



**CITY OF LA CROSSE, WISCONSIN
REQUEST FOR PROPOSAL
BOND COUNSEL SERVICES**

May 16, 2013

City of La Crosse
400 La Crosse Street
La Crosse, Wisconsin 54601

Contact:
Wayne Delagrave, Director of Finance/Treasurer
608-789-7567



May 16, 2013

INVITATION FOR BOND COUNSEL PROPOSALS

The City of La Crosse, Wisconsin will be accepting sealed bid proposals to provide bond counsel services for the City until 11:00 a.m. CST on Tuesday, June 4, 2013. The City's current agreement is with Chapman & Cutler, LLP and has been longstanding and positive; however, the current agreement is expiring. The selected firm will receive a five year agreement beginning September 1, 2013 through August 31, 2018 with the option of two additional one year extensions at the City's sole discretion. The sealed envelope containing the proposal must be clearly labeled "Proposal for Bond Counsel Services" in the lower left hand corner. Proposals must be delivered to:

La Crosse City Clerk
400 La Crosse Street
La Crosse, WI 54601

SPECIAL INSTRUCTIONS:

1. Questions regarding this request for proposal may be directed in writing or e-mail to:

Wayne Delagrave, Director of Finance/Treasurer
400 La Crosse St, La Crosse, WI 54601
delagravew@cityoflacrosse.org

2. Please sign and date the RFP Submission Signature Page (Attachment A).
3. The signed and dated Pricing Proposal (Attachment B) must be included with the request for proposal submission package in a separate sealed envelope.
4. Please submit an original and three (3) copies of the entire proposal package as outlined in the "Required Format of Proposal" Section.
5. Please number all pages of your proposal.
6. Clearly label the envelope containing your proposal "Proposal for Bond Counsel Services" in the lower left-hand corner.
7. Faxes and electronic submissions will not be accepted. All bids must be received in a sealed envelope.
8. **Proposals will be opened Tuesday, June 4, 2013 at 11:00 a.m. CST in the City Clerk's office at City Hall.**

REQUEST FOR PROPOSALS FOR BOND COUNSEL SERVICES

The City of La Crosse, Wisconsin is currently soliciting proposals for "Bond Counsel" services per this request for proposal. The City's current agreement is with Chapman & Cutler, LLP and has been longstanding and positive; however, the current agreement is expiring. The proposed contract period will be for five (5) years for the period September 1, 2013 through August 31, 2018. The City may, at its sole discretion, seek up to two additional one year extensions.

The anticipated schedule for the RFP process is as follows:

- Distribution of proposals -Thursday, May 16, 2013
- Proposals Due -Tuesday, June 4, 2013 at 11:00 a.m. CST
- Evaluation of Proposals -Wednesday, June 5 through Wednesday, June 19, 2013
- Interviews (if necessary) -Week of June 24th
- Verify References -Week of June 24th
- Introduction to City Council -Friday, July 5, 2013
- Recommendation to Finance Committee -Thursday, August 1, 2013
- Recommendation to Committee of the Whole -Tuesday, August 6, 2013
- Common Council Award -Thursday, August 8, 2013
- Final Contract -Wednesday, August 14, 2013

The City reserves the right to reject any or all proposals. Questions regarding this RFP may be directed in writing or e-mail to: Wayne Delagrave, Director of Finance/Treasurer, 400 La Crosse St, La Crosse, WI 54601 or delagravew@cityoflacrosse.org.

Section I – General Information Regarding the City

General Information Regarding City

The City of La Crosse, county seat of La Crosse County, is located in southwest central Wisconsin on the Mississippi River. The City is approximately 150 miles southeast of the Minneapolis-St. Paul, Minnesota metropolitan area; approximately 130 miles northwest of Madison, Wisconsin; and approximately 128 miles northwest of Dubuque, Iowa. La Crosse serves as a regional center for retail, wholesale, manufacturing, cultural, medical and educational activities for the tri-state region. The City encompasses an area of 22.31 square miles.

Mr. Wayne Delagrave is the Director of Finance/Treasurer and was appointed January 1, 2009. He has served the City in other capacities since 1979, including serving as Deputy Director of Finance/Deputy Treasurer from 1982-2009. Ms. Teri Lehrke is the City Clerk and has held this position since April 1993. The City Clerk is an elected position. Mr. Stephen Matty is the City Attorney and was appointed in May 2007. The City currently employs 560 people on a permanent full-time basis and approximately 350 part-time and 600 seasonal employees.

City Capital Budget Process

In May 2010 the City adopted a capital budget process ordinance. The annual City capital budget becomes the basis for the City's annual borrowing, approximately \$7,500,000.00. From time to time, as determined by the Common Council, special projects may increase the amount of annual borrowing.

General Obligation Debt *

| <u>Date of Issue</u> | <u>Original Amount</u> | <u>Purpose</u> | <u>Final Maturity</u> | <u>Est, Principal Outstanding As of 3-1-13</u> |
|----------------------|------------------------|---------------------------------|-----------------------|--|
| 11-1-01 | \$11,590,000 | Taxable Refunding | 12-1-2014 | \$ 2,230,000 |
| 3-15-06 | 5,310,000 | Corporate Purpose | 12-1-2017 | 3,405,000 |
| 3-15-06 | 2,835,000 | Promissory Notes | 12-1-2015 | 1,305,000 |
| 3-15-06 | 1,260,000 | Taxable Promissory Notes | 12-1-2015 | 500,000 |
| 5-1-07 | 4,835,000 | Corporate Purpose | 12-1-2020 | 3,890,000 |
| 5-1-07 | 2,305,000 | Promissory Notes | 12-1-2016 | 1,160,000 |
| 8-1-07 | 5,675,000 | Refunding | 12-1-2017 | 3,175,000 |
| 4-1-08 | 8,000,000 | Promissory Notes | 12-1-2017 | 3,755,000 |
| 2-1-09 | 7,505,000 | Promissory Notes | 12-1-2018 | 5,055,000 |
| 3-1-10 | 4,990,000 | Corporate Purpose | 12-1-2024 | 4,480,000 |
| 3-1-10 | 2,130,000 | Promissory Notes | 12-1-2019 | 1,980,000 |
| 12-15-10 | 4,095,000 | Refunding | 12-1-2018 | 2,210,000 |
| 12-15-10 | 29,210,000 | Taxable Refunding | 12-1-2018 | 21,785,000 |
| 2-15-11 | 4,630,000 | Corporate Purpose | 12-1-2025 | 4,430,000 |
| 2-15-11 | 2,865,000 | Promissory Notes | 12-1-2020 | 2,660,000 |
| 10-1-11 | 10,340,000 | Parking Bonds | 10-1-2031 | 10,020,000 |
| 3-15-12 | 4,575,000 | Corporate Purpose | 12-1-2026 | 4,575,000 |
| 3-15-12 | 12,400,000 | Corporate Purpose and Refunding | 12-1-2021 | 12,300,000 |
| 3-1-13 | 4,760,000 | Corporate Purpose | 12-1-2027 | 4,760,000 |
| 3-1-13 | 1,865,000 | Promissory Notes | 12-1-2021 | 1,865,000 |
| 3-1-13 | 560,000 | Taxable Promissory Notes | 12-1-2021 | 560,000 |
| Total | | | | \$96,100,000 |

* These issues are subject to the legal debt limit.

Section II – Instructions to Proposers

A. Definitions

1. Bond Counsel – The entity to which the contract ensuing from this RFP is awarded.
2. City – City of La Crosse
3. Proposer – Entity submitting an offer, in the form of a proposal, to perform the services described in this Request for Proposal.

B. Examination of the Request for Proposal (RFP)

It is the responsibility of the Proposer to carefully read the entire RFP, which contains provisions applicable to successful completion and submission of a proposal. If you discover any ambiguity, inconsistency or error in the RFP, you must notify the Director Finance/Treasurer. Only interpretations or corrections must be received by the Director of Finance/Treasurer no later than the date specified in the RFP Timetable. The RFP consists of all documents identified in the Table of Contents.

C. RFP Timetable

The anticipated schedule for the RFP and contract approval is as follows:

- Distribution of proposals -Thursday, May 16, 2013
- Proposals Due -Tuesday, June 4, 2013 at 11:00 a.m. CST
- Evaluation of Proposals -Wednesday, June 5 thru Wednesday, June 19, 2013
- Interviews (if necessary) -Week of June 24th
- Verify References -Week of June 24th
- Introduction to City Council -Friday, July 5, 2013
- Recommendation to Finance Committee -Thursday, August 1, 2013
- Recommendation to Committee of the Whole -Tuesday, August 6, 2013
- Common Council Award -Thursday, August 8, 2013
- Final Contract -Wednesday, August 14, 2013

D. Proposal Submission

Proposals should include all customary and usual services required to successfully complete bond issues itemized in Attachment B-Pricing Proposal Form along with responses to each of the following items. Please construct your proposal with responses in the same order as listed below to facilitate review and comparison by the review committee.

1. Attachment B-Pricing Proposal Form
2. Attachment A-RFP Submission Signature Page
3. Provide a general profile of the firm.
4. Demonstrate your experience working with communities that have comparable characteristics to the City of La Crosse i.e. population, budget etc.
5. Outline your firm's experience in providing financial bond counsel services.
6. Identify the professional staff assigned to work with the City, indicating lead representative.
7. Provide at least three references of municipalities of comparable size in the state of Wisconsin, including name, address, phone number, and e-mail address of contact person.
8. Please note any potential conflicts of interest.

Note: Price alone will not be the sole criteria in the selection process. The City reserves the right to reject any or all proposals.

The Technical Proposal and Price Proposal must be received **by Tuesday, June 4, 2013 at 11:00 a.m. CST** in the form described below. It should be submitted in one container, which on its face bears the Proposer's name and must be clearly labeled "Proposal for Bond Counsel Services."

It must be addressed to:

Mr. Wayne Delagrave, Director of Finance/Treasurer
City of La Crosse
400 La Crosse Street
La Crosse, WI 54601

And delivered to:

La Crosse City Clerk
400 La Crosse Street
La Crosse, WI 54601

All proposals must be submitted on 8 ½" X 11" paper, except for drawings, charts, diagrams and the like. Proposers shall include their complete return address on the outer envelope wrapper.

1. Technical Proposal

An unbound original and three copies of the technical proposal must be submitted (please refer to items #2-8 under Section D-Submission Proposal above).

2. Price Proposal

The original price proposal (item #1 under Section D-Submission Proposal above) must be submitted with the technical proposal; however, the price proposal must be in a separate, sealed envelope within the RFP submission packet. It should be identified in the lower left-hand corner with the words, "Price Proposal for Annual Financial Audit Services". The Proposer's name must also appear on the envelope.

Hand delivered proposals must be delivered to the La Crosse City Clerk at 400 La Crosse St, La Crosse, WI 54601 between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, excluding holidays observed by the City.

Proposers are responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the required address information appears on the outer wrapper or envelope used by such service.

Both the technical proposal and the price proposal must be signed by an officer of the company, who is legally authorized to enter into a contractual relationship in the name of the Proposer.

The submittal of a proposal by a Proposer will be considered by the City as constituting an offer by the Proposer to perform the required services at the stated prices.

E. Additional Information/Questions

Additional information or questions regarding this RFP may be directed in writing or e-mail to: Wayne Delagrave, Director of Finance/Treasurer, 400 La Crosse St, La Crosse, WI 54601 or delagravew@cityoflacrosse.org.

F. Modified Proposals

A Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date. The Evaluation Committee will only consider the latest version of the proposal.

G. Withdrawal of Proposals

Proposals shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only prior to the proposal due date.

H. Late Proposals, Late Modifications and Late Withdrawals

Proposals received after the proposal due date and time are late and will not be considered. Modifications received after the proposal due date are also late and will not be considered. Letters of withdrawal received after the proposal due date and time will be considered late and may not be considered.

I. RFP Postponement, Cancellation

The City may, at its sole and absolute discretion, reject any and all, or parts of any and all proposals; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP or in the proposals received as a result of this RFP.

J. Proposal Preparation Costs

All expenses involved with the preparation and submission of proposals to the City, or any work performed in connection therewith shall be borne by the Proposer(s). No payment will be made for any responses received, nor for any other effort required of or made by the Proposer(s) prior to award of a contract.

K. Oral Presentations/Interviews

The City may require Proposers to give oral presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein. If required, the presentations will be conducted on the date indicated in this Section, Paragraph C.

L. Exceptions to the RFP

Proposers may take exceptions to any of the terms of this RFP unless the RFP specifically states that exceptions may not be taken. Should a Proposer take exception where none is permitted, the proposal will be rejected as non-responsive. All exceptions taken must be specific, and the Proposer must indicate clearly what alternative is being offered to allow the City meaningful opportunity to evaluate and rank proposals.

Where exceptions are permitted, the City shall determine the acceptability of the proposed exceptions and the proposals will be evaluated based on the proposals as submitted. The City, after completing evaluations, may accept or reject the exceptions. Where exceptions are rejected, the City may insist that the Proposer furnish the services or goods described herein, or negotiate an acceptable alternative.

It is the intent of the City to entertain alternative proposals that may provide the same or similar services and conditions as called for in the RFP.

M. Confidential Information

Confidential information submitted as part of a proposal must be clearly marked as such. However, such information will be kept confidential only to the extent that Wisconsin's Open Records Law allows. No proposal information or selection process information will be released until a final recommendation has been prepared by the Director of Finance/Treasurer, or the process is terminated. Prior to that time, only a list of the Proposers will be made public.

N. Negotiations

The City may award a contract on the basis of initial offers received, without discussion. Therefore, each initial offer should contain the Proposer's best terms. The City reserves the right to enter into contract negotiations with the selected Proposer. If the City and the Proposer cannot negotiate a successful contract, the City may terminate said negotiations and begin negotiations with another selected Proposer. This process will continue until a contract acceptable to the City has been executed or all proposals are rejected. No Proposer shall have any rights against the City arising from such negotiations or termination thereof.

O. Rules; Regulations; Licensing Requirements

The Proposer shall comply with all laws, ordinances and regulations applicable to the services contemplated herein. Proposers are presumed to be familiar with all Federal, State and local laws, ordinances, codes and regulations that may in any way affect the services offered.

Please note: The City's "Standard Terms & Conditions" document (attachment C) must be complied with.

P. Review of Proposals for Responsiveness

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in the RFP. A responsive proposal is one that follows the requirements of the RFP, includes all documentation, is submitted in the format outlined in the RFP, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem a proposal non-responsive.

Q. Litigation

The contract resulting from this RFP shall be considered in accordance with the laws of the State of Wisconsin. Any litigation between the parties arising out of, or in connection with the contract shall be initiated in the La Crosse County Circuit Court.

R. Assignment, Transfer or Subcontracting

The Contractor shall not assign any interest in the contract resulting from this RFP and shall not transfer any interest in the same (whether by assignment, or notation) without the prior written consent of the City. Consent will not be given to any proposed assignment which would release the Contractor of its responsibilities under the contract. The Contractor must obtain prior written consent of the City to delegate, assign, transfer or subcontract any functions or responsibilities required to fulfill the obligations under the contract resulting from the RFP.

S. Termination for Convenience

The parties have the right at any time to terminate the contract resulting from this RFP upon 180 days written notice to the other party.

T. Termination for Cause

If the Contractor shall fail to fulfill any of its obligations under the contract resulting from this RFP in a timely and proper manner or otherwise violates any of the covenants, agreements or stipulations material to the contract, the City shall thereupon have the right to immediately terminate the contract by giving written notice to the Contractor of such termination.



Attachment A – RFP Submission Signature Page

City of La Crosse, Wisconsin Bond Counsel Services Request for Proposal

Name of Firm: _____

Signature of Authorizing Official: _____

Printed Name of Authorizing Official: _____

Title of Authorizing Official: _____

Date: _____

**CITY OF LA CROSSE, WISCONSIN
BOND COUNSEL SERVICES PROPOSAL
ATTACHMENT B – PRICE PROPOSAL FORM**

| ISSUE TYPE | FEE per \$1,000.00 BOND | MINIMUM FEE (if applicable) |
|---|-------------------------|--------------------------------|
| GENERAL OBLIGATION BONDS/NOTES | | |
| REVENUE BONDS | | |
| REFUNDING/ADVANCED REFUNDING BONDS/NOTES | | |

Note: Rates shown above are to remain in effect until contract expiration August 31, 2018.

Is there a charge for routine post issuance questions? If so, please complete the chart below.

| NAME | POSITION | HOURLY RATE |
|------|----------|-------------|
| | | |
| | | |
| | | |

Company Name _____

Signature/Title _____

Printed Name and Title _____

Date _____

**CITY OF LA CROSSE, WISCONSIN
BOND COUNSEL SERVICES PROPOSAL**

ATTACHMENT C - 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 |
|--------------|--|----------|---|

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