

CITY-SPONSORED BICYCLE-SHARING PROGRAM OPERATING AGREEMENT

Between the City of La Crosse and Drift Share, Inc

This City-Sponsored Bicycle-Sharing Program Operating Agreement (“Operating Agreement”), entered into by and between the City of La Crosse (“City”), a Wisconsin Municipal Corporation, located at 400 La Crosse Street, La Crosse, Wisconsin 54601, and Drift Share, Inc (“Drift”), a Wisconsin non-stock corporation, with its principal place of business at 230 24th St N, La Crosse, Wisconsin, 54601, is effective as of the date by which both parties have signed hereunder and according to the terms and conditions set forth herein.

RECITALS

WHEREAS, Drift is a La Crosse based nonprofit that owns and operates the bicycle share program in the City to address community transportation needs; and,

WHEREAS, in 2018, the City completed a bike share feasibility study, which indicated that the city of La Crosse has adequate bicycle infrastructure and the geographic density to support bike share; and,

WHEREAS, the City of La Crosse Common Council approved the 2024 Bicycle and Pedestrian Master Plan which includes a benchmark to support the local bike share; and

WHEREAS, Drift emerged via public-private partnership to create the first bike share program to provide affordable and accessible transportation alternatives to the community; and,

WHEREAS, Drift officially launched in 2021, leasing forty bikes and eight stations primarily in the downtown area. The bike share has continued to expand service and now operates seventy-five bikes and fifteen stations with a goal of continued expansion. This program saw a total of 6,342 total rides in 2024. With goals of continued expansion, Drift is interested in expanding service to build a more equitable and accessible system; and,

WHEREAS, residents, commuters, and visitors in La Crosse benefit by having bike share as part of the public transportation network; and,

WHEREAS, the program is funded through a collaboration of public and private partners; and,

WHEREAS, Resolution 22-0570 was passed by the La Crosse Common Council in support of allocating funding from ARPA “Lost Revenue” general government services to the Drift Cycle Bike Share Project; and,

WHEREAS, City governmental bodies previously approved Drift bike share locations, as set forth in Exhibit A;

WHEREAS, the City, in partnership with Drift, applied for the Non-Infrastructure Transportation Alternatives Program (TAP) grant (the “Grant”) via Redistribution Funds to expand Drift Cycle bicycle sharing program including five new stations and twenty-four new bikes (the “Project”); and,

WHEREAS, the City was notified that it was awarded the Grant for the project, under which the Wisconsin Department of Transportation (“WisDOT”) will reimburse the City for up to 80% of project costs, up to \$45,360 in federal funds, and the City will be responsible for the remaining 20% (\$11,340) of project costs, which was previously approved by the La Crosse Common Council via Resolution 24-0858; and

WHEREAS, Grant funding will be provided via a State/Municipal Agreement between the City and WisDOT (“SMA Agreement”); and

WHEREAS, to complete the project, it is necessary for the City and Drift to enter into this Agreement to address the work to be done, payment for the work, and other terms and requirements of the Grant and the SMA Agreement.

NOW, THEREFORE, the City and Drift hereby enter into this Agreement, subject to the following terms and conditions:

1. Purpose. The purpose of this Agreement is to establish terms and conditions for the Project and payment and responsibility of the local share of Project costs.
2. Term. This Agreement shall expire ten (10) years after the last station described below in Sec. 3.a is installed.
3. Project. Drift agrees that it shall add 5 bicycle-sharing stations and 24 bicycles to the La Crosse Bike Share System as set forth in this section. Drift shall procure the equipment and bicycles, and install the same, subject to any applicable federal funding requirements.
 - a. Locations. The station additions shall be located in the following areas:
 - i. Eagle Watch (Hwy 53)
 - ii. North Community Library (1552 Kane St)
 - iii. Copeland Park (1130 Copeland Park Dr)
 - iv. Boot Hill (1514 St Andrew St)
 - v. La Crosse Center (315 Front St S)
 - b. Station Placement. Placement shall be approved by the necessary City of La Crosse governing bodies and departments before being placed. Placement of a bicycle sharing station at a location covered by this

Agreement may not commence until all necessary permits and approvals are obtained. During station placement, Drift shall comply with all conditions of approval related to the placement. Upon completion of the placement, Drift shall restore all City land affected by the placement to its original condition, except for the improvements made by Drift for the bicycle-sharing station. The City may charge Drift for its costs associated with restoring the right-of-way or other City property to its original condition if Drift fails to do so. Any property belonging to the City being provided for use by Drift shall be used in a responsible manner and only for the purposes provided in this Agreement.

- c. Bicycles. Drift shall add 24 new bicycles to the La Crosse Bike Share system in the 5 new locations.
 - d. Timing. All new stations and bicycles shall be added no later than the SMA Agreement completion date. Pursuant to the terms of the SMA Agreement, once the City is notified by WisDOT that the project is authorized and available for charging, the City shall notify Drift and work on the project may commence. The SMA Agreement has a commencement deadline of 5/31/2028 and a completion date of 6/30/2030.
 - e. Traffic Control. All signs and traffic control devices and other protective structures erected on or in connection with the Project including such of these as are installed at the sole cost and expense of Drift or by others, will be in conformity with such "Manual on Uniform Traffic Control Devices" as may be adopted by the American Association of State Highway and Transportation Officials, approved by the State, and concurred in by the Federal Highway Administration.
 - f. Responsibility. Drift assumes full responsibility for the plans and special provisions provided by their contractor for the Project. Drift is responsible for any expense or cost resulting from any error or omission in such plans. Drift will reimburse the City if the City incurs any cost or expense in order to correct or otherwise remedy such error or omission or consequences of such error or omission.
 - g. Project Benefit. Both Parties agree that the Project will benefit the general public.
4. On-Going Maintenance Responsibilities. Drift is responsible for the maintenance and operation of the La Crosse Bike Share Program. As such, Drift owns the stations, bicycles, and associated equipment. Drift agrees to own and maintain the stations and bicycles described above in Section 3 and Exhibit A for their useful life. Drift understands that a failure to follow this provision could result in the City

being liable to the State of Wisconsin or the United States government for all or a portion of the Project funding covered by the Grant. Should that occur, Drift agrees to reimburse the City for any amounts owed. More specifically, Drift agrees to maintain and operate all bicycle-sharing stations (including bicycle racks, bicycles, signs) at locations covered by this Agreement in a working condition and such that the facilities do not threaten, in any way, the safety of the public nor unreasonably impede vehicle, bicycle, or pedestrian traffic or cause any type of hazardous obstruction within City right-of-way or on other City land. In addition, Drift agrees to keep each location free from trash, debris, graffiti, or any other condition that impacts the aesthetic appeal to the location. Drift agrees to cure any defect under this provision within five (5) days of receiving written notice from the City. If Drift fails to take this remedial action, the City may perform, or contract to perform, the necessary repairs, which shall be billed to Drift.

5. Abandonment. If this Agreement expires, or is no longer in effect, and the bicycles and bicycle sharing stations still occupy City land at locations set forth in Section 3 and Exhibit A, Drift agrees that the City may remove all equipment and restore all of the locations. The City may sell any equipment recovered to reimburse its costs, and may pursue Drift civilly for any costs not recovered. Drift agrees that the City will not be responsible for any damages or losses incurred as a result of this activity. If Drift abandons the operation of the bicycle sharing system and its equipment while this Agreement is still in effect, such abandonment shall be considered a violation of this Agreement.

6. Cost.

- a. Project Budget. Procurement of 24 bikes and 5 stations is estimated to cost \$51,700. Of this amount, up to \$45,360 (80%) is expected to be covered by the Grant. The City has agreed to cover \$11,340 (20%) of the project costs (local share), as provided in this section.
- b. Federal Funding. Under the SMA Agreement, federal funding will be limited to participation in the costs of the following items, as applicable to the Project:
 - i. Procurement of non-infrastructure items as enumerated in the approved application (stations and bikes).
 - ii. State Review services.
- c. Non-Appropriation. The Parties acknowledge that the State's authority to make Grant payments to the City under the SMA Agreement is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Wisconsin Legislature. If Grant funds are not so appropriated by the State, and the SMA Agreement is terminated, work on

the Project shall cease. If Drift continues work on the Project after being notified of non-appropriation of Grant funding, Drift shall be 100% responsible for any Project costs incurred thereafter.

- d. Invoicing. As stations and bicycles are procured under Sec. 3, Drift will invoice the City for 100% of these costs, up to a total of \$51,700, provided Drift shall not invoice the City for any costs before the request to award is submitted by the City and reviewed and signed by the WisDOT.
 - e. Payment. The City agrees that it will pay Drift within thirty (30) days of an invoice prepared under Sub. d, after which it shall be the City's responsibility to seek reimbursement from WisDOT under the terms of the SMA Agreement with the State of Wisconsin. Drift agrees to work with the City to prepare any necessary documentation to support the reimbursement claim.
 - f. Overages. If total project costs exceed \$51,700, Drift shall complete the Project and shall be 100% responsible for the remaining costs.
 - g. Ineligible Expenses. Unless otherwise agreed to by the parties in writing, Drift shall be responsible for any projects costs that are deemed ineligible for federal reimbursement by WisDOT. If the City is required to reimburse any such amounts under the terms of the SMA Agreement and Grant conditions, Drift shall reimburse the City for such costs within thirty (30) days.
7. Federal and State Requirements. Due to the Grant funding of this project, Drift agrees to be subject to certain federal and state requirements as follows:
- a. General. Where applicable, the initiation and accomplishment of this project will be subject to the federal and state regulations applicable to a non-infrastructure project, as referenced in the document [A Sponsor's Guide to Non-Traditional Project Implementation](#). These laws and regulations include, but are not limited to, the following:
 - i. Environmental requirements, including but not limited to those set forth in 23 U.S.C. sec. 139 and the National Environmental Policy Act (42 U.S.C. sec. 4321 et seq.).
 - ii. Equal protection guaranteed under the U.S. Constitution, WI Constitution, Title VI of the Civil Rights Act and Wis. Stat. § 16.765. Drift agrees to comply with and promote applicable Federal and State laws, Executive Orders, regulations, and implementing requirements intended to provide for the fair and equitable treatment of individuals and the fair and equitable delivery of services to the public. In addition, Drift agrees not to engage in any illegal discrimination in

violation of applicable Federal or State laws and regulations. This includes but is not limited to Title VI of the Civil Rights Act of 1964 which provides that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Drift agrees that public funds, which are collected in a nondiscriminatory manner, should not be used in ways that subsidize, promote, or perpetuate illegal discrimination based on prohibited factors such as race, color, national origin, sex, age, physical or mental disability, sexual orientation, or retaliation.

- iii. The Project is subject to a discretionary DBE goal assessment.
 - iv. Federal and state statutes that govern the Transportation Alternatives Program.
- b. Additional applicable state and federal requirements may include, but are not limited to, the following:
- i. Prevailing wage requirements, including but not limited to 23 U.S.C. § 113 and Wis. Stat. § 103.50.
 - ii. Buy America Provision and its equivalent state statutes, set forth in 23 U.S.C. § 313 and Wis. Stat. § 16.754.
 - iii. Competitive bidding requirements set forth in 23 U.S.C. § 112 and Wis. Stat. § 84.06.
- c. Debarment Certification. By entering into this Agreement, Drift certifies to the best of its knowledge and belief, that it and its principals, as that term is defined in 49 CFR Part 29:
- i. Are not currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any State of Wisconsin or Federal department or agency;
 - ii. Have not, within a three-year period preceding this SMA been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- iii. Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated above;
 - iv. Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or Local) terminated for cause or default; and
 - v. That all grantees, contractors, and suppliers, including what is also known as lower tier participants as that term is used in 49 CFR Part 29 and the Appendix to Part 29 -- Covered Transactions, have certified in writing that neither they or their principals are currently debarred, suspended, proposed for debarment or suspension, have been declared ineligible, or have voluntarily been excluded from participating in this or any other Federal, State or Local transaction by any Federal, State or Local department, agency or official.
- d. Records. Drift understands and acknowledges that the City is subject to the Public Records Law of the State of Wisconsin. As such, Drift 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. Drift agrees to assist the City in complying with any public records request that La Crosse receives pertaining to this Agreement. Additionally, Drift agrees to indemnify and hold harmless the City, 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 Drift's actions or omissions which contribute to the City's inability to comply with the Public Records Law. In the event that Drift decides not to retain its records for a period of seven (7) years, then it shall provide written notice to the City whereupon the City shall take custody of said records assuming such records are not already maintained by the City. This provision shall survive the termination of this Agreement.
- e. Access to Records; Audit. Drift, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. The City, or any of its duly authorized representatives, shall have access, at no cost to the City to such books, records, documents, papers or any records, including electronic, of Drift which are pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. If necessary, Drift will cooperate with the City on WisDOT's Project audit, which is required under the terms of the SMA Agreement. In the event that

any litigation, claim or audit is initiated prior to the expiration of said records retention period, the records will be retained until such litigation, claim or audit involving the records is complete.

8. Insurance. Unless otherwise specified in this Agreement, Drift shall, at its sole expense, maintain in effect at all times during the Agreement, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.
 - a. Worker's Compensation and Employers Liability Insurance. Drift shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. Drift shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least for employer's liability of one hundred thousand dollars (\$100,000.00) per each accident, one hundred thousand dollars (\$100,000.00) per each employee and five hundred thousand dollars (\$500,000.00) total policy limit.
 - b. Commercial General Liability and Automobile Liability Insurance. Contracting Party shall provide and maintain the following commercial general liability and automobile liability insurance:
 - i. Coverage for commercial general liability and automobile liability insurance shall, at a minimum, be at least as broad as the following:
 1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).
 2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).
 - ii. Drift shall maintain limits no less than the following:
 1. General Liability. One million dollars (\$1,000,000.00) per occurrence (\$1,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.
 2. Automobile Liability. One million dollars (\$1,000,000.00) for bodily injury and property damage per occurrence covering all vehicles to be used in relationship to the Agreement.
 3. Umbrella Liability. Five million dollars (\$5,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements as set forth herein.

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

- vii. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
 - viii. All of the insurance shall be provided on policy forms and through companies satisfactory to the City and shall have a minimum AM Best's rating of A- VIII.
- d. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the City.
- e. Evidences of Insurance. Prior to execution of the Agreement, Drift shall file with the City a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.
- f. Sub-Contractor. In the event that Drift employs other contractors (sub-contractors) as part of this Agreement, it shall be Drift's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.
- g. Amendments. The City may amend its requirements for insurance upon sixty (60) days written notice. Drift shall procure updated insurance to comply with the new requirements of the City if commercially available and at the City's expense. Drift may appeal any requirement to amend the insurance coverage to the La Crosse Common Council who may, in its sole discretion, mutually agree to waive such changes.
- 9. Indemnity. To the fullest extent allowable by law, Drift hereby indemnifies and shall defend and hold harmless, at Drift's expense, the City, the State of Wisconsin, and their elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Drift, 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 the City or State. Nothing in this section should be construed as a waiver or estoppel of any governmental party or its insurer to rely upon the limitations, defenses and immunities contained within Wis. Stats. §§ 345.05 and 893.80, or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

10. No Personal Liability. Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of the City have any personal liability arising out of this Agreement, and Drift shall not seek or claim any such personal liability.
11. 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.
12. Default and Termination. In the event that Drift shall default in any of the covenants, agreements, or stipulation of this Agreement, or fails to fulfill in a timely and proper manner its obligations under this Agreement, both as determined by the City in its sole direction, and any such default shall continue unremedied for a period of thirty (30) days after written notice thereof to Drift, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against the other, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of the parties under this Agreement. It shall be a default if any of the following conditions occur:
 - a. If Drift makes an assignment of its property for the benefit of creditors.
 - b. If Drift petitions a court to be adjudged bankrupt, or is adjudged bankrupt.
 - c. If a petition in bankruptcy shall be filed in any court against Drift for more than thirty (30) days.
 - d. If Drift is judicially determined to be insolvent.
 - e. If a receiver or other officer shall be appointed to take charge of the whole or any part of Drift's property or to wind up or liquidate its affairs.
 - f. If Drift shall seek reorganization under any terms of the National Bankruptcy Act, as amended, or under any other insolvency law, including a Wisconsin Chapter 128 proceeding.
 - g. If Drift shall admit in writing its inability to pay its debts as they become due.

- h. If any final judgment shall be rendered against Drift and remain unsatisfied for a period of thirty (30) days from the date on which it becomes final.
13. Termination for Convenience. The City may terminate this Agreement for convenience for any reason by giving twelve (12) months advance notice to Drift of such termination and specifying the effective date.
14. City Ordered Removal of Facilities. Drift shall remove the bicycle(s) and bicycle racks/station equipment in the right-of-way that are permitted under this Agreement upon ten (10) days written notice by the City or as required by any applicable permit. For all other facilities subject to this Agreement located on other City land, Drift agrees to remove the bicycle(s) and bicycle racks/station equipment upon thirty (30) days written notice by the City. Furthermore, due to, among other things, special events, construction or public work activity, weather related concerns, unforeseen circumstances, or other reasons consistent with the City and the public's use and enjoyment of City land, the City may find that it is necessary for Drift to remove some or all of the bicycle station equipment at a location, temporarily or permanently. Under these circumstances, the City shall give Drift as much notice as reasonably possible, after which Drift shall abide by the removal order. If removal is required under this subsection, Drift shall not be entitled to damages for removal of the bicycle station equipment, and if Drift shall not remove the same upon due notice, it shall be removed at Drift's expense.
15. Reimbursement of the City. If Drift fails to restore City property or maintain the bicycles or station equipment covered by this Agreement and the City has to take remedial action, the City shall bill Drift upon completion of the activity, which amount Drift shall pay within thirty (30) days. Drift acknowledges that the City shall be the sole judge of whether locations have been satisfactorily restored or maintained.
16. Governmental Approvals. Drift acknowledges that various of the specific undertakings of La Crosse described in this Agreement may require approvals from the La Crosse Common 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. Drift shall be responsible for obtaining and maintaining all required permits and approvals necessary to install and operate the program's facilities in the right-of-way or on other City land. Failure to have or maintain valid permits or approvals will cause the privileges granted by this Agreement to immediately expire for each location in question where non-compliance has occurred. Drift shall have thirty (30) days to either obtain the necessary permit and approval for the non-complying location or to remove its equipment and complete full restoration of the location.

Drift further acknowledges that this Agreement is subject to appropriation by the La Crosse Common Council and/or the State of Wisconsin. The City's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. The City 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.

17. Governing Law. This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.
18. Jury Trial Waiver. The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.
19. 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.
20. Assignment. Drift shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the City's prior written consent. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Drift shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer. The decision to allow an assignment by Drift rests solely with the City, in its discretion.
21. Compliance with Law. The parties shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.
22. No Waiver. The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of

such other party with respect to such future performance shall continue in full force and effect.

23. Subcontracting. None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of the City. 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. Drift shall be as fully responsible to the City for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.
24. Conflict of Interest. Drift 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. Drift 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 Drift or its employee must be disclosed to the City.
25. Non-Discrimination. Pursuant to law, it is unlawful and Drift 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. Drift shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.
26. Political Activities. Drift employees shall not engage in any political activities within the City of La Crosse while in performance of any and all services and work under this Agreement. This does not apply to periods of time in which Drift employees are not at work.
27. 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.

28. Entire and Superseding Agreement. This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of the City, granting approvals or conditions attendant with such approval, the specific action of the City 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 terms and conditions, these terms and conditions shall take precedence.
29. 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 the City. 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.
30. 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.
2. 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

Drift shall identify in writing and provide to the City the contact person and address for notices under this Agreement.

31. 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 the City, including but not limited to adopted or approved plans or specifications on file with the City, 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 Drift whether or not herein enumerated.
32. 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.
33. 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.
34. Force Majeure. The City shall not be responsible to Drift 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.

35. Good Standing. Drift 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. Drift 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.
36. 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.
37. Execution of Agreement. Drift shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council and Drift's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.
38. Counterparts; Electronic Delivery. 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. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.
39. Survival. All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

IN WITNESS HEREOF, the parties have executed and delivered this Agreement effective the date set forth next to the City's signature below.

THE CITY OF LA CROSSE:

Shaundel Washington-Spivey, Mayor

Date

Nikki Elsen, City Clerk

Date

DRIFT SHARE, INC.:

Jacob Sciammas, Board President

Date