

## WATER SERVICE AGREEMENT

This agreement entered into this \_\_\_\_\_ day of April 2022 by and between the **City of La Crosse**, Wisconsin, a Wisconsin Municipal Corporation, hereinafter referred to as "La Crosse", and the **Town of Campbell**, La Crosse County, Wisconsin, hereinafter referred to as "Campbell."

WHEREAS La Crosse and Campbell entered into a Water and Fire Service Agreement on December 8, 2005, and

WHEREAS that Agreement will expire on December 31, 2024, and

WHEREAS La Crosse has agreed to terminate the December 8, 2005, agreement with Campbell and replace that agreement with this new Water Service Agreement which shall supersede and replace the December 8, 2005, agreement, and

WHEREAS Campbell would like to modify and extend Water service to the entire Town, including Residential, Commercial, Industrial and Public properties, and

WHEREAS La Crosse owns a Water Utility Plant and Equipment, and

WHEREAS La Crosse policy is not to provide water to properties unless said properties annex to the City, and

WHEREAS Section 66.0813(1), Wis. Stats., provides that La Crosse may serve persons or places outside its corporate limits, and

WHEREAS Section 66.0813(3) & (4), Wis.Stats., further provide that Cities may by ordinance fix the limits of any utility service in unincorporated areas, and that the City Water Utility has no obligation to serve beyond the delineated areas, and

WHEREAS the governing bodies of Campbell and La Crosse have determined that the most appropriate way to achieve their individual, yet similar, goals about the provision of water services to citizens while increasing efficiency and achieving cost savings is for La Crosse to provide water on a wholesale basis to Campbell upon the terms and conditions set for in this Agreement, and

WHEREAS the Campbell and La Crosse wish to enter into an agreement providing for present and future wholesale water service to Campbell, for distribution by Campbell to properties within the boundaries of Campbell but not limiting Campbell or the Campbell Water Utility from entering into agreements with other entities to provide water services to Campbell in the future, and

NOW, THEREFORE, in consideration of the mutual provisions of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and pursuant to Sections 61.34(1) and (2), 62.11(5), 66.0301, 66.0809, 66.0813, 196.58 of the Wisconsin Statutes and other applicable provisions of such statutes, the La Crosse and Campbell hereby agree as follows:

**1. Wholesale Water Service:**

La Crosse agrees to furnish wholesale water service to Campbell within the Town in accordance with Section 66.0813, Wis. Stats.

**2. Conditions of Service:**

- a. Campbell shall construct all necessary water mains and usual appurtenances, including fire hydrants and water meters, to provide water and fire protection service to properties in the Town. Construction may be done in phases. Where the Town's distribution system is modified to benefit the La Crosse distribution system, costs may be shared pursuant to an agreement between the La Crosse and Campbell.
- b. Campbell shall obtain prior written approval from La Crosse (which approval shall not be unreasonably withheld) for the installation of any municipal water facilities. La Crosse has the right, at its own expense, to inspect any and all phases of the construction of any facilities. In the event La Crosse chooses not to conduct its own inspections, Campbell agrees to make available to La Crosse copies of Campbell's inspection reports and as-built records as requested by La Crosse.
- c. Campbell shall obtain DNR approval for all municipal water facilities subject to DNR approval. The materials used for mains, services, valves and hydrants shall meet DNR standards.
- d. Campbell shall own the water facilities constructed by Campbell. Construction may be done in phases determined by Campbell.
- e. Upon construction, Campbell will maintain and operate the facilities providing water service in Campbell. La Crosse may install vaults at connection points to the La Crosse water system for future installation of metering facilities.

- f. Campbell and the properties receiving water service shall in all respects comply with the ordinances of La Crosse relative to water service.
- g. Campbell shall not permit the resale of water supplied by the La Crosse Water Utility or La Crosse which is being provided to Campbell but not prohibit customers of the Campbell Water Utility from bottling water and selling bottled water purchased under this Agreement, or using water purchased under this Agreement to formulate, manufacture and sell products that contain water and other compounds or liquids. Campbell further agrees that it shall not, nor does it have the right to, assign any of the rights contained in this water service agreement to any other water utility, user or other entity. Campbell has the unrestricted right to use all the fire hydrants constructed within Campbell for the purpose of firefighting. It is understood that Campbell shall be the primary provider of firefighting services to Campbell properties.
- h. The water provided by La Crosse to Campbell pursuant to this Agreement shall satisfy all applicable federal and state quality standards for safe drinking water, as those standards shall be amended from time to time, and shall be of the same purity and quality as water provided to the customers in La Crosse and any other communities that receive water service from La Crosse ("Standard Quality Water").
- i. La Crosse shall supply uninterrupted service of Standard Quality Water at a pressure sufficient to satisfy all applicable pressure requirements of the Wisconsin Department of Natural Resources and Public Service Commission of Wisconsin ("PSC") at the following Delivery Volumes: Average Daily Demand 895,000 GPD, Peak 16-Hour Demand 150,000 GPH, Peak 2,500 GPM, Total 2-Hour Demand 480,000 gals. (4,000 GPM).
- j. Campbell shall not connect water from any other supply and shall prohibit cross-connections by any customers with private wells. The distribution system for any water supply developed by the Campbell Water Utility shall not have any cross connections with the La Crosse distribution system.
- k. Within 120 days of the approval of this agreement, La Crosse shall have all the La Crosse water supply wells sampled for PFAS and report the results to Campbell. This analysis shall be done at the Wisconsin State Lab of Hygiene.

- I. La Crosse shall permanently disconnect Wells 23, 24 and 26 due to the PFAS contamination issues that currently exist in those wells.

### 3. Charges for Wholesale Water

- a. Wholesale Water Rates and Charges. Campbell shall pay La Crosse for wholesale water service in accordance with rates and rules approved by the PSC. For purposes of determining the water rates to be paid by Campbell, the revenue requirements shall include operations and maintenance (O&M) costs, depreciation, taxes and tax equivalents, return on investment (ROI) and other costs as may be deemed appropriate by the PSC. The rate of return used to determine the wholesale return on investment shall be equal to the minimum prevailing PSC benchmark rate of return at the time of each rate case application. The rate base for purposes of determining return on investment shall exclude future growth costs that will be recovered from connection fees and front foot charges by La Crosse. La Crosse shall submit an invoice to Campbell for the wholesale water charges on a quarterly basis, and the payment of each said invoice shall be made by Campbell to La Crosse within 20 days after the date of an invoice. Interest at the rate of 1% per month shall accrue and be paid by Campbell on any balance that is not paid within said 20-day period.
- b. La Crosse properties adjoining Campbell mains shall be customers of the La Crosse Water Utility. Campbell properties adjoining La Crosse mains shall be customers of the Campbell Water Utility.
- c. Billing Individual Retail Customers for Retail Water Service. The failure of Campbell to obtain payments for any use, charge or other fee that is ultimately due to La Crosse, shall not excuse Campbell from paying any amounts due to La Crosse on a timely basis. Any payments due hereunder from Campbell to La Crosse are not contingent on the receipt of any money by Campbell. La Crosse shall meter, charge and receive from Campbell the wholesale rates the City of La Crosse charges its wholesale customers. Campbell shall meter, charge and receive from customers their retail rates. The wholesale rate, determined by the PSC, must exclude the costs for utility services not provided by La Crosse, exclude non-utility costs and include the minimum Return on Investment deemed appropriate by PSC.

**4. Termination of all Annexation Provisions in December 8, 2005  
*Water and Fire Services Agreement***

- a. La Crosse and Campbell acknowledge this this Agreement terminates all of the provisions in the December 8, 2005, Agreement between the parties.
- b. La Crosse and Campbell acknowledge that La Crosse shall have no right to annex any properties from Campbell pursuant to any of the annexations provisions that were in place pursuant to the December 8, 2005, Agreement.
- c. La Crosse and Campbell acknowledge that this Agreement does not provide any Annexation Rights to La Crosse with regard to any property located in Campbell.

**5. Compliance with State Law.**

La Crosse and Campbell shall comply with all Wisconsin Statutes and regulations of the PSC and the Wisconsin Department of Natural Resources, insofar as they are applicable to matters covered by this Agreement.

**6. Coordination**

- a. Annual Meetings. Representatives of La Crosse and Campbell shall meet Annually to discuss their respective capital improvement programs and other matters of common interest to facilitate coordinated planning and implementation of capital projects.
- b. Ad hoc Meetings. Upon request from Campbell and upon reasonable advance notice, La Crosse shall make available a knowledgeable representative to meet with representatives of Campbell and/or a developer regarding matters relating to water service, water improvements or other issues arising under or in connection with this Agreement. Upon request from La Crosse and upon reasonable advance notice, Campbell shall make available a knowledgeable representative to meet with representatives of La Crosse and/or a developer regarding matters relating to water service, water improvements or other issues arising under or in connection with this Agreement.

**7. Reliance on PSC**

La Crosse and Campbell acknowledge that in entering into this Agreement they are mutually relying on the regulatory role played by

the PSC with respect to matters relating to water service rates, rules and practices. In the event that the responsibilities of the PSC or any successor agency with respect to such matters change materially, or in the event that the level of involvement of the PSC or any successor agency in such matters changes materially as a result of funding cuts or otherwise, or in the event that the PSC ceases to exist without its responsibilities regarding such matters being transferred to a successor agency, the Parties shall use good faith efforts to amend this Agreement in a mutually satisfactory manner to accomplish the continued provision of Adequate Water Service by La Crosse to Campbell.

- a. Force Majeure. As used herein the term “Force Majeure Event” means an event not the fault of, or beyond the reasonable control of the Party claiming an excuse which makes it impossible or extremely impractical for such party to perform an obligation or obligations imposed on it by this Agreement, by virtue of its effect on physical facilities, the operation of physical facilities or employees essential to such performance. Force Majeure includes, without limitation: (i) an “act of God” such as an earthquake, flood, earth movement, severe weather, ice or similar catastrophic event, (ii) an act of a public entity, terrorism, sabotage, war, civil disturbance or similar event, (iii) a strike, work stoppage, picketing or similar concerted labor action, (iv) delays in construction caused by negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts; (v) an order or regulation issued by a federal or state agency after the Effective Date or a judgment or order entered by a federal or state court after the Effective Date; or (vi) if La Crosse is unable to obtain or extract water that is suitable for treatment and eventual use as Standard Quality Water.
  - i. Excuse from Performance. No Party shall be liable for damages to any other party for delay in performance of, or failure to perform its obligations under this Agreement if such delay or failure is caused by a Force Majeure Event.
  - ii. Notice. The Party claiming excuse shall deliver to the other Parties a written notice of intent to claim excuse from performance under this Agreement by reason of a Force Majeure Event. Notice required by this section shall be given promptly in light of the circumstances of the Force Majeure Event. Such notice shall describe the Force Majeure Event, the physical facilities and/or services impacted by the claimed event and the length of time the Party intends to take to restore its ability to perform.

- iii. Obligation to Restore Ability to Perform. Any suspension of performance by a Party due to a Force Majeure Event shall only be to the extent and for a period of no longer duration than, required by the nature of the Force Majeure, and the Party claiming excuse shall use reasonable efforts to remedy its inability to perform.
  
- b. Emergencies. Restrictions may be placed upon the use of water in Campbell as a result of an occurrence adversely affecting the operation of La Crosse caused by circumstances beyond the control of La Crosse or Campbell, including but not limited to, Force Majeure Events or the issuance of a declaration of emergency under La Crosse Ordinance \_\_\_\_\_, resulting in the La Crosse being unable to provide Adequate Water Service to Campbell ("Emergency"), provided such restrictions apply uniformly to all customers of La Crosse. La Crosse shall give Campbell as much prior notice as is reasonably possible of any such restrictions. Whenever La Crosse does not supply Adequate Water Service, the Campbell may obtain emergency water service from any other source for the specific period of time during which La Crosse is unable to provide such service.

## **8. Implementation**

La Crosse and Campbell shall promptly take such actions as may be necessary or desirable to effectuate and implement this Agreement.

## **9. Notices**

- a. Written Notices. Each notice required by or relating to this Agreement shall be in writing. Any such notice shall be delivered to each notice addressee of the Party receiving the notice by personal delivery (or alternatively, if the address specified for such notice addressee is an office address, by personal delivery during normal business hours to the person apparently in charge of such addressee's office), or shall be mailed such addressee by certified mail-return receipt requested or shall be transmitted to such addressee by facsimile (provided that the notice is mailed the same day by first class mail), at the address stated in Section 16(f). Notice addressees and addresses may be changed from time to time in accordance with Section 16(b). Nothing in this section 16(a) shall be deemed to require delivery of a notice to any notice addressee by any particular means, provided that the means used is approved by this Agreement or is approved in writing by the recipient Party.

- b. Changing Notice Address. Each party may, from time to time and as appropriate, change its notice addressees, change its notice address, or add additional addresses for notice by electronic mail or other communications media (which shall be treated like notice by facsimile), by providing a written notice for the change to the other Parties that is sent pursuant to Section 16(a).
- c. Effective Date of Notice. Each notice shall be effective upon delivery in person, or two days after mailing by certified mail-return receipt requested or upon facsimile transmission with receipt confirmed, or upon actual receipt requested or upon facsimile transmission with receipt confirmed, or upon actual receipt without regard to the method of delivery or transmission, whichever occurred first. Any time period specified by this Agreement in connection with a notice requirement shall be determined with respect to the effective date of the notice unless a different intent is clearly stated.
- d. Emergency Notice. The Parties may reasonably shorten the time for any notice required by this Agreement when necessary to deal with a serious emergency situation, provided, however, that an emergency resulting from a failure of a Party to act promptly in response to circumstances clearly requiring attention shall not qualify as an emergency.
- e. Waiver of Notice. A Party shall have authority to waive, in writing, any notice that it is entitled to receive under this Agreement.
- f. Notice Addressees and Addresses. The notice addressee(s) for each of the Parties, and their respective addresses for purpose of giving notice pursuant to or in connection with this Agreement, shall be as follows:

**City of La Crosse**

**Town of Campbell**

## **10. Waiver**

Except as otherwise specifically provided in this Agreement, any right of a Party pursuant to this Agreement can only be waived in writing. A waiver on one occasion, or in one set of circumstances, shall not be



deemed to be a waiver of such right on any other occasion or in any other circumstances.

### **11. Severability**

In the event that any provision of this Agreement, or any part thereof; is held or determined by a court or agency of competent jurisdiction to be invalid or unenforceable, the balance of this Agreement shall be deemed to be severable and shall survive.

### **12. Prior Claims**

This Agreement does not preclude Campbell or any Campbell property owner from any claim it may have against the City related to PFAS contamination of the soil or groundwater in Campbell.

### **13. Interpretation**

This Agreement shall not be deemed to have been drafted by any particular Party so as to be interpreted strictly against such Party. As used in this Agreement, "shall" and "must" are mandatory, "may" and "should" are discretionary, and "municipality" means city, village or town. As used in this Agreement, "person" means an individual, corporation, limited liability company, partnership or any other recognized entity.

### **14. References**

Any references in this Agreement to any particular agency, organization, municipality or official shall be interpreted as applying to and binding upon any successor agency, organization, municipality or official or to any other agency, organization, municipality or official to which functions are transferred by law. Any references in this Agreement to any particular statute, ordinance, rule or regulation shall be interpreted as applying to such statute, ordinance, rule or regulation as amended or recreated from time to time. In the event that any such amendment or recreation necessitates an amendment of this Agreement in order to continue the provision of Adequate Water Service by La Crosse to Campbell, the Parties shall use good faith efforts to amend this Agreement in a mutually satisfactory manner to accomplish the continued provision of Adequate Water Service by La Crosse to Campbell.

### **15. Section and Subtitles**

Section and subsection titles in this Agreement are provided for convenience only and shall not be used in interpreting this Agreement.

## **16. Successors and Assigns**

This Agreement shall benefit and be binding upon the Parties and their successors and assigns. Except as provided in Section 21 with regard to any successor agency, organization, municipality or official, or to any other agency, organization, municipality or official to which functions are transferred by law, this Agreement shall not be assigned by any Party without the written consent of each of the other Parties.

## **17. Complete Agreement**

This Agreement represents the complete agreement of the Parties and supersedes all agreements, warranties, representations and promises, either written or oral, made during the course of negotiations leading up to this Agreement. This Agreement supersedes and replaces any prior agreement between or among the Parties relating to the provision of water service by La Crosse to Campbell, including, without limitation, the former Water and Fire Services agreement on December 8, 2005.

## **18. Good Faith and Fair Dealing**

La Crosse and Campbell hereby acknowledge and agree that this Agreement imposes on each of them a duty of good faith and fair dealing.

## **19. Enforcement / Remedies**

### **a. Remedies.**

- i. Campbell shall have the right and standing to complain to the PSC, pursuant to Section 196.26 of the Wisconsin Statutes, that any decision made or action taken by La Crosse under or pursuant to this Agreement constitutes an unreasonable or unjustly discriminatory rate, rule or practice, provided and to the extent that Campbell's position is consistent with a good faith interpretation of this Agreement and does not challenge the validity or enforceability of this Agreement or any of its provisions.
- ii. Each Party shall have the right and standing to seek a declaratory judgment in court regarding the proper interpretation of this Agreement or of the rights or obligations of the Parties under the provisions of this Agreement as stated. Each Party shall have the right and standing to seek any available equitable or legal remedy in court to enforce this Agreement, and/or to seek damages

for the breach of this Agreement, unless the PSC has primary jurisdiction over such matter under Section 196.26 of the Wisconsin Statutes. No Party, however, shall have the right or standing to use such an action to challenge the validity or enforceability of this Agreement or any of its provisions.

- b. Notice of Breach or Dispute. If a Party believes that any other Party is in breach of this Agreement, or that a dispute exists about the meaning of the Agreement, the aggrieved Party shall promptly give written notice of the breach or dispute to the other Parties, specifying the provision(s) of this Agreement that are involved and the action, inaction, dispute or interpretation that gives rise to the notice. Representatives of the Parties shall meet as promptly as practicable thereafter, and in any event within 30 days after the effective date of the notice, and shall endeavor in good faith to resolve any dispute or other matter amicably. If the initial meeting fails to resolve the dispute or other matter, the Parties shall meet again within 30 days after the first meeting, unless the Parties agree in writing at the first meeting that there is no possibility a second meeting will help resolve the dispute or other matter, After the second meeting or after any agreement not to hold a second meeting, the Parties may pursue remedies in the Circuit Court of La Crosse County for breaches of this Agreement provided, however, that the Party allegedly in breach shall not be in breach if such Party cures the alleged breach within 30 days after such notice or commences steps which should reasonably cure the -alleged breach within a period of time that is reasonable under the circumstances and diligently pursues such steps to completion, and the completion of such steps does cure the alleged breach. This Section 28 is intended by the Parties to waive their respective statutory right to any notice under Section 893.80(1) of the Wisconsin Statutes, to the extent such section is applicable.
- c. Commencement of Civil Actions or Other Proceedings. A Party shall not commence a civil action or file a complaint with the PSC until after the meeting(s) required by Section 26(b) above, and until after the Party is in compliance with the payment provisions of this Agreement, except that a Party may commence an action seeking specific performance or injunctive relief prior to that time if, in that Party's good faith judgment, urgent action is necessary to protect the public health, safety or welfare from serious harm.

## **20. Amendment**

This Agreement may be amended or terminated by written agreement duly approved by the governing bodies of the Parties and signed by appropriate and duly authorized officers of such Parties, and approved by the PSC if such approval is required by law.

## **21. No Third-Party Beneficiaries**

This Agreement is intended to benefit only the Parties and their successors and assigns, and nothing in this Agreement shall be interpreted as giving to any person that is not a Party any legal or equitable rights whatsoever.

## **22. Limitations on Liability**

Notwithstanding any other provision of this Agreement, La Crosse shall not be liable to Campbell for any claims, losses or damages as it relates to water system operations connected to this agreement resulting from any Force Majeure Event, break in any water main or any other failure of physical facilities to perform (except for breaks or other failures caused by the gross negligence or willful misconduct of La Crosse) or any other cause beyond the reasonable control of La Crosse, or for any consequential damages. It is agreed by the Parties that any liability of La Crosse arising from this Agreement or water matters shall only be paid or satisfied from the funds of La Crosse available for such purpose to the extent that after such payment La Crosse shall continue to maintain reasonable and prudent reserves. The Parties expressly acknowledge that this limitation on liability does not apply to any claims, losses or damages that Campbell may have had which preexisted this agreement.

## **23. No Revenue Sharing**

There shall be no revenue sharing pursuant to Section 66.0305 of the Wisconsin Statutes required by the City as consideration for the wholesale water service to Campbell that is provided for in this Agreement. The Parties acknowledge and agree that none of the payments required of Campbell by this Agreement constitutes such revenue sharing.

## **24. Approval / Authority**

Each of the Parties hereby represents that this Agreement was duly approved by its governing body in accordance with all applicable state and local laws, and that its governing body has caused its duly

authorized officers to execute this Agreement on its behalf on the date stated after each signature below.

- a. Term: Campbell may terminate this agreement by providing 18 months written notice to La Crosse. Termination will only be effective when equivalent water service is provided by another entity. La Crosse will not actively oppose Campbell's efforts to terminate this agreement and obtain water service via another entity. Upon termination, La Crosse water customers connected to Campbell's watermains shall continue to receive service at the same rates charged other customers using the facilities.
  
- b. Effective Date: This Agreement shall be effective May 1, 2022. For the same to be effective and binding, it shall be approved by the Common Council of the City of La Crosse and the Town Board of the Town of Campbell on or before May 1, 2022.

CITY OF LA CROSSE:

BY: \_\_\_\_\_  
\_\_\_\_\_, Mayor

BY: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

TOWN OF CAMPBELL:

BY: \_\_\_\_\_  
\_\_\_\_\_, Town Chair

BY: \_\_\_\_\_  
\_\_\_\_\_, Town Clerk