



Request for Proposals
Instructions and Conditions

for the Preparation of a
TID Summary Report & financial
recommendations for the City's eleven TIDs,
as well as financial analysis of future
developer agreements (three year retainer).

**CITY OF LA CROSSE
PLANNING & DEVELOPMENT DEPARTMENT
400 LA CROSSE STREET
LA CROSSE, WISCONSIN, 54601**

All proposals must be received **no later than 5:00 p.m. Friday, May 10, 2013**

BACKGROUND INFORMATION

Project Description: The City of La Crosse is soliciting proposals for the purpose of preparing a Tax Increment Finance (TIF) Summary Report of the City's eleven open tax incremental finance districts (TIDs). The City is looking for a consultant with considerable Wisconsin TIF statute/project experience in combination with municipal finance experience to assist in optimizing the use of TIF in the future. The scope will include:

- Review project plans/amendments for eleven TIDs
- Potential projects within one-half mile of existing TIDs that benefit the TIDs
- Projects to be completed within the TIDs, schedule of those projects vs. the expenditure periods
- Potential for additional development in each TID
- Financial capability of the TIDs to fund additional eligible projects
- Benefit to the City and overlying taxing entities
- TID management recommendations based on current legislation as well as best practices to optimize TID performance (Return on Investment)
- Conformity to the City's Comprehensive Plan
- Create a format and process for City staff to duplicate in the future
- Recommend City wide tracking system for projects and expenditures
- During contract negotiations other scope items may be added

This report will inform the new Economic Development Commission for the City of La Crosse on the current status of the city's TIDs and will provide recommendations for the future management.

In addition, the City will utilize the chosen firm on retainer for three years as the City's Financial Advisor, to analyze future development agreements as needed. The Economic Development Commission will use the firm to analyze funding requests including evaluating the gap and/or determination of financial need and the return on investment (ROI) as outlined in the City's Economic Incentives Ordinance.

Audience: City Council, City Economic Development Commission, City Staff, City taxpayers.

Project Schedule

March 8, 2013	Submit legislation into Council cycle
April 11	Council approval of RFP
April 19	RFP posted, emailed, mailed
May 10	All proposals due at 5:00 p.m., local time, at the office of the City of La Crosse Planning Department
May 17	Shortlist of firms selected for interviews
May 24	Consultant Interviews 1:00 p.m. – 5:00 p.m. (Executive Committee)
May 27-31	Selection of top firm & reference checks
June 3	Offer made to top firm
June 17	Executive Committee approval of consultant contract

June 24	Project start
September (TBD)	Present Report to Economic Development Commission
October 4	Resolution introduction to Council for approval of TID Summary Report
November 12	Present Report to Committee of the Whole
November 14	Council adopts Report
July 11, 2016	Consultant contract continues on retainer until this end date

Inquiries And Response Submissions

All inquiries and 8 copies of the proposal, including detailed scope of services and element-by-element itemized budget shall be directed to:

Ms. Amy M. Peterson, AICP, Planning & Economic Development Administrator
 City of La Crosse
 400 La Crosse Street
 La Crosse, Wisconsin 54601
 Telephone (608) 789-7512; petersona@cityoflacrosse.org

All proposals must be received **no later than 5:00 p.m., local time, Friday, May 10, 2013.** No amendments to proposals will be accepted after this time. The City of La Crosse and Gundersen Lutheran reserve the right to accept or reject any or all proposals. The City of La Crosse is not liable for any costs incurred in replying to this RFP.

Introduction

The objective of this intensive report is to evaluate each TID and provide recommendations for the future management to optimize each TID.

Submission Requirements

Section 1.0 *Qualifications*

Vendors shall prepare and submit their qualifications in the following order:

1.1 Letter of interest (not to exceed one page)

1.2 Table of contents

1.3 Company Background

A. Type of organization:

- a.** Corporation proposing as a single entity for all services
- b.** Corporation proposing as prime entity for all services with sub-consultants(s)
- c.** Joint Venture
- d.** Partnership

- e. Other
- B.** Provide the length of time that the company has been in business and ownership history of prime and its sub-consultant(s) or joint venture partner(s). (If prime entity is a wholly-owned subsidiary of another corporation, please provide details)
- C.** Provide the location of the principal office that will be responsible for implementing this contract.
- D.** Provide the location of other offices from which resources may be drawn.
- E.** Size, resources and capabilities of responding entity:
- a. Organizational structure of business entity for this project:
 - Partners
 - Associates
 - Consultants
 - Subcontractors
 - Other participant(s) and title(s)
 - Organizational hierarchy
 - b. Services and professional disciplines provided in-house by prime responding entity
- F.** Specialized Experience and Qualifications:
- a. **Specific** experience with Wisconsin Tax Increment Finance law, TID management, municipal finance and financial analysis of developer agreements.
 - b. Organization and Key Personnel
 1. Identify primary contact and any key personnel/staff contact information and provide their experience, responsibilities, and qualifications. One page resumes of the proposed project team preferred.
 2. Names of Staff with the following experience:
 - Wisconsin TIF law and TID management
 - Municipal finance, and municipal financing systems
 - Financial analysis of developer agreements
 - Certified Economic Development Professional (CEcD or EDFP)
 - Certified Independent Public Finance Account (CIPFA)
 3. Indicate if the proposed project team has completed similar projects for other clients and if so, list the clients and projects. If the proposed team has not worked together previously, briefly state why the proposed team should be selected.

- G. Examples of comparable projects completed in the past 5 years with references for each. (We request at least five total projects):
 - a. Provide the client name
 - b. Contact name and title
 - c. Address and phone number

- H. Consultants shall describe their approach to the project and how they will provide deliverables.
 - a. A description of the consultants understanding and approach to the project, including projected timeline showing milestone dates and anticipated project deliverables.
 - b. Description of the type and level of support the consultant will require/expect from the project sponsor—such as staff support, provision of meeting/studio space, materials, meals, etc.

Section 2.0 Report and Retainer Requirements

Provide information requested below on how the project will proceed.

2.1 Report

- A. *Staff Meetings:* Document necessary project staff meetings throughout the project and their purpose.

- B. *Data Provided:* The City will provide access to the following: TID Project Plans and amendments, access to financial data in relation to the TIDs, TID annual reports, and information already compiled for the report. If other data is needed, please list data and information needed from the City to complete the report.

- C. *Draft Document:* Provide timing and scope of draft report.

- D. *Document Revisions and Presentations:* Complete all necessary final revisions of draft report. Present report to both the Economic Development Commission as well as the Committee of the Whole.

- E. *Final Report:*
 - a. The documents should be capable of education those who did not participate in the process. Provide a Report capable of being adopted by the Common Council.
 - b. Include an Implementation Chapter within the Report that includes prioritized actions, strategies, policies, and suggestions to optimize TIDs in the future.
 - c. The consultant shall prepare and submit one (2) camera-ready copies of the FINAL PLAN document to the City of La Crosse Planning Department. All submissions shall become property of the City of La Crosse. All documents and exhibits shall also be provided in electronic

form - Microsoft Word, Excel, and Publisher or “In Design” compatible. The City will reproduce the draft and final copies in sufficient amounts for meetings and hearings using the camera-ready copies or electronic files.

- F. *Education and Training:* Conduct one training session with City staff, and elected officials to assure that those who are responsible for the day-to-day administration of the TIDs have a clear understanding of their purpose and process.

2.2 Retainer

- A. *Analysis and Recommendations:* Provide 3rd party financial analysis of proposed projects as they arise. Provide recommendations to the City per the current City Economic Development Ordinance (Section 2.23 of the City Code).
- B. *Time as Required:* Provide information regarding the response time of the team when a potential project arises.

Section 3.0 Contract Terms and Conditions

The City of La Crosse shall incorporate the City’s Standard Contract Terms and Conditions, attached as Appendix A, and to be reviewed by the City Attorney:

- A. The Conflict of Interest provisions that no person who is an employee, agent, consultant, officer, elected official or appointed official of the City, who exercises or has exercised any functions or responsibility with respect to such funds being provided by the City or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, will obtain a personal or financial interest or benefit from the project, or have any interest in a contract, subcontract, or agreement with respect thereto, or the proceeds thereof, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter, except for approved eligible administration or personnel costs.

Section 4.0 Cost

Indicate the anticipated expenditures **both by task and by personnel in a spreadsheet** appropriate to a lump sum contract for the TID Summary Report by the categories listed below. Also provide anticipated expenditures **by both task and personnel in a spreadsheet** for a “per financial analysis” estimate on the retainer.

4.1 Cost Categories

- A. Labor Costs

- a. By individual (name)
 - b. List estimated hours
 - c. Hourly rate and total cost
 - B. Overhead: Show as a percentage of labor costs
 - C. Other Direct Cost Itemizations that may include, but are not limited to:
 - a. Transportation
 - b. Lodging and meal per diem
 - c. Printing
 - d. Communication
 - D. General Administrative Costs: Indicate base used and basis therefore, percentage and total.
 - a. Total estimated cost of work
- 4.2 The consultant shall provide time for project scheduling, staffing, coordination, billing, progress reports, etc., necessary for the consultant to expedite the project.
- 4.3 The contract entered into as a result of this RFP shall be limited to a lump sum contract not to exceed \$15,000 (includes labor, overhead, direct, and administrative costs), to be mutually agreed upon between the consultant and the City of La Crosse.
- 4.4 The consultant shall indicate the timeframe of invoices.

Section 5.0 Selection Process

- A. All proposals received in response to this RFP will be subject to an evaluation by the City Project Team.
 - B. A limited number of firms will then be invited to interview in person to give a brief presentation of their proposal to the Project Team, followed by a question and answer session. The interview format will be prescribed by the Project Team and will be structured less in the form of sales pitch, but rather a true assessment of the consultant team's experience, abilities and readiness to complete this report and financial retainer work.
 - C. A recommendation and proposed contract with the City's Terms and Conditions shall be forwarded to the City of La Crosse Common Council for final approval.
- 5.1 *Evaluation criteria in order of priority:*
- A. Organization, Personnel and Experience
 - a. Qualifications of personnel

- b. Specific experience with Wisconsin TIF Statutes, municipal finance in preparing TIF Summary Reports, and developer agreement financial analysis
 - c. Experience of consultant firm
 - d. An interdisciplinary team that includes those from 1.3(F)(b)(2)
 - e. Client references from 5 clients
- B. Quality of Proposal/Consultant's Approach**
- a. Completeness and thoroughness in addressing the scope
 - b. Understanding of project goals
 - c. Responsiveness to terms and conditions
 - d. Quality and quantity of services to be performed
 - e. Proposal design and attentiveness to detail
- C. Cost Proposal – per Section 4**
- D. Ability to complete study on schedule – per project deadline, as well as responsiveness to meet the City's retainer needs.**

APPENDIX A: STANDARD TERMS AND CONDITIONS

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

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

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

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

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

6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingences 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 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