

KNIGHT

Engineers & Architects

March 10, 2015

Mr. Randy Turtenwald, P.E.
City Engineer
City of La Crosse
400 La Crosse Street, 4th Floor
La Crosse, WI 54601

Re: VIP Trail Expansion

Dear Randy:

Knight E/A, Inc. is pleased to submit this proposal for engineering services on the VIP Trail Expansion. If you find this proposal to be acceptable, the executed copies of this letter, together with the General Terms and Conditions attached hereto which set forth the contractual elements of this agreement, will constitute an agreement between The City of La Crosse ("Client") and Knight E/A, Inc. ("Knight") for services on this project.

Project Understanding

Goals for this project are to widen the existing trail located behind Gundersen Lutheran Medical Center, and to extend the trail to South Avenue and to Maple Street as shown on the project location map.

The existing trail is proposed to be widened from 8 feet to 10 feet with a 2 foot wide shoulder and a 5 foot wide running trail. The extension of the existing trail is proposed to be a 10 foot wide paved trail with a 2 foot wide shoulder and 5 foot wide running path. The trail surface is presumed to be asphalt. The project length is approximately 0.80 miles. Sections of the trail extension will be located on slopes that may require engineered retaining walls.

Scope of Services

See Attached Request for Proposal

Schedule

Consultant Selected	February 24, 2015
Consultant Notice To Proceed	May 1, 2015
P S & E Date	June 7, 2016
Ad Date	September 28, 2016
Let Date	October 18, 2016



Compensation

We proposed to provide these services on an actual cost plus fixed fee not to exceed \$46,196.17. This amount includes Knight's design services, Mead and Hunt's survey, plat and cultural resources investigation and Chosen Valley's geotechnical analysis.

Knight's supporting documents immediately follow.

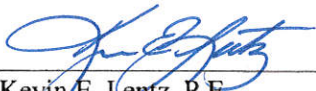
Terms and Conditions

This proposal, together with Attachment A - General Terms and Conditions, represents the entire understanding between Client and Knight. If the terms of this agreement are found to be satisfactory, please sign this agreement in duplicate in the space provided and return one fully executed original to our office.

We appreciate the opportunity to present this proposal and look forward to working with you on this project.

Sincerely,

KNIGHT E/A, INC.

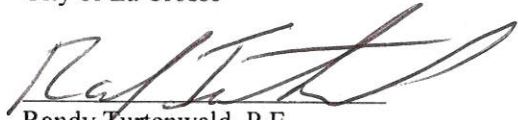


Kevin E. Lentz, P.E.
President

3/23/2015

[Date]

City of La Crosse



Randy Turtenwald, P.E.
City Engineer

5.20.15

[Date]

Attachment: Request for Proposal

CITY OF LA CROSSE

REQUEST FOR PROPOSAL

For

Design Services

VIP Trail Expansion / Extension

DOT Project No. 5991-07-33/34

January 21, 2015

The City of La Crosse has been awarded funding for a shared use trail project under the Wisconsin Department of Transportation, Transportation Alternatives Program (TAP). Additional funding will be by Gundersen Health System and the City of La Crosse.

To accomplish this project, the City intends to retain a consulting engineering firm to prepare plans, specification and estimate (PS&E) for the trail project. The selected consultant shall have a minimum of 5 years of successfully completing projects that meet ASHTO, Federal Highway Administration and Wisconsin DOT (WisDOT) design standards. This shall include working through the WisDOT Sponsor's Guide to Non-Traditional Transportation Project Implementation (Sponsor's Guide) design and bidding process with the WisDOT's Management Consultant (MC).

Real estate acquisition will not be part of this agreement.

This will be a local let project.

Bidding documents shall be in the City of La Crosse format.

PROJECT GOALS

Goals for this project are to widen the existing trail located behind Gundersen Lutheran Medical Center, and to extend the trail to South Avenue and to Maple Street as shown on the project location map.

The existing trail is proposed to be widened from 8 feet to 10 feet with a 2 foot wide shoulder and a 5 foot wide running trail. The extension of the existing trail is proposed to be a 10 foot wide paved trail with a 2 foot wide shoulder and 5 foot wide running path. The trail surface is presumed to be asphalt. The project length is approximately 0.80 miles.

Sections of the trail extension will be located on slopes that may require engineered retaining walls.

PLANNING

Work under this section will be to obtain all necessary site data to design the trail and shall include, but not limited to, the following:

- Conduct a kick-off meeting in La Crosse with the City of La Crosse, Gundersen Health System, the WisDOT MC, and WisDOT Staff.
- Prepare and submit a project specific schedule. Include project goals, deliverable documents and delivery dates
- Conduct a monthly planning progress meeting, prepare and distribute meeting notes
- Obtain all necessary site information to design the trail. The field survey horizontal control shall be in the Wisconsin State Plane Coordinate System – Southern Zone, and the vertical control shall be the USGS NAV 88 datum
- Conduct soil investigations as necessary

- Conduct a historical and archaeological review of the project area following the WisDOT Section 106 process
- Provide utility coordination
- Prepare and submit the Environmental Review Document
- Prepare and submit the Design Study Report
- Obtain all real estate information to prepare a right-of-way plat and relocation order
- Recommend materials and design any retaining walls
- Recommend surface types for the paved trail and the running trail

DESIGN

Design services shall be to prepare all bidding documents that shall include, but not limited to, the following:

- Conduct a monthly design progress meeting, and prepare and distribute meeting notes
- Prepare the plan and profile sheets in City of La Crosse format
- Prepare the specifications and special specifications in City of La Crosse format
- Prepare and submit all Sponsor's Guide forms
- Prepare a right-of-way plat for real estate acquisitions in WisDOT format
- Prepare the relocation order for the project in WisDOT format
- Prepare an estimate of probable cost for the project
- Assist City Staff with alternate bid items to control project cost
- Provide all coordination with the WisDOT MC and WisDOT Staff

BIDDING

Bidding services shall be to assist the City in the bid process as follows:

- Attend a Pre-bid meeting in La Crosse
- Prepare addendum(s) as necessary
- Assist City Staff in evaluating bids
- Submit the Request To Award to the WisDOT MC

ITEMS FURNISHED BY THE CITY

Items to be furnished by the City of La Crosse include the following:

- Real estate acquisition
- Be the contact with the Gundersen Health System Staff
- Provide the consultant with record drawings as available
- Provide a plan sheet templet and front-end bid documents
- Assemble and distribute the bid documents
- Distribute addendum(s)
- Conduct a pre-bid meeting
- Conduct the bid opening and award

A draft project schedule for this project has been developed and is attached. Major target dates are as follows:

Consultant Selected	February 24, 2015
Consultant Notice To Proceed	May 1, 2015
P S & E Date	June 7, 2016
Ad Date	September 28, 2016
Let Date	October 18, 2016

Please provide the City a NOT-TO-EXCEED cost for the above listed services. The Consultant shall breakdown the cost by task, position, labor rate, subcontractor costs, and other expenses for each phase of the project.

This shall be a "Time & Material" contract with a not to exceed provision. The Consultant will be compensated for all work at the rates indicated in their proposal.

The City of La Crosse Professional Agreement Terms and Conditions shall apply to this contract and are attached.

Your proposal should include the following information:

- Name, address, telephone number and description of your firm
- Statements as to your firm's particular abilities and qualifications related to this project
- Resumes of key professionals who will be assigned to this project, including related experience and pertinent background
- Identify any consultants who would be employed by your firm and made a part of the project team
- Provide examples of experience and expertise with this type of project
- Provide references with contact information (names, addresses, telephone numbers)
References for similar projects preferred
- Provide a not-to-exceed cost for the planning, design and bidding service
- Any other information you feel is pertinent to this project

Deliver five (5) copies of the proposal within a single, sealed package, to the office of the City Engineer no later than 4:00 P.M., Monday February 16, 2015, at the address below:

Mr .Randy Turtenwald
City Engineer
400 La Crosse Street
La Crosse, Wisconsin 54601

The City reserves the right to interview all or some firms in order to make a final selection.

Direct questions or requests for additional information to:

Greg Kozelek
Project Engineer
400 La Crosse Street
La Crosse, Wisconsin 54601
Phone (608) 789-7365
kozelekg@cityoflacrosse.org

Regards,



Gregory P. Kozelek P.E.
Project Engineer

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 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.

Approved: 10/07/08

Attachment A
General Terms and Conditions

- 1. General Conditions.** The Terms and Conditions set forth herein and in the attached cover letter constitute and offer by Knight E/A, Inc. ("Knight") to perform for the Company to whom this letter is addressed ("Client"), all of the professional design services described in said cover letter as Scope of Services ("Services") for Client's project as defined therein ("Project"). Knight's offer becomes a contract on these same terms and conditions when accepted by Client. This contract supercedes all previous understandings, if any, and constitutes the entire agreement between Knight and Client relating to the Services. Pre-printed terms and conditions on Client purchase orders are not accepted regardless of when issued. Knight shall have the right, at its sole option, to rescind its offer if the Services have not commenced within ninety (90) days of the date of Knight's offer.
- 2. Knight's Obligations.** Knight will endeavor to perform its Services using that degree of care and skill ordinarily exercised by reputable members of its profession under similar circumstances. No other warranty, express or implied, is made or intended.
- 3. Client's Obligations.** Client shall provide the following: (i) all criteria and full information as to Client's requirements for the Project, including design objectives and constraints, borings, probings and subsurface explorations, hydrographic surveys, laboratory tests, environmental assessment and impact statements, property, boundary, easement, right-of-way, topographic and utility surveys, property descriptions, zoning, deed and other land use restrictions; all of which Knight may use and rely upon in performing services under this Agreement; (ii) arrange for access to and make all provisions for Knight to enter upon public and private property as required for Knight to perform services under this Agreement; and (iii) give prompt written notice to Knight whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Knight's services, or any defect or non-conformance in the work of any Contractor.
- 4. Consultant Services.** When Knight procures consultant services required for the Project on behalf of Client, Knight does so as an administrative/invoicing convenience to Client and such consultants shall be considered Client's independent Consultants. Knight makes no representation of, and does not assume responsibility or liability for, the work or services of Client's Independent Consultants. Knight shall be entitled to rely upon the accuracy of services, including reports or surveys, provided by Client's Independent Consultants.
- 5. Additional Services.** Changes in scope or extent of Services may be made from time to time by mutual written agreement. Any additional Services required because of such changes will be charged at Knight's customary rates in effect at that time. Unless otherwise agreed in writing all Terms and Conditions of this contract shall apply. Changes in these Terms and Conditions can only be made by written consent of Knight. Projects suspended for more than thirty (30) days through no fault of Knight shall be subject to a re-mobilization fee compensated as Additional Services.
- 6. Opinions of Probable Cost.** Knight's opinions of probable construction cost represent its best judgment as a design professional familiar with the construction industry and are not guarantees by Knight of actual construction cost. Knight has no control over material cost, labor, methods of construction or bid procedures. Accordingly, Knight does not warrant or represent that contractor bids will not vary from the Project budget or Knight's opinion of probable construction cost. If Client desires greater assurance of cost, Client shall engage the services of an independent construction cost estimator.
- 7. Payment.** Knight shall be entitled to payment for Services rendered on the basis of Knight's invoices submitted monthly. Invoices shall be due and payable within thirty (30) days after receipt. Past due invoices shall accrue interest at the rate of one and one-half percent (1.5%) per month. No retention shall be withheld. All accounts receivable must be current before Knight shall seal drawings, issue drawings to contractors for bidding, or issue drawings for permit application. Knight reserves the right to stop Services

and/or withhold documents for reasons of non-payment and Knight shall not be liable for delays which may result from such stoppage.

Knight shall be compensated for reimbursable expenses such as travel, duplication, plotting, prints, messenger services, additional insured provisions or increased limits of insurance, and other reasonably identifiable costs incurred in connection with the Services. Such reimbursable expenses shall be invoiced at cost or Knight's customary rate, plus five percent (5%) handling and, unless specifically stated otherwise in the cover letter, are in addition to any amounts stated as maximum compensation. The amount of any excise, Value Added Tax (VAT) or gross receipts tax may be imposed by any Authority having jurisdiction shall be added to compensation due hereunder and shall be in addition to any amounts agreed to as maximum compensation.

In the case of lump-sum fee arrangements, invoices shall reflect the percentage of work completed as estimated by Knight to the date indicated on the invoice. For all other fee arrangements, invoices shall indicate the fees earned on the basis of effort expended. A service charge of five percent (5%) of the invoice amount shall be added to all invoices prepared on special Client forms or requiring back-up such as time sheets, copies of receipts, and the like. Waivers of Lien will be provided, upon request, after receipt by Knight of monies due.

8. Documents. Any and all documents and plans (including Knight's independent professional associates and consultants) in whatever form, including electronic media (disks, tapes, telecommunication, etc.) prepared pursuant to or otherwise resulting from this contract are instruments of professional service and shall be and at all time remain the sole property of Knight. Client shall be entitled to retain hard copy of such documents and plans for informational use and references in connection with Client's use and occupancy of this specific property only. Computer diskettes of project documents will not be released by Knight without agreement in writing stipulating the terms and restriction of usage. Knight will not be responsible for any consequence of re-use, other use, or adaptation of such documents without Knight's express written approval.

9. Facsimile Transmissions. The parties agree that each may rely, without investigation, upon the genuineness and authenticity of any document, including any signature or purported signature, transmitted by facsimile machine, without reviewing or requiring receipt of the original document. Each document or signature so transmitted shall be deemed an enforceable original. Upon request, the transmitting party agrees to provide the receiving party with the original document transmitted by facsimile machine; however, the parties agree that the failure of either party to comply with such a request shall in no way affect the genuineness, authenticity or enforceability of the document. Each party waives and relinquishes as a defense to the formation or enforceability of any contract between the parties, or provisions thereof the fact that a facsimile transmission was used.

10. Certifications, Guarantees and Warranties. Knight shall not be required to sign any documents that would result in Knight having to certify, guarantee or warrant the existence of conditions whose existence Knight cannot ascertain. Client also agrees not to make resolution of any dispute with Knight or payment of any amount due to Knight in any way contingent upon Knight signing any such certification.

11. Insurance. Knight is protected by Professional Liability Insurance, Worker's Compensation Insurance and Comprehensive General Liability Insurance and will furnish certificates upon request. Any additional insurance or limits or "additional insured endorsement" shall be provided as a reimbursable expense at actual cost or Knight's scheduled charge. Client agrees to cause the Contractor to (i) provide Comprehensive General Liability Insurance for the Project naming Knight E/A, Inc. and Client as Additional insureds; and (ii) to defend, indemnify, and hold harmless Knight E/A, Inc. and Client from any and all loses, cost, damages, and expenses resulting from the Contractors Work on the Project, including without limitation claims arising out of or in connection with construction worker injuries. Client agrees to notify Knight of the existence of any Project-Specific Professional Liability Policy applicable to the Project which includes Knight as an Insured by name or reference so that Knight may, in a timely and effective manner coordinate its own insurance program. Should such a Project-Specific Professional Liability Policy be purchased by Client or Client's contractors, Client agrees to make available to Knight a certified copy of

the Policy and to cooperate with Knight in obtaining data with respect to possible claims against that Policy.

12. Indemnification. Knight agrees to the fullest extent permitted by law, to indemnify and hold Client harmless from any loss, cost (including reasonable attorney's fees and costs of defense) or expense for property damage and bodily injury, including death, caused by Knight, or its employees' negligent acts, errors or omissions in the performance of professional services under this Agreement. Client agrees to the fullest extent permitted by law, to indemnify and hold Knight harmless from any loss, cost (including reasonable attorney's fees and costs of defense) or expense for property damage and bodily injury, including death, caused solely by Client, its agents or employees, negligent acts, errors or omissions in the performance of professional services under this Agreement. In no event shall Client be entitled to obtain from Knight, its agents, representatives, officers, employees, or independent contractors, 'damages' arising from Knight's breach of this Agreement, or for its failure to perform its services in accordance with the standard of care provided for herein, in excess of fifty thousand dollars (\$50,000) or the total fee amount paid by client, whichever is less. "Damages" as used herein, shall include tort damages, contract damages, strict liability damages, liquidated damages, economic losses, penalties, fines and attorney's fees. No Claims shall be made more than two (2) years after substantial completion of the Project.

13. Waiver of Contract Breach. The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.

14. Suspension of Services. Client may, at any time, by written order to Knight require Knight to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order Knight shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Client, however, shall pay all costs associated with the suspension.

15. Termination. This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. In the event of termination, Knight shall be compensated by Client for all Services performed up to and including the termination date, including reimbursable expenses, and/or the completion of such Services and records as are necessary to place Knight's files in order and/or protect its professional reputation. In the event of bankruptcy or insolvency of Client or if the financial condition of Client at any times does not, in the judgment of Knight, justify continuance of the work, Knight shall be entitled to cancel this contract and receive reimbursement for its reasonable and proper cancellation charges.

16. Asbestos/Hazardous Materials Disclaimer. Client is hereby notified that asbestos is prevalent in building constructed prior to 1978. Client agrees to defend, indemnify and hold harmless Knight from any and all asbestos, pollution, and/or hazardous waste-related claims arising against Knight relative to the presence, detection, removal or disposal of asbestos and or other hazardous wastes at the Project site.

17. "ADA" Compliance. For Projects of new construction, Knight shall endeavor to design the Project in conformity with the Americans with Disabilities Act ("ADA") Accessibility Guidelines, 28 CFR Part 36 (July 26, 1991) (hereinafter the "Act") and advise Client if any accommodation is structurally impractical. For modifications to an existing facility of any type, Knight shall endeavor to identify existing barriers and needed accommodations as those terms are used in the Act, and inform Client of the existence of these barriers and needed accommodations. It is the Client's sole responsibility to determine whether to exclude a specific accommodation because the accommodation is not readily achievable or unduly burdensome. Knight shall not be responsible to determine whether it is necessary to remove all barriers identified in order to comply with the Act. Such determination shall be made by Client.

18. Compliance with Codes. Knight's design shall conform to local applicable codes in effect, and as interpreted by building official, at the time the design is prepared; however, Knight shall not be responsible for changes to the Project resulting from changes in local or applicable codes or changes in interpretation thereof by authorities having jurisdiction.

19. Applicable Law. The rights and obligations of the parties under this contract shall be interpreted in accordance with and governed in all respects by the State of Illinois.