

Resolution approving a contract between the City of La Crosse and Gundersen Health Plan to provide administration services for the City's medical benefit plan effective January 1, 2014.

## RESOLUTION

WHEREAS, Common Council File #13-0077 adopted on March 14, 2013 directed the Human Resources Department to request proposals from qualified vendors to provide claim administrative services, utilization review and network access for the City's self-funded Medical Benefit Plan's Dual Network for a term beginning January 1, 2014, and

WHEREAS, an open and competitive bid process was utilized to secure proposals from qualified third party administrators and the recommendation of the Director of Human Resources is to select the proposal by the current administrator, Gundersen Health Plan, to provide claims administration, utilization review and network access services for the Gundersen Health System Preferred Provider Network under the City's Medical Benefit Plan.

NOW THEREFORE BE IT RESOLVED by the Common Council of the City of La Crosse that the attached Agreement between the City of La Crosse and Gundersen Health Plan effective January 1, 2014 is hereby approved and ratified.

BE IT FURTHER RESOLVED that the Director of Human Resources and the Director of Finance are herewith authorized and directed to take any and all necessary steps to implement this agreement.

## ADMINISTRATIVE SERVICE AGREEMENT

This Agreement, effective this 1<sup>st</sup> day of January, 2014, by and between City of La Crosse ("PLAN SPONSOR") doing business in and having full-time employees in the State of Wisconsin with PLAN SPONSOR's principal place of business being located at La Crosse, Wisconsin, and Gundersen Health Plan, Inc., a Wisconsin corporation ("TPA"). PLAN SPONSOR AND TPA shall be individually referred to as a "Party" and collectively referred to as the "Parties."

**WHEREAS**, PLAN SPONSOR provides a self-funded health and welfare benefit plan as described in Exhibit A (the "Plan") to its employees and their dependents, and to the employees of participating affiliates and their dependents ("Members"); and

**WHEREAS**, TPA desires to be appointed as the third party administrator for the Plan and PLAN SPONSOR desires to contract with TPA to administer the Plan;

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

### **1. Appointment**

1.01 PLAN SPONSOR appoints TPA to perform the administrative duties necessary to the operation of PLAN SPONSOR'S Plan as outlined in this Agreement.

1.02 TPA hereby accepts this appointment and agrees to perform faithfully the duties thereof to the best of its knowledge, skill and judgment, and to obey promptly such reasonable instructions relating to performance of TPA's duties as they may be given by PLAN SPONSOR.

1.03 The PLAN SPONSOR, not TPA, is the plan administrator and the plan sponsor of the Plan.

TPA's sole function shall be to provide the services stated herein. In no instance shall TPA be deemed to be the Administrator of, or fiduciary to the Plan, as amended from time to time.

1.04 Any financial obligations or responsibilities related to payment of benefits under the Plan on behalf of Members, or payment of service fees, shall remain the obligations and responsibilities of PLAN SPONSOR until satisfied.

### **2. Compliance with Applicable Law**

2.01 The Parties shall comply with all applicable laws and with the rules and regulations of all regulatory authorities having jurisdiction over the Parties' activities, and

each shall, whenever necessary, maintain at its own expense all required licenses and/or certificates of authority required of it to transact business and to perform its duties and obligations under this Agreement.

2.02 PLAN SPONSOR is the plan administrator and plan sponsor of the Plan. As such, PLAN SPONSOR assumes full responsibility for maintaining the Plan in compliance with all applicable laws, and for complying with all applicable reporting and disclosure requirements.

Except as required by law and in accordance with the Patient Protection and Affordable Care Act (the Affordable Care Act), PLAN SPONSOR shall have the sole responsibility for (a) determining whether the Plan is "grandfathered" for the purposes of the Plan's compliance with the requirements of the Patient Protection and Affordable Health Care Act, the Health Care and Reconciliation Act of 2010, and any other applicable law, (b) providing any required notice to Members related to the Plan's grandfathered status, and (c) maintaining any records required to preserve the Plan's grandfathered status.

2.03 TPA assumes no liability for the provisions contained in the Plan document or Summary Plan Descriptions (SPD). Periodically, TPA may provide PLAN SPONSOR with correspondence concerning the Plan. Such correspondence is only informational and should not be considered legal advice for the maintenance of the Plan.

### **3. Obligations of TPA**

Subject to the terms and conditions of this Agreement, TPA agrees to the following:

3.01 Applications. The City of La Crosse shall review and evaluate applications for coverage under the Plan, determine whether to accept or reject said applications in accordance with the eligibility requirements of the health plan and respective collective bargaining agreement(s), and determine the effective date of such coverages.

The Plan Sponsor will issue SPD's to the applicants.

3.02 Claims. Subject to the supervision by PLAN SPONSOR, TPA shall examine all initial claims and determine the payment level under the Plan, including data entry and adjudication by its claims department, maintenance of claims experience files, complete review of claims for billing accuracies, use of medical consultants, review of utilization, review and apply reasonable and customary charges, coordination of benefits, and reinsurance.

TPA shall process and settle all valid claims, including expenses incurred in the investigation and settlement thereof arising under the Plan, subject to the supervision of PLAN SPONSOR, and in accordance with the terms and provisions of the Plan document and SPD. All such claims shall be handled in a

manner and under standards customary to the industry and as required by applicable law.

TPA shall (a) timely pay HEOS providers the HEOS contracted rates, (b) comply with the applicable terms and conditions of the Network Provider Agreements, and (c) comply with any applicable terms in third party network agreements, including but not limited to HealthEOS and Gundersen Health System providers with regard to the administration of the network Programs and maintaining the confidentiality of the third party information, the Contract rates and the terms of the Network Provider Agreements and other applicable terms.

3.02.a TPA shall provide PLAN SPONSOR a copy of the claim paid report and provider check register indicating total payments to each provider of all eligible claims made.

Claims shall be paid by TPA from its health fund assets with reimbursement made by PLAN SPONSOR as described in this Agreement.

3.02.b TPA shall process all PLAN SPONSOR's rights under the Plan as to coordination of benefits, and recovery of overpayments, including coordination with Medicare, Medicaid or other insurance carriers.

3.02.c TPA shall actively review all claims paid by the Plan to determine if a third party might be responsible for the medical claim. TPA will also investigate any potential subrogation claims on behalf of the Plan. If the Plan becomes a party to litigation as a result of the Plan's subrogation rights, TPA shall refer said lawsuit to PLAN SPONSOR. PLAN SPONSOR shall prosecute or defend any third party liability subrogation lawsuit.

3.02.d Whenever TPA becomes aware of an incorrect payment under the Plan to a provider, or to a Member, TPA shall make a diligent attempt to recover the amount incorrectly paid. If the amount cannot be recovered in full, TPA shall inform PLAN SPONSOR for the purpose of determining further action by PLAN SPONSOR. PLAN SPONSOR shall determine whether to pursue recovery of any such incorrect payments and how to pursue such recovery.

3.03 Procedures. TPA shall establish such rules, regulations and procedures as it may deem proper and necessary to the effective administration of the Plan.

3.04 Statistical Information Regarding Claims. TPA shall furnish to PLAN SPONSOR such statistical data regarding the claims under the Plan as may be requested by PLAN SPONSOR and mutually agreed upon by both PLAN SPONSOR and TPA. Minimally and in accordance with the request for proposal from the City of La Crosse, the following reports shall be provided to the City and any designees on a quarterly basis. Additionally, the reports must be provided on a total basis and group divisions as determined by the City, to be received by City of La Crosse and designees:

- a. Enrollment (Alphabetical by Subscribers and Dependents)
- b. Number of Enrollment by Tier (i.e. Single, Ltd Family, Family) by Month
- c. Individual Summary of Paid Claims
- d. Deductible Report by Participant
- e. Claims by Cause by Type of Service
- f. Information Required to meet Health Care Reform Provisions as Enacted by The Health Care Reform Patient Protection and Affordable Act (PPACA), also known as The Affordable Care Act
- g. Paid Claims (Monthly and Rolling Twelve Month)
- h. Incurred Claim Analysis (Lag Report)
- i. Most Utilized Hospitals and Physicians
- j. Large Claims Report/indicating claims amounts and diagnoses
- k. Savings Reports, Coordination of Benefit Savings, Subrogation Savings Reports, PPO Savings as this information is available from TPA.
- l. Medical and Rx Network Utilization/Cost Analysis (if possible to integrate with Navitus)
- m. Paid Claims by Provider Category
- n. Paid Claims by Procedure Category
- o. Top Ten (10) MDC Report
- p. Top Ten (10) DRG Report
- q. Top Twenty-five (25) Physician's Utilized
- r. Top Ten (10) Hospital's Utilized
- s. Lifetime maximum reports as necessary

Once appropriate Business Associates Agreements and information system connectivity are in place, TPA will provide data monthly data transfer via secure FTP to a third party approved by both the PLAN SPONSOR and TPA.

The PLAN SPONSOR right to withhold a payment of \$10,000 for reporting timeliness referenced in the RFP request is null and void.

3.05 Inquiries/Appeals. Except as provided below, TPA shall properly respond to and answer all questions, inquiries, grievances, or complaints that are received by or directed to TPA or PLAN SPONSOR by a Member with respect to eligibility, claims coverage, or billing. When deemed necessary, TPA shall seek and follow the advice of PLAN SPONSOR, if necessary, to properly address any such matters. If the Member appeals TPA's response, TPA shall refer the Member to PLAN SPONSOR for final determination on the appeal. All final determination on all appeals will be made by PLAN SPONSOR, subject to applicable law. In addition, any grievances, complaints, or appeals that involve benefits that are not clearly defined under the SPD shall be referred to PLAN SPONSOR for a response and final determination. All written grievances or complaints which PLAN SPONSOR is legally obligated to answer that are received by or directed to TPA by an applicant, covered individual, or regulating body, shall be immediately forwarded to PLAN SPONSOR along with copies of all pertinent information.

Notwithstanding this Section 3.05 to the contrary, PLAN SPONSOR shall be responsible for complying with all external review requirements applicable to the Plan. Upon loss of grandfathered status in accordance with the Patient Protection and Affordable Care Act (the Affordable Care Act), TPA shall arrange to make available at least three duly accredited independent review organizations (or "IROs") with whom the PLAN SPONSOR may contract to review applicable external review claims, and PLAN SPONSOR may then choose how to allocate external review assignments among the IROs. The TPA will cooperate with PLAN SPONSOR and the IRO with respect to the review of any applicable claim or appeal, and shall immediately forward any applicable information it receives regarding such claim or appeal to PLAN SPONSOR.

3.06 Plan Design and Documents. TPA shall assist PLAN SPONSOR in the design and content of the Plan, including any amendments to the Plan. PLAN SPONSOR shall have sole responsibility for drafting documents stipulating the benefits provided under the Plan unless otherwise agreed to by the Parties. PLAN SPONSOR shall be responsible for printing all applications, SPDs, and other documents stipulating the benefits provided under the Plan unless otherwise agreed to by the Parties. PLAN SPONSOR shall have the sole responsibility for determining whether any documents or materials described in this Section comply with applicable law.

3.07 ID Cards. TPA shall be responsible for the initial printing of standard issue ID cards that have been approved by PLAN SPONSOR.

3.08 ID Cards. PLAN SPONSOR shall be responsible for the expense of reprinting/reissuance of the standard issue ID cards if the reissuance is due to the PLAN SPONSOR'S request. The TPA must be in receipt of a written request from PLAN SPONSOR before the ID cards will be revised.

The ID cards will contain all appropriate logos including but not limited to MultiPlan, Inc.

3.09 Certificates of Creditable Coverage. TPA shall provide certificates of creditable coverage to Members, and former Members, providing a copy to PLAN SPONSOR. PLAN SPONSOR shall promptly provide all information necessary to allow TPA to satisfy this Section 3.09.

3.10 General Administration. TPA shall provide all general administrative and clerical personnel, and facilities necessary for the proper administration of the Plan, and the services provided hereunder.

3.11 Relationship. Upon reasonable request by PLAN SPONSOR, TPA shall provide written notice approved by PLAN SPONSOR, to Members advising them of the identity of and relationship between TPA and PLAN SPONSOR. Except as provided for in this Agreement, neither TPA nor any person acting on behalf of TPA, shall have authority to incur expenses or obligations of any kind in the name of or on behalf of PLAN SPONSOR without prior written approval of PLAN SPONSOR. Without specific prior

written authorization from an authorized executive officer of PLAN SPONSOR, TPA is not and shall not be authorized:

3.11.a To waive or change any provision of any contract or document issued by PLAN SPONSOR.

3.11.b To modify or waive any procedures or rules of PLAN SPONSOR.

3.11.c. To alter or discharge any indebtedness due the Plan or PLAN SPONSOR.

3.12 This agreement incorporates the TPA response to the City of La Crosse Request for Proposal for Claims Administration for the Self-Funded Medical Benefit Plan from August 15, 2013 as amended by mutual agreement.

#### **4. Services Not Provided Under This Agreement**

The following services and items are not provided by TPA under this Agreement:

- 4.a Consulting services, nor payment of consulting fees;
- 4.b Legal services, nor payment of legal fees;
- 4.c Audit services, nor payment of audit fees;
- 4.d Actuarial services, nor payment of actuarial fees;
- 4.e Investment services, nor payment of investment fees;
- 4.f PLAN SPONSOR expenses;
- 4.g Determining the cost of the any coverage under the Plan;
- 4.h The cost of supplies; postage and printing for PLAN SPONSOR approved special mass mailings to Members. This does not include costs for member newsletters, or similar wellness or preventive care mailings.
- 4.h The cost of postage and reprinting of erroneous standard issue ID cards that were approved for print by PLAN SPONSOR.
- 4.i The cost of postage and reprinting of revised standard issue ID cards whereby changes to the ID card are requested by the PLAN SPONSOR.

The above is not an exhaustive list of the services that are excluded from this Agreement.

#### **5. Obligations of PLAN SPONSOR**

Subject to the terms and conditions of this Agreement, and during any period of time for which PLAN SPONSOR's plan document and/or SPD obligates PLAN SPONSOR to provide employee benefits or services, PLAN SPONSOR agrees:

5.01 To furnish for the use of TPA any and all information and/or documents considered by TPA to be necessary in assisting in the administration of PLAN SPONSOR's Plan as outlined in PLAN SPONSOR's Plan document and/or SPD.

5.02 To notify TPA a minimum of ninety (90) days in advance of or as soon as reasonably possible, any desired effective date of a benefit plan change, or any change that may have an effect on PLAN SPONSOR'S plan in any manner, agreeing that Plan changes only be made when requests for such changes are made in writing, above PLAN SPONSOR's signature.

The City understands that requests for plan design changes with less than a ninety (90) day notice may not be effective upon the effective date. If the TPA is provided less than a ninety (90) day notice, it will make every reasonable effort to process the request timely and agree to not charge for such changes.

5.03 To pay any tax (other than State or Federal income taxes) or any other assessment or premium charge assessed against or with respect to the Plan during the operation of the Plan.

5.04 To appoint a person, or committee, responsible to review and decide any claim appeals, and to make final determinations (subject to applicable law) with respect to Plan/SPD interpretations. TPA requires such determination in a written format. PLAN SPONSOR shall advise TPA, in writing, if a successor is appointed in this capacity.

5.05 To appoint a person, or committee, with whom TPA can consult and obtain written approval of subrogation settlements, if TPA is involved in such settlement. PLAN SPONSOR shall advise TPA, in writing, if a successor is appointed in this capacity.

5.06 That all checks, money orders, and other negotiable instruments received by TPA by and related to the Plan may be endorsed by an authorized TPA representative and deposited in a TPA account for claims payment for the benefit of the Plan in accordance with the terms and conditions of this Agreement.

5.07 To compensate TPA as described in this Agreement.

5.08 To satisfy all applicable continuation coverage requirements under Section 4980B of the Internal Revenue Code of 1986, as amended and other applicable law.

5.09 To maintain all required documents, as well as all required signature(s) of any applicable Member, that are necessary to establish compliance with applicable law in the event that PLAN SPONSOR files a Member's application or enrollment form electronically through TPA's internet portal or any other electronic media, and to make such documents and signature(s) available to TPA upon its reasonable request.

5.10 To satisfy any financial obligation or responsibility related to payment of benefits under the Plan on behalf of Members or payment of service fees related to the Plan.

5.11 To supply TPA with the name of a PLAN SPONSOR employee or representative with whom TPA should communicate when issues arise related to Plan members' protected health information (as such term is defined by HIPAA).



5.12 To rescind a Member's coverage only in compliance with applicable law, including the Patient Protection and Affordable Health Care Act and the Health Care and Reconciliation Act of 2010.

## **6. Compensation and Allowances of TPA**

6.01 As consideration for the services performed by TPA as described in this Agreement, PLAN SPONSOR shall pay to TPA the amounts set forth on Exhibit B. TPA shall also include in its billing other charges for related coverages and/or services purchased by PLAN SPONSOR. All fees for a month's services are due by the first day of that month. PLAN SPONSOR shall indemnify TPA for any action taken against TPA or PLAN SPONSOR due to PLAN SPONSOR's delinquent payment.

6.02 The monthly fee shall not change during the guarantee period specified in Exhibit B. Thereafter, with proper written notice to PLAN SPONSOR, TPA has the right to change the monthly fee. Such notice will state the amount of the new monthly fee; and the effective date of such change; and will be made not less than sixty (60) days before the effective date of the change. TPA has the right to make reasonable mutually agreed upon, by both the City and the TPA, changes to the fee on the date a material change is made to the Plan, whether or not such change is made at Plan Sponsor's request or is required by law.

## **7. Reports and Settlement of Balances**

TPA shall furnish the following reports to PLAN SPONSOR on or before the twentieth (20<sup>th</sup>) day of each calendar month with respect to the services provided during the preceding calendar month:

- 7.a A monthly summary of the claims paid account showing:
  - i. A listing of adjudicated claims for the month in a form sufficient for PLAN SPONSOR's history files.
  - ii. Claims paid and refunded during that month by PLAN SPONSOR, including date paid or received; and
  - iii. TPA's compensation calculated pursuant to Exhibit B of this Agreement.
  
- 7.b A monthly claims pending report showing:
  - i. Date received;
  - ii. Date incurred; and
  - iii. Estimated amount.

## **8. Banking Arrangement**

For the purpose of paying claims, TPA will utilize its general operating bank account. TPA will provide to PLAN SPONSOR a claims paid report as described in Section 7a and PLAN SPONSOR agrees to reimburse TPA within 10 days in an amount

equal to the claims paid in a method acceptable to both Parties as described in Exhibit C.

**9. Dispute Resolution**

It is expected that any disputes or differences that may arise under this Agreement will be resolved in the usual course of business. If, however, any dispute does arise between TPA and PLAN SPONSOR that relates to or arises from this Agreement, whatever its nature, the Parties agree to proceed as follows: Either Party may notify the other Party of the matter in dispute and that it wishes to begin the dispute resolution procedure. Within thirty (30) days after notification, a designated executive of TPA and a designated representative of PLAN SPONSOR will meet and confer in an effort to resolve the problem. The Parties may, if they wish, agree to mediation or other voluntary form of dispute resolution in accordance with procedures to be agreed to by the Parties. Unless otherwise agreed, the Parties do not waive their right to pursue remedies in a court of law.

To the extent permitted by applicable law, all negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

**10. Protected Health Information**

PLAN SPONSOR and TPA shall enter into a business associate agreement that describes each party's rights and obligations with respect to Plan members' protected health information.

**11. Proprietary Information**

Each Party may, in the course of the relationship established by this Agreement, disclose to the other Party in confidence non-public information governing patient treatment and/or finances and such Party's earnings, volume of business, methods, systems, practices, plans, and other confidential commercially valuable proprietary information (collectively, "Confidential Information"). Each Party acknowledges that the disclosing Party shall at all times be and remain the owner of all Confidential Information disclosed by such Party, and that the Party to whom Confidential Information is disclosed may use such Confidential Information only in furtherance of the purposes and obligations of this Agreement. The Party to whom any Confidential Information is disclosed shall use its best efforts, consistent with the manner in which it protects its own Confidential Information to preserve the confidentiality of any such Confidential Information which such Party knows, or reasonably should know, that the other Party deems to be Confidential Information. Neither Party shall use for its own benefit, or disclose to third parties unless required by law, any Confidential Information of the other Party without such other Party's written consent.

This proprietary information/confidentiality clause is also applicable to third party contracts and their proprietary information that may be disclosed to Gundersen, including but not limited to HealthEOS, etc.

## 12. Records

12.01 Maintenance and Access. TPA shall maintain adequate records of the following transactions relating to the administration of the Plan for at least seven (7) years: (a) claims records for all claims for benefits under the Plan; (b) enrollment records; and (c) payment records, including all requests for funds and deposits for payment of claims under the Plan by PLAN SPONSOR, in such form as may be agreed to between PLAN SPONSOR and TPA (whether hard copy, computer or other format). PLAN SPONSOR shall maintain adequate records relating to the terms and operation of the Plan, including the identification of eligible persons, payments to TPA and payments for Covered Services for at least seven (7) years. Each Party shall have access to the records relating to the Plan maintained by the other Party during normal business hours and upon reasonable notice and request and subject to applicable laws and regulations. The Parties shall maintain the confidentiality of any information relating to Members and the Plan in accordance with applicable laws. At the conclusion of the period for which records are required to be kept under this provision and prior to any modification, destruction or disposal of any records, PLAN SPONSOR, and TPA shall provide the other Party a reasonable opportunity to review the records and obtain copies of any such records. All reasonable costs associated with copying such records will be paid by the Plan.

Additionally, Gundersen shall keep any disputed records for the latter of seven (7) years or seven (7) after the resolution of the dispute should the dispute extend beyond the length of this Agreement.

12.02 Access for Audit. Except as provided in Section 12.04, and in accordance with applicable law, PLAN SPONSOR or its designee shall have access to such records described in Section 12.01 and any other records required to audit the type, volume and quality of care, and fees charged for services provided to Members pursuant to this Agreement, for the purpose of auditing the records that support compliance of TPA with the terms of this Agreement. Such access shall be made available, during normal business hours, upon five (5) calendar days' notice, excluding any Saturday, Sunday or legal holiday, for so long as records are required by law or standard business practice to be retained. "Records" includes not only records in the form of paper, but also microfilm or electronic records that can be printed in hard copy form. As used in this Agreement, "access" shall also mean the right to receive the records in electronic form via tape, disk or other electronically transferable means. Neither Party shall use, willingly allow, or cause to have such materials used for any purpose other than the performance of that Party's duties and obligations under this Agreement, except that, if permitted by applicable law, TPA shall be permitted to include such records into internal TPA data bases to be used for such things as provider profiling, quality improvement, and aggregated line of business reporting for plan management. The Party requesting the records shall pay all reasonable costs associated with such request.

12.03 Transfers on Termination. Upon termination of this Agreement, TPA may transfer to PLAN SPONSOR, and/or any successor administrator, those records necessary to effectuate a smooth transition of management of the Plan. TPA shall provide PLAN SPONSOR a reasonable opportunity to review the records, and obtain copies of any such records, in addition to the records necessary for a smooth transition. The details of such transfer, including the means, method and timing, shall be mutually agreed to by the Parties. All reasonable costs associated with such a record transfer will be paid by PLAN SPONSOR.

12.04 Use of Information. PLAN SPONSOR may only inspect or copy Members' medical records (including medical histories) maintained pursuant to this Agreement by TPA to the extent not prohibited by law or regulation, or with the written consent of the Member. No Party shall use, willingly allow, or cause to have such materials used for any purpose other than the performance of a Party's duties and obligations under this Agreement except that, if permitted by applicable law, TPA shall be permitted to include such records into internal data bases to be used for such things as provider profiling, quality improvement, and aggregated line of business reporting for plan management. The Party requesting the records shall pay all reasonable costs associated with such request.

### **13. Termination**

13.01 Except for the reasons stated elsewhere in this Agreement, this Agreement shall not be subject to termination by either Party for a period of January 1, 2014 to December 31, 2014 ("Initial Term") Following completion of the Initial Term, this Agreement continues in force for an indefinite period; but may be terminated as of the first day of any calendar year by TPA, or at any time by PLAN SPONSOR, provided that not less than sixty (60) days, (or as soon as reasonably possible), prior written notice is given by the terminating Party. Such notice shall state the effective date of the termination (or if no effective date is stated in the notice given by PLAN SPONSOR, this Agreement shall terminate sixty (60) days after the date of the postmark, or personal delivery dates, of such notice) and shall be personally delivered or sent via U.S. registered or certified mail.

13.02 This Agreement may be terminated by either Party effective upon personal delivery of written notice thereof to the other Party or delivery of such notice by U.S. registered or certified mail for any of the following reasons:

13.02.a Failure of the other Party to remedy any material breach of this Agreement within thirty (30) after the breaching Party's receipt of written notice of such breach from the non-breaching Party;

13.02.b If one Party is about to become insolvent, make any assignment of its assets for the benefit of its creditors, file a voluntary petition in bankruptcy or for reorganization under the bankruptcy laws, consent to the appointment of any

receiver, trustee or liquidator, or suffer an order against it pursuant to the bankruptcy laws approving the filing of an involuntary petition in bankruptcy against such Party, that party will give the other party thirty (30) days notice or a reasonable notice; or

13.02.c Fraud, embezzlement, or willful violation of any law governing this Agreement.

13.03 In the event this Agreement is terminated for any reason (and to the extent of such termination), the following procedures shall be followed:

13.03.a Except as provided in subsection 13.03.b below, TPA shall continue to perform each and every duty and obligation hereunder until the administration of the Plan has been transferred from TPA, or until the Plan has expired or been terminated, and all claims thereunder have been settled and paid (or denied, as the case may be).

13.03.b In the event of termination pursuant to Section 13.02, PLAN SPONSOR shall have the option at any time on and after the effective date of termination to restrict or limit TPA's authority or performance hereunder or otherwise to discharge TPA from further performance.

13.03.c Except as provided in subsection 13.03b above, TPA shall provide appropriate administrative and claim services for up to six (6) months after the termination of this Agreement for claims incurred prior to the termination date. TPA shall provide claim run-out administration only, at the cost in effect at the time of termination.

#### **14. Indemnification**

14.01 Each Party to this Agreement agrees to indemnify, defend and hold harmless the other Party for any expense, loss, claim or judgment, including reasonable attorney fees, that results from the negligent acts or omissions, or willful misconduct, of the respective Party (or their employees, directors, officers or agents), or from any breach of this Agreement by the respective Party (or their employees, directors, officers or agents), or from any breach of fiduciary duty by the respective Party (or their employees or agents). Nothing in this Agreement shall be construed as Plan Sponsor waiving its statutory limitations and/or immunities as set forth in applicable law.

14.02 Notice of Claims. With respect to any claim for which indemnification will be sought pursuant to the provisions of this section, the Party seeking indemnification will promptly, upon receiving notice of such claim, notify the indemnifying Party of the existence and the nature of the claim; thereafter, the indemnifying Party shall have control of any defense or settlement of such claim, and the Party being indemnified shall provide all reasonable cooperation with respect to such defense or settlement.

### **15. Fidelity Bond**

During the term of this Agreement, and until the final termination of its duties and obligations hereunder, TPA shall retain in force, and shall furnish PLAN SPONSOR proof of coverage with this Agreement, a blanket forgery and fidelity bond covering all employees, directors, officers and agents of TPA, and any other person handling any amounts collected and claims paid hereunder on behalf of PLAN SPONSOR. Said bond shall require notification by the bonding TPA to PLAN SPONSOR in the event of termination or nonrenewal of said bond.

### **16. Liability Insurance Requirements**

During the term of this Agreement, and until the final termination of its duties and obligations hereunder, TPA shall retain in force Managed Care Professional Liability Insurance and Managed Care Errors and Omissions Liability Insurance. The minimum limits should be \$1 million per occurrence and \$3 million aggregate unless otherwise agreed upon by the Plan Sponsor.

TPA shall furnish PLAN SPONSOR proof of coverage with this Agreement, and shall require notification by the insurance carrier to PLAN SPONSOR in the event of termination or nonrenewal of such insurance.

### **17. Nonwaiver**

The failure of either PLAN SPONSOR or TPA to insist in any one or more instance upon the performance of any one or more of the duties or obligations of this Agreement, or the failure to perform any duty or obligations of this Agreement, shall not be construed as a waiver or relinquishment for the future performance of such one or more duties or obligations of this Agreement, or of the exercise of any such right, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act, or omission.

### **18. Assignment/Delegation**

18.01 Neither this Agreement nor the performance of any duty or obligation hereunder may be assigned or delegated by either Party without the prior written consent of the other; provided, however that TPA may subcontract for services it is to perform hereunder so long as TPA so notifies PLAN SPONSOR and enters into a written contract for such services. TPA agrees that a written contract shall be executed for all services performed hereinunder that are to be provided by entities or individuals other than TPA or its employees. Such entities or individuals shall be required to maintain the same level of Professional and General Liability Insurance against claims resulting from their actions or inactions as is required of Gundersen in 16 above.

18.02 TPA shall be responsible under this Agreement for any act or omission of any subcontractor to the same extent as if the act or omission were that of TPA.

## 19. Miscellaneous

19.01 Notification of Lawsuit. Each Party hereto agrees to notify the other Party at the time a lawsuit is initiated concerning any dispute with any third person or entity that is relevant to any rights, obligations, or other responsibilities or duties provided for under this Agreement.

19.02 Modifications. This Agreement constitutes the entire understanding between the Parties hereto, and no changes, amendments, or alterations shall be effective unless agreed to in writing by the Parties. Notice to, or consent of, Members shall not be required to effect any modifications to this Agreement provided, however, that if this Agreement or any portion shall be determined to be in violation of any statute, rule and/or regulation under State or Federal law, the Parties agree to amend this Agreement to conform to such statute rule and/or regulation.

19.03 Invalidity or Unenforceability. If any provision of this Agreement is found invalid by any court of competent jurisdiction, then such provision shall be deemed automatically adjusted to conform to the requirements for validity as declared at such time and, as so adjusted, shall be deemed a provision of this Agreement as though originally included herein. In the event that the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be included herein. In either case, the remaining provisions of this Agreement shall remain in effect. The invalidity or unenforceability of any terms or provisions hereof shall in no way affect the validity or enforceability of any other term or provision.

19.04 Governing Law. This Agreement shall be governed by and interpreted 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, Wisconsin. Each party waives its right to challenge venue.

19.05 Third Party Beneficiaries. Except as specifically provided herein, this Agreement shall not create, nor be construed to create, any rights in any manner whatsoever in any other person or entity as a third party beneficiary.

19.06 Advertising. None of the Parties shall cause or permit the insertion or the distribution and publication or otherwise, of any advertising or publicity matter, as to any Party's name, trademarks, or services utilized by the other Party without the prior written consent of the other Party. Such consent may be assumed in a written notice as to an advertisement sent to a Party, and such Party does not give the other Party written notice of an objection to the advertisement within thirty (30) days of receiving such written notice of the advertisement.

19.07 Operations of the Parties. Throughout the term of this Agreement, the Parties shall use their best efforts to comply with the terms of this Agreement and to continually comply with all applicable laws and regulations. A duty of good faith dealing is hereby imposed upon, acknowledged, and accepted by the Parties.

~~19.08 Force Majeure. In the event any Party's activities are substantially interrupted by fire, insurrection, riots, the elements, acts of God, or without limiting the foregoing, and other cause beyond the control of such Party, such Party shall be relieved of its obligations as to all services affected for the duration of such interruption.~~

19.09 Authority. Each signatory to this Agreement represents and warrants that he or she has full authority to enter into this Agreement on behalf of the respective Parties hereto. The Parties represent and warrant that they have full authority to enter into and negotiate the terms of this Agreement.

19.10 Entire Agreement. This Agreement and the attached Exhibits contained all their terms and conditions agreed upon by the Parties hereto regarding the subject matter of this Agreement have been merged herein and superseded hereby.

19.11 Independent Contractor. TPA shall at all times be deemed an independent contractor with respect to the services provided hereunder and, in no event, shall this Agreement be construed to create a joint venture, a partnership, or a PLAN SPONSOR–Employee relationship.

## **20. Health Plan Network**

20.01 TPA shall provide to PLAN SPONSOR access to all health care facilities and professionals contracted through Gundersen Health Plan, Inc. This access may be subject to change without notice and be based upon current Health Plan Provider Agreements. This provision may also be subject to changes mandated by State or Federal Law. In any case, TPA will provide reasonable notice of any major provider changes.

20.02 For the initial three years of the contract, TPA through Gundersen Health Plan, Inc. will provide discounts as indicated in the request for proposal response in the "Network" section of the request for proposal response. PLAN SPONSOR acknowledges that discount information is proprietary information of the TPA, and PLAN SPONSOR agrees to keep this information confidential in accordance with provision 11 of this Agreement. Should the TPA relationship with the City extend beyond the three initial years referenced in the request for proposal, the TPA will provide reasonable notice of any major provider contract changes.

20.03 TPA shall notify PLAN SPONSOR if TPA enters into (or has in effect) any contract with any health care provider that calls for payment from such provider to TPA based upon the services rendered by such provider to Members under the Plan, which payments are treated by TPA as compensation for services provided for its administrative services with respect to the Plan (or other plans for which it serves as third-party administrator). This does not include any payment that reflects a recovery to the Plan, such as a return of overpayments made by the Plan, or any similar payment. Any notice to the PLAN SPONSOR will include a description of the relevant terms of



such contract and the amount of fee received or expected to be received from the provider.

20.04. TPA shall provide to PLAN SPONSOR access to additional health care facilities and professionals through travel/wrap networks contracted through Gundersen Health Plan, Inc. as described in Exhibit D. This access may be subject to change without notice and is based upon current Health Plan travel/wrap network Agreements. This provision may also be subject to changes mandated by State or Federal law.

Additionally, Gundersen acknowledges and accepts without issue that the Plan Sponsor has a contract with HealthEOS Select Network via direct contract.

TPA will provide a discount from eligible PLAN services provided through the travel/wrap network. TPA will provide negotiated provider discounts contracted within the travel/wrap Network. These discounts may be subject to change. PLAN SPONSOR acknowledges that discount information is proprietary information of the TPA, and PLAN SPONSOR agrees to keep this information confidential in accordance with the confidentiality and proprietary provisions of this Agreement. TPA shall provide reasonable notice of any major travel/wrap network contract change. The travel/wrap network is not intended for use as a primary network.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representative effective on the date hereinabove first written.

By: \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

(Print)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Gundersen Health Plan, Inc.**

By: \_\_\_\_\_

(Signature)

Name: \_\_\_\_\_

(Print)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Gundersen Health Plan, Inc.  
1836 South Avenue, Mail Stop: NCA2-01  
La Crosse, WI 54601  
Phone: (608) 775-8000  
Fax: (608) 775-8060

**EXHIBIT A**

(WILL INCLUDE A SCHEDULE OF BENEFITS AND REFERENCE TO SPD TO BE PROVIDED)

## EXHIBIT B

### COMPENSATION SCHEDULE

#### PRESCRIPTION DRUGS/MEDICAL

As consideration for the responsibilities being assumed by TPA, PLAN SPONSOR shall pay to TPA the following amount for each employee covered under the Plan as of the beginning of the month:

For the Period: January 1 – December 31, 2014	
Service	Amount
Medical Administration Fee	\$21.25 PEPM
Dental Administration Fee	\$N/A PEPM
Vision Administration Fee	\$N/A PEPM
Medical Management (defined as Utilization Management/Disease Management)	\$2.25 PEPM
GHP Select Network	\$4.50 PEPM
PPO Network Fee	\$N/A PEPM 20% of savings to NPPN 20% of savings to GHP
PBM Access Fee	\$N/A PEPM
Conversion Charge	\$N/A PEPM
Agent/Broker Fee	\$N/A PEPM
Other Ad-hoc Service Requests	\$ _____ PEPM
<b>TOTAL ADMINISTRATIVE FEE</b>	<b>\$28.00 PEPM</b>

The term of this Agreement shall commence as of January 1, 2014 and shall remain in effect until December 31, 2017, unless earlier terminated as hereinafter provided. The term of this agreement shall thereafter be automatically renewed for successive one year periods unless terminated by either the Plan Sponsor or their designee by giving written notice of termination as referenced in this Agreement.

The discounts in the request for proposal response will be honored as indicated in the "Network" section of the request for proposal response. The fees outlined above are as indicated in the request for proposal response. Should a discrepancy arise, the request for proposal shall supersede this Exhibit. The fees for subsequent years are as outlined in the request for proposal.

Such payment shall be made as part of the monthly invoice provided for in Section 6. PLAN SPONSOR will reconcile invoices monthly. Discrepancies shall be reported to TPA within 60 days of invoice date. Failure to report discrepancies within the 60-day period may result in loss of associated administrative fees.

## EXHIBIT C

### BANKING ARRANGEMENT

#### **CLAIM EXPENSES**

TPA will invoice PLAN SPONSOR as payments are made to providers, but no more frequently than weekly, for all plan claim expenses paid through the invoice date. TPA will be reimbursed by check from the PLAN SPONSOR'S account for the invoiced amount.

Upon notice of termination in accordance with the terms of this Agreement, PLAN SPONSOR will be invoiced for any excess amount as required by the plan. In no event shall any unpaid claims that are otherwise eligible for reimbursement under the Plan be the responsibility of TPA.

#### **ADMINISTRATIVE AND RELATED FEES**

TPA will invoice PLAN SPONSOR monthly a fixed administrative fee per employee/per month, as set forth in Exhibit B.

TPA shall also include in its billing other charges for related coverages and/or services purchased by PLAN SPONSOR. The total of all monthly fees are payable by check and due in advance by the first day of each month.

**EXHIBIT D  
TRAVEL/WRAP NETWORK**

**CLAIMS AND NETWORK SELECTION**

All claims outside of the Gundersen Health Plan, Inc. network service area will be subject to the travel/wrap network unless the provider is one that Gundersen Health Plan, Inc. already has a contracted relationship with.

- National Preferred Provider Network (NPPN), percent of savings

These networks will retain 20% of the savings as payment for services. Gundersen Health Plan will retain 20% of the savings.

Utilization of the travel/wrap network will be made in accordance with the provisions set forth in Section 20 of this Agreement.

The RFP response included an option to include Mayo Clinic Health System-Franciscan Healthcare providers in the network if GHP was the sole TPA. The PLAN SPONSOR has chosen to continue a dual TPA arrangement. Therefore Mayo Clinic Health System-Franciscan Healthcare providers are not included in the network and the related PEPM fee for this network access is not included in Exhibit B pricing.

1. **DEFINITIONS:** In this section "Contracting Party" shall mean any party that is entering into the Administrative Services Agreement ("the Agreement" or "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 & 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 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 laws 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 even 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 services set forth in this agreement is based on the 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 in the Agreement.
7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING:** Personal income tax payments, social security contributions, insurance and all other government 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:** Termination by either party shall be consistent with the terms set forth in Section 13 of the Agreement. .
9. **SAFETY:** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.
10. **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.

11. **OPIONS OF COST:** Any opinion of cost prepared by La Crosse is supplied for general guidance of Contracting Party only. La Crosse cannot guarantee the accuracy of such onions as compared to actual costs to contracting party.
12. **USE OF LA CROSSE PROPERTY:** Any property belonging to AL Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement.
13. **INSURANCE:** The insurance obligations of each party are set forth in Section 16 of the Agreement.
14. **INDEMNIFICATION.** The indemnification obligations of the Parties are set forth in Section 14 of the Agreement.
15. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, directory, member, partner or employee of La Crosse, have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claims any such personal liability.
16. **INDEPENDENT CONTRACTORS.** The parties, their employees, agents, volunteers, and representatives 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, counters, and representatives are not entitles to any of the benefits that the other providers for its employees. The parties shall not be considered joint agents, joint venturers, or partners.
17. **GOVERNING LAW.** This agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the law 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 the right to change venue.
18. **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 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 or any environmental laws, rules regulations or ordinances.



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, 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 assignees 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.
21. NO WAIVER. The failure of any party to insist, in any one or more instance, upon performance of any of the terms, comments, or conditions of this Agreement shall not be constituted as a waiver, or relinquishment of the future performance of any such term, comment, or condition by any other party hereto but the obligations of such other party with respect to such future performance shall continue in full force and affect.
22. 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. Coordinating Party shall be fully responsible to La Crosse for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.
23. 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.
24. 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 the reasons: not to adopt or enforce any employment policy which discrimination 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 is the selection of personnel for training, activity on the basis of race, color, religion, sex, sexual orientation, age, disability, nation origin or ancestry, lawful source of Income, marital status, creed or familial status.  
Contracting Party shall include or cease 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.

25. **POLITICAL ACTIVITIES.** La Crosse recognizes that Gundersen Health System, an affiliate of Contracting Party, is registered as a lobbyist in the state of Wisconsin. If La Crosse determines that Gundersen Health System's political activities directly impact La Crosse in a negative manner, La Crosse shall have the right to terminate this Agreement on sixty (60) days advance written notice pursuant to Section 13.01 of the Administrative Service Agreement..
26. **GOVERNMENTAL APPROVALS.** Contracting Party acknowledges that various of the specific undertakings of La Crosse described in this Agreement may require approval 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 assume that all such approvals will be obtained; however, it agrees to use good faith efforts to obtain such approvals on a timely basis.
27. **ENTIRE AND SUPERSEDING AGREEMENT.** This writing. All Exhibits herein, and the other documents and agreements reference 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.
28. **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.
29. **IMPLEMENTATION SCHEDULE AND TIME OF THE ESSENCE.** Any and all phases and schedules which are the subject of approvals, or an act forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedule shall occur only upon approval of La Crosse. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days.
30. **TIME COMPUTATION.** Any period of time described in this Agreement by reference to a number of 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.
31. **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 with the United States Postal Service, postage prepaid, certified, return receipt required:

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

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

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

32. 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 are referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Contracting Party whether or not herein enumerated.
33. ACCESS TO RECORDS. Contracting Party, as its sole exposure, 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 the Agreement, for the purpose of making audits, examinations, excerpts and transcription.
34. 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 requests 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.
35. CONSTRUCTION. This Agreement shall be construed without regard to any presumptions 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 constructing this Agreement with the duties, obligations, or liabilities of the respective parties herein 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 content may require.

36. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performances of the parties hereunder, is intended to benefit, nor shall inure to the benefit, of any third party.
37. COMPLIANCE WITH LAW. The parties shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.
38. 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 say 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.
39. GOOD STANDING. Contracting Party confirms that it is a company duly formed and validly updating and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, penalties, 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.
40. 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.
- ~~41. EXECUTION OF AGREEMENT. Contracting Party shall sign and execute this Agreement on or before sixty (60) days of the 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.~~
42. COUNTERPARTS. This Agreement may be executed in one or more counterparts, all of which shall be considered 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.
43. SURVIVAL. All express representatives, indemnifications and limitation of liability included in this Agreement will survive its completion or termination for any reason.