting Party contained in this Agreement to be untrue.
- (3) Notify La Crosse, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Contracting Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contracting Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contracting Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

21. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

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

23. **NO WAIVER.** The failure of any party to insist, in any one or more instance, upon performance of 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 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 Mayors absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Revised: April 2011, June 2015