



## **REQUEST FOR PROPOSAL**

### **BRANDING SERVICES**



Deadline for Submission: March 8, 2019 at 4:00 P.M. CST  
Late or unsigned proposals will be rejected

## SPECIAL INSTRUCTIONS

<b>RFP Title</b>	<b>Branding Services</b>
<b>RFP Number</b>	<b>LCC-2019-001</b>
<b>Purpose</b>	The purpose of this document is to provide interested parties with information to enable them to prepare and submit a proposal for the above mentioned services
<b>Deadline</b>	<b>4:00 P.M. CST – March 8, 2019</b>
<b>Submit RFP to this address</b>	La Crosse Center PO Box 1027 300 Harborview Plaza La Crosse, WI 54603
<b>Special instructions</b>	<ul style="list-style-type: none"><li>• Submit one (1) original of your proposal</li></ul>
<b>Submit all inquires to</b>	Name: Art Fahey Title: Director Phone: (608) 789-7413 E-Mail: <a href="mailto:afahey@lacrossecenter.com">afahey@lacrossecenter.com</a> Web: <a href="http://www.lacrossecenter.com">www.lacrossecenter.com</a>
<b>Date issued</b>	February 8, 2019

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## **1. GENERAL INFORMATION**

### **1.1. Introduction and Background**

The purpose of this RFP is to award a contract for services to provide the La Crosse Center as requested covering development and implementation of a new brand that would coincide with the La Crosse Center's new expansion project and upgrades. This would include, but not limited to logo, wayfinding signage, social media, website, on sight materials. This would be a distinct brand that would resonate with visitors, guests of the venue, residents, stake holders and the community.

### **1.2. Scope of Project(s)**

#### **1.2.1. Brand Development & Management**

The La Crosse Center desires to engage a consultant with proven experience to lead a comprehensive branding plan and recommend appropriate channels to introduce and utilize the new look. The selected contractor shall develop a creative concept for a campaign with slogans, themes, graphics and visual elements for print, electronic media and social media applications.

#### **1.2.2. Creative Element Design and Production**

The contractor will translate creative concepts to produce print and electronic materials, allowing the La Crosse Center adequate time for review and approval. The contractor must submit written production estimates to the La Crosse Center Director prior to production.

Services may include producing both static and moving creative for print materials, digital ads, website content, social media campaigns.

#### **1.2.3. Brand Development**

The Contractor should be able to develop and execute a clearly defined social media strategy, building off of current established strategies and vehicles that directly support marketing and customer engagement initiatives. Contractor will be responsible for evaluating, planning, organizing, and contributing to all social media channels.

### 1.3. RFP and Contract Administration

This RFP is issued by the La Center and is administered by the La Crosse Center Board and the La Crosse Center Administration.

### 1.4. Clarification of the specifications

All inquiries concerning this RFP must be directed to the contact person listed with this RFP.

Any questions concerning this RFP must be submitted in writing by mail or e-mail before the submission deadline.

Proposers are expected to raise any questions, exceptions, or additions they have concerning the RFP document at this point in the RFP process. If a proposer discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFP, the proposer should immediately notify the contact person of such error and request modification or clarification of the RFP document.

### 1.5. Addendums and/or Revisions

In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFP, revisions/amendments and/or supplements will be posted on the La Crosse Center web site at [www.lacrossecenter.com](http://www.lacrossecenter.com)

It shall be the responsibility of the proposers to regularly monitor the La Crosse Center web site for any such postings. Proposers must acknowledge the receipt / review of any addendum(s) at the bottom of the RFP Cover Page /Signature Affidavit.

Each proposal shall stipulate that it is predicated upon the terms and conditions of this RFP and any supplements or revisions thereof.

### 1.6. Contract Term and Funding

The contract shall be effective on the date indicated on the purchase order or the contract execution date and shall run for one (1) year(s) from that date, with an option by mutual agreement of the La Crosse Center and contractor, to renew for six (6) additional months.

## **2. PREPARING AND SUBMITTING A PROPOSAL**

### **2.1. General Instructions**

The evaluation and selection of a contractor and the contract will be based on the information submitted in the proposal plus references and any required on-site visits or oral interview presentations. Failure to respond to each of the requirements in the RFP may be the basis for rejecting a response.

Elaborate proposals (e.g. expensive artwork) beyond that sufficient to present a complete and effective proposal, are not necessary or desired.

### **2.2. Proprietary Information**

Proprietary information submitted in a proposal, or in response to the RFP, will be handled in accordance with the applicable Wisconsin State Statute(s).

To the extent permitted by law, it is the intention of La Crosse Center to withhold the contents of the proposal from public view until such times as competitive or bargaining reasons no longer require non-disclosure. At that time, all proposals will be available for review in accordance with the Wisconsin Open Records Law.

### **2.3. Incurring Costs**

La Crosse Center is not liable for any cost incurred by proposers in replying to this RFP

### **2.4. Submittal Instructions**

Proposals must be received by the Director of the La Crosse Center by the specified time stated on the RFP Special Instructions page. Proposals received in response to this solicitation will not be returned to the proposers.

All proposals must be packaged, sealed and show the following information on the outside of the package:

Proposer's name and address  
Title

### **2.5. Required Copies**

Proposers must submit an original and three (3) copies of all materials.

All hard copies of the proposal must be on 8.5"x11" individually securely bound.

- Introduction
- Response to general requirements
  - Organizational qualifications
  - Staff qualifications and Facilities
  - References
- Cost proposal
- Required forms
  - Attachment A – Signature Affidavit
  - Attachment B – Reference Data Sheet
  - Attachment C – Cost Summary Page
- Appendices (any additional information the proposer wishes to submit)

## 2.6. Multiple Proposals

Multiple proposals from a vendor will be permissible; however each proposal must conform fully to the requirements for proposal submission. Each such proposal must be separately submitted and labeled as Proposal #1, Proposal #2, etc.

## 2.7. Oral Presentations and Site Visits

Top ranked selected proposers may be required to make oral interview presentations and/or site visits to supplement their proposals, if requested by the La Crosse Center. The La Crosse Center will make every reasonable attempt to schedule each presentation at a time and location that is agreeable to the proposer. Failure of a proposer to conduct a presentation to the La Crosse Center on the date scheduled may result in rejection of the vendor's proposal.

# 3. PROPOSAL SELECTION AND AWARD PROCESS

## 3.1. Preliminary Evaluation

The proposals will first be reviewed to determine if requirements of the RFP are met, and if additional mandatory requirements are met. Failure to meet mandatory requirements will result in the proposal being rejected. In the event that all vendors do not meet one or more of the mandatory requirements, the La Crosse Center reserves the right to continue the evaluation of the proposals and to select the proposal which most closely meets the requirements specified in this RFP.

## 3.2. Proposal Scoring

Accepted proposals will be reviewed by an evaluation team and scored against the stated criteria. This scoring will determine the ranking of vendors based upon their written proposals. If the team determines that it is in the best interest of the La Crosse Center to require oral presentations, the highest ranking vendors will be invited to make



such presentations. Those vendors that participate in the interview process will then be scored, and the final ranking will be made based upon those scores.

### 3.3. Right to Reject Proposals and Negotiate Contract Terms

The La Crosse Center reserves the right to reject any and all proposals and to negotiate the terms of the contract, including the award amount, with the selected proposer prior to entering into a contract. If contract negotiations cannot be concluded successfully with the highest scoring proposer, the La Crosse Center may negotiate a contract with the next highest scoring proposer.

### 3.4. Evaluation Criteria

The proposals will be scored using the following criteria:

DESCRIPTION	PERCENT
• General Requirements (Section 4)	
○ Organizational Capabilities	15%
○ Staff Qualifications	10%
• Technical Requirements (Section 5)	
○ Brand Development & Management	35%
○ Creative Element Design & Production	15%
○ Social Media Development	5%
• Cost: Hourly rates and charges	20%
TOTAL	100%

### 3.5. Award and Final Offers

The award will be granted in one of two ways. The award may be granted to the highest scoring responsive and responsible proposer. Alternatively, the highest scoring proposer or proposers may be requested to submit final and best offers. If final and best offers are requested, they will be evaluated against the stated criteria, scored and ranked. The award will then be granted to the highest scoring proposer.

### 3.6. Notification of Intent to Award

As a courtesy, the La Crosse Center may send a notification of award memo to responding vendors at the time of the award.

## **4. GENERAL PROPOSAL REQUIREMENTS**

### **4.1. Introduction**

Provide a one page overview of your firm's interest in the project.

### **4.2. Organization Capabilities**

Describe the firm's experience and capabilities in providing similar services to those required. Be specific and identify projects, dates, and results.

### **4.3. Staff Qualifications**

Provide resumes describing the educational and work experiences for each of the key staff who would be assigned to the project.

### **4.4. Proposer References**

Proposers must include in their RFPs a list of organizations, including points of contact (name, address, and telephone number), which can be used as references for work performed in the area of service required. Selected organizations may be contacted to determine the quality of work performed and personnel assigned to the project. The results of the references will be provided to the evaluation team and used in scoring the written proposals.

## **5. TECHNICAL REQUIREMENTS**

### **5.1. Brand Plan Development & Management**

5.1.1. Provide a list of projects; similar in type and scope to the requirements of this RFP, that vendor has in its portfolio in relation to: brand development and management.

5.1.2. Provide samples (photos or web site references are allowable) of a comprehensive brand development and plan that illustrates a successful end product.

5.1.3. Describe the vendor's facilities, equipment, and expertise for developing a comprehensive brand.

## 5.2. Market Research Management

- 5.2.1. Provide a sample list of the types of branding that has been completed. State the goal of the client and how the vendor approached research for that client. (Client names need not be used.)
- 5.2.2. Provide a sample of a client report.
- 5.2.3. Describe the vendor's facilities and expertise (or past contracted services) for conducting brand development.

## 5.3. Creative Design & Production

- 5.3.1. Provide a sample list of the types of creative design products completed.
- 5.3.2. Provide samples (photos or web site references are allowable) of past creative design production for a variety of mediums including: print, web, large format, video, audio, and signage.
- 5.3.3. Describe the vendor's facilities, equipment and expertise (or past contracted services) for conducting creative design and production.

# 6. COST PROPOSAL

## 6.1. General Instructions on Submitting Cost Proposals

One copy of the cost proposal should be submitted with the written proposal.

## 6.2. Format for Submitting Cost Proposals

The Proposer must provide a cost breakdown for hourly services for key personnel and services.

## 6.3. Fixed Price Period

All prices, costs, and conditions outlined in the proposal shall remain fixed and valid for acceptance for 120 days starting on the due date for proposals.

# 7. SPECIAL CONTRACT TERMS AND CONDITIONS

## 7.1. Payment Requirements

The payment schedule will be negotiated with the successful proposer.

- 7.2. All products (including electronic and other masters) and rights become the property of La Crosse Center.

**ATTACHMENT A**

**RFP COVER PAGE  
SIGNATURE AFFIDAVIT**

NAME OF FIRM:	
STREET ADDRESS:	
CITY, STATE, ZIP:	
CONTACT PERSON:	
PHONE #:	
FAX #:	
EMAIL:	

In signing this proposal, we also certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a proposal; that this proposal has been independently arrived at without collusion with any other proposer, competitor or potential competitor; that this proposal has not been knowingly disclosed prior to the opening of proposals to any other proposer or competitor; that the above statement is accurate under penalty of perjury.

The undersigned, submitting this proposal hereby agrees with all the terms, conditions, and specifications required by the La Crosse Center in this Request for Proposal, and declares that the attached proposal and pricing are in conformity therewith.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Date

Addendums -This firm hereby acknowledges receipt / review of the following addendum(s) (If any)

Addendum # \_\_\_\_\_ Addendum # \_\_\_\_\_ Addendum # \_\_\_\_\_ Addendum # \_\_\_\_\_

**ATTACHMENT B**

**REFERENCE DATA SHEET**

Provide company name, address, contact person, telephone number, and appropriate information on the product(s) and/or service(s) used for three (3) or more installations/services with requirements similar to those included in this solicitation document

NAME OF FIRM:	
STREET ADDRESS:	
CITY, STATE, ZIP:	
CONTACT PERSON:	
PHONE #:	
EMAIL:	
Products and/or services used:	
<hr/>	
NAME OF FIRM:	
STREET ADDRESS:	
CITY, STATE, ZIP:	
CONTACT PERSON:	
PHONE #:	
EMAIL:	
Products and/or services used:	
<hr/>	
NAME OF FIRM:	
STREET ADDRESS:	
CITY, STATE, ZIP:	
CONTACT PERSON:	
PHONE #:	
EMAIL:	
Products and/or	

services used:	
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***ATTACHMENT C***

**COST SUMMARY SHEET**

**Provide the Hourly Rate for personnel in the Job Functions who may be assigned to this project, such as Principal, Account Executive/Project Manager, Clerical/Admin Support, Creative Director, Art Director, Layout & Graphic Design, Photographer, Social Media**

<b>ITEM DESCRIPTION</b>	<b>COST</b>
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**SERVICE AGREEMENT BETWEEN THE CITY OF LA CROSSE  
AND \_\_\_\_\_**

This Services Agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and among the City of La Crosse, a municipal corporation, ("City") and \_\_\_\_\_, ("Service Provider").

WHEREAS, the La Crosse Center Board of the City of La Crosse authorized this Service Agreement with \_\_\_\_\_, and

WHEREAS Service Provider has submitted a proposal in accordance with Request for Proposal LCC-2019-001.

NOW, THEREFORE, IN CONSIDERATION of the covenants set forth herein and other good and valuable considerations, receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. TERM: the term of this agreement shall commence on \_\_\_\_\_, \_\_\_\_\_ and terminate on \_\_\_\_\_, \_\_\_\_\_. City and Service Provider, upon mutual written agreement, may renew this Agreement for up to six (6) additional months. Either party may terminate this agreement upon ten (30) days prior written notice.
2. WORK SCHEDULE: All work performed by Service Provider under this Agreement will be conducted upon approval of the La Crosse Center Board and the City of La Crosse. No work is authorized under this Agreement unless so authorized. Service Provider shall provide to City a written work estimate with a "not to exceed" for each work item requested by City prior to commencing work. The La Crosse Center will sign and return a copy of such work estimates to the Service Provider prior to commencing work.
3. FILES: Graphic design digital files and other digital content will be provided for each design job.
4. PRODUCT RIGHTS: All products including electronic and photography files are the property of City and shall be provided to City at no additional cost. Service Provider shall assign to City all right, title, and interest, including copyright and intellectual property rights, in applicable projects completed during the term of this Agreement.
5. COMPENSATION: In exchange for the services provided within this Agreement, the La Crosse Center shall pay Service Provider at hourly rates for each individual classification so agreed upon within "**Appendix B**" to this Agreement not to exceed the provided work estimate. Additionally, La Crosse Center shall pay Serviced Provider for actual expenses related to printing and distributing work conducted under this Agreement. Such payment will be made to Contractor within thirty (30) days of invoice. Invoices shall be provided to La Crosse Center no later than the twentieth (20<sup>th</sup>) of each month in which Service Provider is requesting payment.



6. STANDARD TERMS AND CONDITIONS: The Standard Terms and Conditions attached as “**Appendix A**” are made part of this Agreement.

By:

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By:

City of La Crosse

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Art Fahey  
Director  
La Crosse Center

## APPENDIX A - STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.** In this section "Contracting Party" shall mean any party that is entering into this Agreement with the City of La Crosse. "La Crosse" shall mean the City of La Crosse. These definitions shall apply only to this section titled "Standard Terms and Conditions" and shall not replace, modify or supersede any definitions used in other sections of this Agreement.

2. **STANDARD OF PERFORMANCE.** Contracting Party agrees that the performance of the services, pursuant to the terms and conditions of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services. Contracting Party agrees to abide by all applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.

3. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.

4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement, including without limitation materials, equipment, supplies, and incidentals. The scope of services to be performed shall include, without limitation, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.

5. **CHANGE OF SCOPE.** The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement, including, if applicable, information supplied by Contracting Party. Scope may not be fully definable during initial phases. As projects progress, facts discovered may indicate that the scope must be redefined. Parties shall provide a written amendment to this Agreement to recognize such change.

6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingencies set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices must be itemized to include labor costs and the Contracting Party's direct expenses, including subcontractor costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement.

7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.

8. **TERMINATION FOR CAUSE.** If, through any cause, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, La Crosse shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of La Crosse, become the property of La Crosse. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to La Crosse for damages sustained by La Crosse by virtue of this Agreement by the Contracting Party, and La Crosse may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to La Crosse from the Contracting Party is determined.

9. **TERMINATION FOR CONVENIENCE.** La Crosse may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by La Crosse.

10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.

11. **DELAYS.** If performance of La Crosse's obligations is delayed through no fault of La Crosse, La Crosse shall be entitled to an extension of time equal to the delay.

12. **OPINIONS OF COST.** Any opinion of costs prepared by La Crosse is supplied for general guidance of Contracting Party only. La Crosse cannot guarantee the accuracy of such opinions as compared to actual costs to Contracting Party.

13. **USE OF LA CROSSE PROPERTY.** Any property belonging to La Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement.

14. **INSURANCE.** Contracting Party shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

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

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

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

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

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

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

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

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

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

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

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

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

23. **NO WAIVER.** The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

24. **SUBCONTRACTING.** None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of La Crosse. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to La Crosse for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

25. **CONFLICTS OF INTEREST.** Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to La Crosse.

26. **NON-DISCRIMINATION.** Pursuant to law, it is unlawful and Contracting Party agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Contracting Party shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

27. **POLITICAL ACTIVITIES.** Contracting Party shall not engage in any political activities while in performance of any and all services and work under this Agreement.

28. **GOVERNMENTAL APPROVALS.** Contracting Party acknowledges that various of the specific undertakings of La Crosse described in this Agreement may require approvals from the City of La Crosse Council, City of La Crosse bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Contracting Party further acknowledges that this Agreement is subject to appropriation by the La Crosse Common Council. La Crosse's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. La Crosse cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**APPENDIX B**  
**HOURLY RATES**

(Include negotiated hourly rates as per RFP proposal)