



# CITY OF LA CROSSE

## WASTEWATER UTILITY

905 Joseph Houska Dr  
La Crosse WI 54601  
Phone (608) 789-7330

Jared Greeno - Wastewater  
General Superintendent  
[greenoj@cityoflacrosse.org](mailto:greenoj@cityoflacrosse.org)

Date 03/14/2022

Subject: 2022 Biosolids Management Contract Renewal

In the beginning of 2020 the City of La Crosse Wastewater Utility experienced challenges with Biosolids Management. An RFQ was sent out to multiple contractors. As a result, the Utility entered into a 1-year agreement with A-1 Advanced Pumping Inc. in which the program was successful the remainder of 2020. The Utility utilized A-1 for Land Application and as Other Methods for reuse of Biosolids. Working with A-1 Advanced Pumping Inc. provides the City of La Crosse flexibility in managing Biosolids reuse.

The Wastewater Utility respectfully requested to renew the Biosolids Management agreement with A-1 Advanced Pumping Inc. in 2021 with no price increase using the same rates as the 2020 agreement. This was another 1-year agreement covering 2021 Biosolids Management. The 2021 season again was successful.

We are currently coming to the Board of Public Works asking to approve another 1-year agreement with A-1 Advanced Pumping Inc for 2022. The request is to use the same agreement as the 2020 contract. The difference being an increase cost in the 2022 season due to higher fuel prices. The increase on biosolids project is 2.3% please see the attached documents for pricing.

We the Utility believe the price increase is justifiable this is a big project for the WWTP and can be difficult for contractors to ramp up for this size of project. Note this is the final year that this large of quantity of Liquid Biosolids will be produce, in 2023 the heat drier for Biosolids should be up and running. The agreement for 2023 will look much different.

We ask the Board of Public Works approve 2022 1-year agreement to manage City of La Crosse Biosolids Program.

Thank You  
Jared Greeno  
Wastewater Superintendent  
City of La Crosse



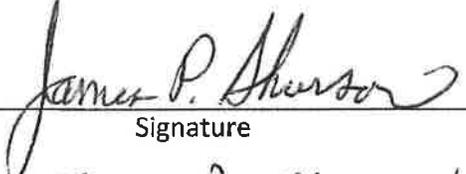
**Exhibit A: QUOTATION FOR BIOSOLIDS MANAGEMENT PROGRAM  
for City of La Crosse, WI Sanitary Sewer Utility**

Term of initial Agreement shall be 1 year to include a fall and spring application, unless terminated, extended or amended by mutual agreement of the parties.

Addenda numbers 0 are hereby acknowledged.

The City of La Crosse Sanitary Sewer Utility will select a contractor which it deems to be most qualified to successfully complete the work, based on established criteria. The Utility reserves the right to accept or reject any and all quotations and to select the quotation considered to be most advantageous, cost-effective, and in the best interest of the Utility. The Utility may also choose to meet to negotiate with qualified, responding contractors, and to require contractors to submit price, technical or other revisions to their quotations that result from negotiations.

Quotations submitted by:

  
\_\_\_\_\_  
Signature

3/14/2022  
Date

James P. Sherswood  
Print Name

Contractor Name: A-1 Advanced Pumping

Business Address: N 4314 County Rd. M  
West Salem, WI 54669

Phone: 608-784-1888

Email: A1Advancedpumping@aol.com



# CITY OF LA CROSSE

## WATER & SEWER UTILITIES OFFICE

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March 10th, 2020

**SUBJECT:** Scope of Services - Biosolids Management Program

The following information is intended to describe and specify the requirements for a complete, contracted biosolids management and disposal program, generally to include:

- All equipment, personnel and materials to safely and efficiently transfer, load, haul and dispose biosolids at agricultural sites.
- Record-keeping including compiling, managing and maintaining all information as required by the program.
- Acquisition of additional agricultural sites as may be necessary to effectively complete the program.
- Active and close coordination and communication with customers who receive and accept the biosolids materials.
- Active, close and regular communication with Utility staff to provide updates and respond to problems, issues or developments related to the biosolids program, including immediate reporting of biosolids and/or issues related to disposal sites, site owners, transportation, etc.
- Active, close and regular formal communication with Utility staff as to when hauling will begin.
- Contractor shall have and manage a system for soil sampling routine. Provide annual report on Soil sampling completed and what was sampled. Provide formal report of soil samples to DNR and La Crosse.
- Contractor shall do the incorporating of Cake. Approval by La Crosse management is required for farmers to incorporate Cake. Cost savings derived from farmer incorporation shall be subtracted from payment for cake disposal.
- La Crosse Biosolids shall be hauled before other communities if land conditions are similar.
- Damage caused to farmer property, fields, etc. shall be responsibility of the contractor.
- If conditions are urgent contractor must be prepared to work around the clock in small windows of opportunity based on land availability
- Contractor shall have the ability/equipment/resources to haul 600,000gpd or more (idea here is to have subs lined up & haul faster if hauling "window" is short).
- Full compliance with regulatory requirements.

### **General description and details of the wastewater system**

The Sanitary Sewer Utility (SSU) operates a regional wastewater treatment facility (WWTP) located on Isle La Plume (905 Joseph Houska Drive) in the City of La Crosse. Biosolids generated by the treatment process are anaerobically digested and stored as liquid in two 3.1-million-gallon storage tanks and as cake (storage capacity of approximately 230 dry tons) located on the WWTP site. Storage tanks include mixing systems such that liquid biosolids leaving the facility typically average about 6 % solids; stored, cake biosolids typically average about 18% solids. The total volume of biosolids generated during calendar year 2019 was approximately 12 million gallons. Of that, 2,608 metric tons of cake was made. The total volume of biosolids in 2020 and following years may be more or less.

The Utility anticipates utilizing two or more contractors for disposal of Biosolids and will award multiple contracts as necessary. How contractors are used will be determined by need, timing, and disposal method availability. The following are the volume/quantity of biosolids to be handled by all contractors through this RFQ. You are expected to inform the City how much volume you are able to manage in your response. The City reserves the right to select contractor(s) as it deems most advantageous to the City.

<u>Season</u>	<u>Liquid Biosolids</u>	<u>Cake Biosolids (Dry Tons)</u>	<u>Other Methods of Disposal Liquid Biosolids</u>
Spring – 2020	3 - 4MG	250 - 500 or as Needed	2 - 3MG
Fall – 2020	3 - 4 MG	250 - 500 or as Needed	2 - 3MG

Liquid storage facilities include a pumping facility that allow transport trucks to drive through the building for loading and exit the WWTP site without disrupting other plant operations. A tanker truck loading facility at the wastewater plant will fill a 6000-gallon truck in approximately 6 – 8 minutes. There is also a second connection point, located outside the South storage tank, for loading liquid biosolids. If multiple contractors are loading at once, the “other methods of disposal” contractor would have second priority. Cake biosolids are stored in a fully covered and enclosed facility fully accessible by trucks and loading equipment. It is expected that trucks hauling cake biosolids will be loaded using an end loader supplied and operated by the utility. Coordination to access WWTP will be facilitated with La Crosse WWTP management, hours will vary based on demand and urgency.

**Biosolids Management Program**

The following information is intended to describe and specify the requirements for disposal of 6% liquid biosolids and 18% Cake from City of La Crosse WWTP under WPDES Permit No. WI-0029581-09-0 using land application.

**Scope of Work:** Services shall include, but not be limited to the following activities:

- Loading trucks at the wastewater plant, hauling biosolids directly from plant, and land application of biosolids materials, based on calculated, appropriate agronomic spreading rates. Land application methods that may be required as part of this program include:
  - Injection of liquid biosolids to deliver materials evenly over the full area of the field, at a minimum depth of 8” - 10” below the ground surface.
  - Surface application of liquid biosolids to approved fields and crops to deliver materials evenly over the full area of the field. This method will require close communication with the land owner to select appropriate sites (site location must be selected to avoid issues with neighboring properties) and to coordinate with types of crop.
  - Surface application of cake biosolids to approved fields and crops to deliver materials evenly over the full area of the field, and incorporation of applied materials by contractor or farmer as a secondary option. This method will require close communication with the land owner to select appropriate sites (site location must be selected to avoid issues with neighboring properties) and to coordinate with types of crop.
  - Bulk delivery of cake biosolids for application by the landowner(s). Note that this method will require close communication and coordination with the land owner related to delivery schedules, quantity of materials and control of sites to avoid issues with neighboring properties.
  - All work must be within DNR compliance and Contractor accepts responsibility if this method is used.
- Oversight and supervision of contractor’s personnel during biosolids transport and disposal or delivery.
- Observation of all federal, state and local safety standards as they apply to this type of work.
- Observation of all applicable regulatory standards for land application of wastewater biosolids.
- Planning, scheduling and completion of work with regular coordination and communication with wastewater management and land owners receiving biosolids. Contractor shall provide at least 12 hours’ notice prior to the start of their biosolids program. It is anticipated that the normal schedule for hauling and disposal of biosolids

will be 24/7. The program is intended to empty the biosolids storage system, the expectation is that emptying the storage system will be completed within a maximum of 3 - 4 weeks once the process is started.

- Maintenance and management of complete and accurate records related to biosolids program. Separate records shall be maintained for each individual disposal site with minimum information to include: site ID, loading rate, application pattern, application method and acreage used. Copies of records shall be submitted to Utility management on a monthly basis. Record management shall include preparation of an annual report for Utility review, approval and electronic submittal to DNR.
- Contact with and recruitment of new farm owners to continue to build inventory of available and approved sites for biosolids disposal. Work as required to obtain approval of new fields, including: certification for self-approval of fields, qualifications for soil sampling for site approval, soil sampling using GPS technology, all necessary communication written forms/paperwork, and submittals for approval of new sites.
- On-call and after-hours services as required.

### **Minimum Contractor Qualifications and Requirements:**

- Contractor shall have experience with a municipal biosolids management program, generating a minimum of 10-million gallons per year, and utilizing liquid injection and surface application methods, over the last five years. Contractor shall provide at least three references, including contact names & phone numbers, showing this previous experience.
- Contractor shall provide full site management including communication and coordination with site owners and timely resolution of any issues that develop related to the Biosolids Management Program. The intent of this Scope of Services is to strongly emphasize the expectation that the contractor will provide excellent and professional customer service under all circumstances.
- Contractor shall provide a written description of proposed biosolids application method and procedures. Contractor shall provide the Utility with the following documents:
  - Sample of a typical land management plan.
  - An emergency response plan that specifically address response to issues and emergencies related to biosolids management program.
  - Certification of a current, written safety manual.
  - List of subcontractors
- Contractor shall be in good standing with the Wisconsin Department of Natural Resources (WDNR), including all current reporting and applicable licensing requirements.
- Contractor shall provide names and qualifications of all personnel who may be assigned to complete the biosolids management work. This information shall include levels of relevant education, certification and licensing as they apply to the biosolids management program.
- Contractor shall provide continuous, on-site supervision during disposal of biosolids.
- Contractor shall comply with all regulations related to traffic control and signage, and shall coordinate and work with Town, County or other entities with road jurisdiction to assure necessary traffic control devices where needed and to address and resolve potential issues with damage to public roads.
- Spring and fall biosolids applications are usually dictated by weather and crop conditions and may be limited to extremely short “windows” of time. Contractor shall utilize even one day “windows” of time. Contractor shall be ready and have equipment ready prior to the hauling season. Once disposal sites are available, contractor must be capable of mobilizing sufficient personnel and resources to empty storage system and complete biosolids application, in coordination with Utility management and landowners, with minimum interruptions. Contractor shall provide a full listing of vehicles and equipment that would normally be available to respond to and complete biosolids program during these short windows of time.

- For the last five years contractor shall provide a complete list of (1) any OSHA or similar safety citations issued to contractor, (2) any work-related accidents resulting in personal injury to contractor's employees or others, and (3) any Notices of Violations issued by the WDNR.
- Contractor shall provide a copy of their most recent Federal Motor Carrier's CSA score.
- Other contractor responsibilities:
  - Contractor shall be responsible for all damage to City/Utility or private property caused by contractor.
  - Contractor's activities shall comply with all regulatory requirements for transporting and applying biosolids.
  - Contractor shall comply with local, seasonal weight limits, and is responsible for road repairs resulting from transporting biosolids.
  - Contractor shall take measures necessary to control dust and other nuisance conditions generated by transport and application of biosolids.
  - Contractor shall be responsible for any and all licensing and/or permitting that may be required.

**Other Methods of Disposal:**

The following information is intended to describe and specify the requirements for **Secondary contractor** disposal of 4 – 6 million gallons of 6% liquid biosolids from City of La Crosse WWTP WPDES Permit No. WI-0029581-09-0 using Other Disposal Methods.

**Scope of Work Biosolids Other Disposal Methods:** - Services shall include, but not be limited to the following activities:

- Custom DNR approved methods of disposal.
- Provide annual report of other methods of disposal to Lacrosse by December 31<sup>st</sup> to include quantities and methods used.
- Contractor shall provide all equipment, personnel and materials to safely and efficiently transfer, load, haul and dispose biosolids using other methods.
- Record-keeping including compiling, managing and maintaining all information as required by the agreement and WDNR.
- Active, close and regular communication with Utility staff to provide updates and respond to problems, issues or developments related to the biosolids disposal, including immediate reporting of biosolids spills and/or issues related to disposal, transportation, etc.
- Full compliance with regulatory requirements.
- Loading trucks at the wastewater plant, hauling biosolids directly from plant, and disposing of biosolids using other methods.
- Over sight and supervision of contractor's personnel during biosolids transport and disposal or delivery.
- Observation of all federal, state and local safety standards as they apply to this type of work.
- Planning, scheduling and completion of work with regular coordination and communication with wastewater management. Contractor shall provide at least 48 hours' notice prior to the start of their biosolids program. It is anticipated that the normal schedule for hauling and disposal of biosolids is sunrise to sunset and may be 24/7 if needed.
- Maintenance and management of complete and accurate records related to biosolids disposal. Separate records shall be maintained for each individual disposal site with minimum information to include: site ID, Copies of records shall be submitted to Sewer Utility/WWTF on a monthly basis.

## **Minimum Contractor Qualifications and Requirements:**

- Contractor shall have experience with a municipal biosolids management, generating a minimum of 1-million gallons per year, and over the last five years. The intent of this Scope of Services is to strongly emphasize the expectation that the contractor will provide excellent and professional customer service under all circumstances.
- An emergency response plan that specifically address response to issues and emergencies related to biosolids disposal.
- Contractor shall be in good standing with the Wisconsin Department of Natural Resources (WDNR), including all current reporting and applicable licensing requirements.
- Contractor shall provide names and qualifications of all personnel who may be assigned to complete the biosolids management work. This information shall include levels of relevant education, certification and licensing as they apply to the biosolids other methods disposal.
- Contractor shall provide continuous, on-site supervision during disposal of biosolids.
- Contractor shall be responsible for all damage to City/Utility property caused by contractor.
- Contractor's activities shall comply with all regulatory requirements for transporting and disposing biosolids.
- Contractor shall comply with local, seasonal weight limits, and is responsible for road repairs resulting from transporting biosolids.
- Contractor shall be responsible for any and all licensing and/or permitting that may be required.

## **Manage options prior to optimal land application conditions (requires WWTP approval):**

### ➤ **Fall Harvest Early Agreement.**

Objective: To partner with Farmers to Harvest prior to optimal conditions by offsetting the additional cost of drying. This would allow to get into fields earlier. Securing this option earlier in October is optimal.

As part of this contract, Contractor shall coordinate and develop agreements to facilitate early harvest as needed, thru a Harvest Early Agreements and provide agreements to the City by October 1st.

If the Harvest Early agreements are used, the city will pay the additional amount for drying costs due farmers. Contractor agrees to work with the City to set this payment price based on drying crops as follows:

- Corn-\$\$\$/% moisture over 17% (Corn-Compensation starts with 18 percent and goes to 27 percent.)
- Beans-\$\$\$/% moisture over 13% (Bean-Compensation starts with 14 percent and goes to 17 percent.)

### ➤ **Spring Yield Supplement Agreement.** (Compensates farmer for delayed planting)

Objective: To partner with farmers to delay the spring planting to allow for extended application window. This will provide a longer application window in the spring.

As part of this contract, Contractor shall secure as needed, acres for spring application thru Yield Supplement Agreements with farmers and provide agreements to the City in a timely manner.

If the Yield supplemental agreements are used, the city will pay the additional amount for yield supplemental due farmers for delayed planting, starting May 1st. This payment will be one bushel per day per acre at the Price/Bushel set by USDA pricing on March 31<sup>st</sup> of that year.

- Implementation of Early Harvest or Supplemental Yield Agreement is secondary and for extreme years. Regular permitted land is to be used a primary means of biosolid disposal during spring and fall application whenever feasible. Permission to use these agreements must be requested by the contractor and approved by the City before implementation of the agreements with farmer is initiated by the contractor.

**Biosolids characteristics & related information provided by City:**

- The following information shall be provided to contractor to describe biosolids characteristics:
  - Laboratory Analysis Report for Liquid and Cake Solids:
  - Current Laboratory Analysis for the application time period. This is done once/ 2 months.
- List of permitted Land in Wisconsin and Minnesota.

**Insurance:**

- Contractor shall at all times during the term of the agreement, keep in force and effect insurance policies as specified and required in section 14 of the standard terms and conditions attached.

Contractor shall provide insurance and performance bond documents as part of executing the written agreement for this work.

**Terms:**

- Terms of the Agreement shall be 1-year agreement from the period of March 6th, 2020 through March 6th, 2021
- Evaluation after the 1-year for possible 2-year extension, unless terminated earlier or amended by mutual agreements of the parties.

**Payment:**

- Invoices for services under this contract will be calculated based on the gallons and/or dry tons of biosolids actually handled by the contractor, multiplied by the unit rate.
- The Utility processes and pays bills once per Month, coordinated with the City of La Crosse's normal payment schedule. In order to assure timely payment, invoices for services must be received timely and should reflect actual services for the work completed.

## Modified 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 ~~whichever 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.
- negligent act**
- 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 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.

Revised: July 2011