

# SMITHGROUP

## LETTER FORM PROPOSAL

Date: July 15, 2019

**Transmitted – Via eMail**

Mr. Jay Odegaard  
Director of Parks, Recreation & Forestry  
City of La Crosse  
400 La Crosse Street  
La Crosse, Wisconsin 54601

RE: Cruise Ship Landing, Phase 2

Dear Mr. Odegaard:

On behalf of SmithGroup, Inc., ("SmithGroup") I am pleased to submit this proposal to assist the City with the necessary planning, permitting, and engineering for construction of an expanded cruise ship landing / port expansion along the La Crosse waterfront. The ultimate scope of work includes final design, bidding assistance and construction administration. However, until the final design concept is defined, and funding opportunities are better understood, only the scope and fee for Phase 2 is offered at this stage. Detailed scope of services and fees for future phases will be provided upon the completion of Phase 2. The following is our understanding of the services which are to be provided.

### UNDERSTANDING OF THE PROJECT

SmithGroup completed Phase 1, Schematic Design, of this project that resulted in a 'La Crosse Cruise Ship Landing & Courtesy Dock, Schematic Design' report dated March 1, 2018. The report studied the shoreline adjacent to Riverside Park to determine the feasibility of providing for the development of a permanent docking facility to accommodate the Viking River Cruise ships. In addition, the City had desired to have courtesy dockage for transient, recreational boaters that was within walking distance to downtown restaurants, shops and other amenities.

It is currently unknown whether Viking Cruises will pursue a Mississippi River cruise program. However, the City knows there is interest from other cruise ship companies and has the desire determine the feasibility of expanding the existing landing along Riverside Park to accommodate up to three cruise ships. The City also does not wish to pursue advancement of the courtesy dockage design as shown in the Schematic Design Report. The following is our understanding of the services which are to be provided.

### SCOPE OF SERVICES

#### Task 1 – Community Engagement

##### Task 1.1 Program Validation

In order to further understand the needs of cruise ship companies other than Viking Cruises, SmithGroup will conduct interviews with the American Cruise Line and the American Queen Steamboat companies to understand the

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City of La Crosse	<b>Cruise Ship Landing, Phase 2</b> La Crosse, Wisconsin	Rev. 08.01.18 SmithGroup 10093.001
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maneuvering and berthing requirements of the vessels. Preferences for berthing alignments, turning limitations, mooring line locations, and deployments and vessel capabilities will be confirmed. The cruise program will be reviewed, and egress requirements established. Shore side utilities service needs will also be understood.

SmithGroup will also assist the City by researching leases for docking along the port and providing input on comparable lease terms. At this time, the City is not interested in providing exclusive dock rights for any cruise company.

## Task 1.2 Project Kick-Off and Stakeholder Meetings

SmithGroup will participate in a series of meetings with city staff and stakeholders to identify factors which will influence the detailed design of the preferred Schematic Design option, and to better understand how the project will interface with on-going, adjacent projects. Stakeholders may include City staff, La Crosse Queen representatives, La Crosse Center representatives, downtown business owners, boating associations, commercial barge owners/operators, and others directly impacted by this project. SmithGroup will work with city staff to identify project stakeholders at the onset of the project.

SmithGroup assumes that the City of La Crosse will identify a location for stakeholder meetings, invite stakeholders, and work with SmithGroup to schedule a series of meetings to solicit input from individual stakeholders or stakeholder groups.

## Task 1.3 Public Informational Meeting

SmithGroup will participate in a Public Information Meeting to present the project to the La Crosse community and solicit public input. SmithGroup will prepare a presentation focused on project background, project goals, the results and findings of assessments, surveys, and modeling, site analysis, opportunities and constraints, and preliminary concepts. Boards will be developed and displayed to facilitate post-presentation conversations with members of the community and to record public preferences, concerns, and other feedback.

The Public Information Meeting will be scheduled early in this Phase 2 schedule, providing an opportunity for public input prior to the solidification of a preferred Design Development solution. SmithGroup assumes that the City of La Crosse will identify a meeting time and location, advertise the meeting, and facilitate meeting setup.

## Task 1 Deliverables

- Program Validation for the American Cruise Line & American Queen Steamboat companies
- Stakeholder Meeting Presentation
- Public Informational Meeting Presentation
- A maximum of (4) poster-size graphics for the Public Informational Meeting

## Task 1 Meetings

- (1) Kickoff Meeting with the City (in La Crosse)
- (1) Public Informational Meeting (in La Crosse)
- (1) Stakeholder Meeting (in La Crosse, assumed to be the same day as the Kickoff Meeting)
- Phone/Video Conference Calls, as needed

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## Task 2 – Site Investigations

### Task 2.1 Existing Infrastructure Condition Assessment

SmithGroup will conduct a dive inspection along the park waterfront to assess the existing sheet pile wall. The intent is to confirm the condition of the wall and determine if any maintenance is required and project its residual life. The condition of the wall will also be assessed in terms of its capacity to accommodate modifications and reuse as a major cruise ship berth.

### Task 2.2 Mussel Survey

As part of the endangered resources review by the WDNR, several mussel species were identified as possibly being impacted by this project. SmithGroup will perform a mussel survey to verify and/or recommend relocation or mitigation.

### Task 2.3 Wetland Survey

Both the City and SmithGroup suspect that no wetlands are present in the project area, however the WDNR Wetland Identification Program will be used to obtain a presence/absence determination and an approximate wetland boundary location. Additional services will be requested if the presence of wetlands is determined by the WDNR Wetland Identification Program and an official wetland delineation is required.

### Task 2.4 Archeological Survey

La Crosse's Historic District is east of Front Street, and therefore not within the project bounds. The river gauge building in Riverside Park, located near the vacated Mount Vernon Street right-of-way, is the only structure in the project limits of potential historical significance. Because of its proximity to the proposed improvements, SmithGroup will work with the City to determine the appropriate approach on evaluating the historical significance of the structure.

Also, to ensure that known or potential archaeological sites within or adjacent to the project site are mapped, and their implications and importance are well understood, SmithGroup will coordinate with the Mississippi Valley Archeological Center (MVAC) at UW La Crosse to verify the project's historic context. Coordination between SmithGroup and the MVAC is included in this Scope of Services. However, any fees required or requested by the Mississippi Valley Archeological Center to assist with this site analysis effort are understood to be contracted directly with the City of La Crosse and are not included in this Contract.

## Task 2 Deliverables

- Existing Infrastructure Condition Assessment
- Mussel Survey
- WDNR Wetland Identification Program Determination
- MVAC feedback on potential archaeological sites

## Task 2 Meetings

- Phone/Video Conference Calls, as needed

## Task 3 – Design Development (30%)

### Task 3.1 Onshore Site Analysis

SmithGroup will study the waterfront parcel adjacent to the proposed port expansion; this includes the area bound by the Pearl Street right-of-way to the north, Front Street to the east, and 328 Front Street to the south. SmithGroup will examine existing pedestrian, vehicular, and service connections, existing vegetation cover and quality, existing

Rev. 08.01.18

City of La Crosse

**Cruise Ship Landing, Phase 2**  
La Crosse, Wisconsin

SmithGroup  
10093.001

# SMITHGROUP

materials, furnishings, and lighting (to ensure the proposed design is compatible with and complementary of existing conditions), site access, thematic and physical connections to downtown, and other opportunities and constraints.

Onshore site analysis findings will be represented using diagrams; these diagrams will inform the DD-level evolution and refinement of the current Schematic Design

## Task 3.2 Design Development

SmithGroup will refine the current Schematic Design and prepare plans for the associated improvements. The plans will represent approximately 30% level completed drawings and will be submitted to the City for review. The documents will include layout, materials, grading and utility drawings that show the general layout and dimensions of the extended port landing project.

In addition to the water-edge project components, onshore improvements are included in this Scope of Services. The port expansion will include recommendations for onshore improvements at the area bound by the east bank of the Mississippi River to the west, the extension of Pearl Street to the north, the western Front Street back-of-curb to the east, and 328 Front Street north parking lot to the south. These improvements may include pedestrian, vehicular, and service accessways, lighting, site furnishings, signage, and streetscape enhancements.

Design development will consider the operating needs of both the existing and the anticipated cruise ship operations. These needs include the size and types of vessels, landing requirements, service logistics and shore utility needs (power and water). The facility layout will presume provisions for simultaneous berthing of at least three large river cruise vessels. On the land side, the design development will consider accessibility, passenger embarkation and control, public and private vehicular access and parking.

## Task 3.3 Floodplain Analysis

The proposed project is located within the floodway of the Mississippi River. A floodplain analysis will be performed that documents that planned improvements will not negatively impact flood elevations. The hydraulic modeling will provide a basis for evaluating potential impacts of waterway and floodplain modification alternatives considered during design development of the improvements proposed near the mouth of the La Crosse River. SmithGroup will collect existing hydrologic and hydraulic models, available watershed information and floodplain data (it is assumed that an existing HEC2 model can be provided by WDNR or FEMA that will be used for this analysis. Additional services will be required if a HEC model needs to be produced by SmithGroup). This analysis will also aid in defining berthing alignments.

The results from the floodplain analysis will be shared and coordinated with the City's zoning administrator. It is assumed at this time that a Letter of Map Revision (LOMR) or a Conditional Letter of Map Revision (CLOMR) is not required and is not part of this scope of services. It is also assumed that coordination required with WDNR staff will be done by the City's zoning administrator.

## Task 3.4 Tug and Barge Wake Analysis

La Crosse currently has a 'no wake' policy to prevent vessel traffic from creating wake waves which can be harmful to infrastructure and natural shorelines. Tug and barge captains have expressed the need to increase propulsion while making the northwest turn toward Taylor Island against the current which would result in wake waves. They are requesting that the no wake policy be eliminated. SmithGroup proposes to review what, if any, effects this will have on the La Crosse shoreline adjacent to Riverside Park and the portion of the Barron Island shoreline across from Riverside Park by performing a desktop analysis of propeller wash based on typical and extreme maneuvers and propulsion. This analysis will be based on a set of assumptions of vessel angle and track, bow and stern

Rev. 08.01.18

City of La Crosse

**Cruise Ship Landing, Phase 2**  
La Crosse, Wisconsin

SmithGroup  
10093.001

LETTER FORM PROPOSAL

- 4 -

07/15/2019

# SMITHGROUP

propulsion systems, and applied power which will be developed based on discussions with vessel captains. Site specific shoreline orientation and materials will be reviewed against the possible increased forces imparted by vessel wake and propeller-induced velocities to determine whether structural integrity is compromised. SmithGroup will prepare a memo of recommendations for policy changes or structural enhancements, should they be warranted.

## Task 3.5 Permitting (Meetings & Applications)

SmithGroup will coordinate a meeting with the City, WDNR, USACE and other regulatory agencies to discuss the project and coordinate specific permits required by each agency. SmithGroup will then complete the necessary permit applications to regulatory agencies, review the applications with the City and submit them for review and agency approval. It is assumed that all permit fees will be paid by the City.

- Permit requirements include WDNR / USACE Joint 401/404 permit

SmithGroup services for permit support and negotiation, after the permit applications are submitted, will be provided on a Time and Materials Contract basis (see Task 4.1).

## Task 3 Deliverables

- Onshore Site Analysis Diagrams and Inventory
- DD level drawings (30%)
- Specifications Table of Contents
- Opinion of Probable Construction Costs
- Floodplain Analysis Summary
- Tug and Barge Wake Analysis Memo
- Permit Applications

## Task 3 Meetings

- (2) Progress Meetings (in La Crosse)
- (1) Regulatory Agency Pre-permit application meeting (in La Crosse)
- Phone/Video Conference Calls, as needed

## **Task 4 – Permitting Support**

### Task 4.1 Permitting Support

Throughout the permit negotiation process, SmithGroup will assist the City in communicating with agencies by clarifying application details and preparing responses to agency comments. SmithGroup will provide documentation of all correspondence with the agencies throughout the process. In addition, SmithGroup will attend any permit negotiation meetings as requested by the City.

Permit negotiations vary widely in response to such items as the agency review team, nature of the project and level of controversy. As a result, SGJJR will provide these services on an as needed and requested basis by the City with compensation provided on a time and materials basis.

## Task 4 Deliverables

- Permit clarifications and responses, as directed by the City

## Task 4 Meetings

- Phone/Video Conference Calls, as needed

Rev. 08.01.18

City of La Crosse

**Cruise Ship Landing, Phase 2**  
La Crosse, Wisconsin

SmithGroup  
10093.001

# SMITHGROUP

- In-person meetings, as directed by the City

## PREPARATION OF DIGITAL DATA

In the event SmithGroup is requested to prepare digital data for transmission to the Owner's consultants, contractors or other Owner authorized recipients ("Digital Data"), the Owner acknowledges that due to the limitations of the digital data software, not all elements of SmithGroup's services may be represented in the Digital Data, this being in the sole discretion of SmithGroup. Accordingly, although SmithGroup will endeavor to represent all material elements of SmithGroup's services in the Digital Data, any use shall not relieve the Owner's consultants, contractors, or other Owner authorized recipients or their respective obligations. The Owner agrees that it will include this provision in any agreements with its consultants, contractors, or other Owner authorized recipients, in which Digital Data is provided.

## OWNER RESPONSIBILITIES

The City will identify meeting times and location(s), advertise the meetings, and facilitate meeting setup for the Stakeholder and Public Informational Meetings.

## SCHEDULE

Upon Authorization to Proceed, SmithGroup proposes a 6-month schedule to complete the items described in the Scope of Services.

## CONSULTANTS

SmithGroup anticipates using the following consultant(s) for this project and the costs will be borne by SmithGroup and are included in SmithGroup projected fee:

- J.F. Brennan Company, Inc. – Existing Infrastructure Condition Assessment (Task 2.1) & Mussel Survey (Task 2.2)

## COMPENSATION

City of La Crosse shall compensate SmithGroup for the scope of services outlined above in Tasks 1a fixed fee lump sum of \$172,000.00, inclusive of all expenses. In addition, Task 4 will be billed at an hourly time and materials, plus expenses, not to exceed \$15,000; as requested by the City.

## ADDITIONAL SERVICES

Requests for additional services or staff will be documented by SmithGroup (if given verbally), and the work will commence upon City of La Crosse approval of an estimated fee for that effort or, if not agreed otherwise, City of La Crosse shall reimburse SmithGroup on an hourly basis of SmithGroup's project staff actively engaged for all personnel hours worked on the project.

## PAYMENTS

Invoices will be prepared monthly on the basis of services rendered.

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City of La Crosse	<b>Cruise Ship Landing, Phase 2</b> La Crosse, Wisconsin	Rev. 08.01.18 SmithGroup 10093.001
LETTER FORM PROPOSAL	- 6 -	07/15/2019

# SMITHGROUP

All payments due to SmithGroup shall be made monthly upon presentation of the statement of services rendered. All payments due SmithGroup under this agreement shall bear interest at one-and one-half (1½%) percent per month commencing thirty (30) days after the date of billing.

## DELIVERY OF CADD GRAPHIC FILES

Any electronic/data/digital files (Files) from SmithGroup shall be deemed Instruments of Service, and/or Work Product, as the case may be, for the Project identified above. City of La Crosse covenants and agrees that: 1) the Files are Instruments of Service of SmithGroup, the author, and/or Work Product of SmithGroup, as the case may be; 2) in providing the Files, SmithGroup does not transfer common law, statutory law, or other rights, including copyrights; 3) the Files are not Contract Documents, in whole or in part; and 4) the Files are not As-Built files. City of La Crosse agrees to report any defects in the Files to SmithGroup, within 45 days of the initial Files transmittal date (Acceptance Period). It is understood that SmithGroup will correct such defects, in a timely manner, and retransmit the Files. City of La Crosse further agrees to compensate SmithGroup, as Additional Services, for the cost of correcting defects reported to SmithGroup after the Acceptance Period. City of La Crosse understands that the Files have been prepared to SmithGroup's criteria and may not conform to City of La Crosse drafting or other documentation standards. City of La Crosse understands that, due to the translation process of certain CADD formats, and the transmission of such Files to City of La Crosse that SmithGroup does not guarantee the accuracy, completeness or integrity of the data, and that the City of La Crosse will hold SmithGroup harmless for any data or file clean-up required to make these Files usable. City of La Crosse understands that even though SmithGroup may have computer virus scanning software to detect the presence of computer viruses, there is no guarantee that computer viruses are not present in the Files, and that City of La Crosse will hold SmithGroup harmless for such viruses and their consequences, as well as any and all liability or damage caused by the presence of a computer virus in the Files. City of La Crosse agrees, to the fullest extent permitted by law, to indemnify and hold SmithGroup harmless from any and all damage, liability, or cost (including protection from loss due to attorney's fees and costs of defense), arising from or in any way connected with and changes made to the Files by City of La Crosse. Under no circumstances shall transfer of Files to City of La Crosse be deemed a sale by SmithGroup. SmithGroup makes no warranties, express or implied, of merchantability or fitness for any particular purpose.

## LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY AND TO THE FULLEST EXTENT PERMITTED BY LAW, CITY OF LA CROSSE AGREES THAT THE TOTAL LIABILITY OF SMITHGROUP IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT, NEGLIGENCE, BREACH OR OTHERWISE, SHALL NOT EXCEED AND SHALL BE LIMITED TO THE TOTAL COMPENSATION RECEIVED BY SMITHGROUP UNDER THIS AGREEMENT.

## MISCELLANEOUS PROVISIONS

SmithGroup will use reasonable professional efforts and judgment in responding in the design to applicable federal, state and local laws, rules, codes, ordinances and regulations. City of La Crosse acknowledges that certain state and local laws, rules, codes, ordinances and regulations may reference standards that are outdated and/or contrary with today's industry requirements. SmithGroup cannot and does not warrant or guarantee that the Project will comply with all such outdated and/or contrary federal, state and local laws, rules, codes, ordinances and regulations

Notwithstanding anything to the contrary, nothing contained herein shall be construed: i) to constitute a guarantee, warranty or assurance, either express or implied, that the SmithGroup's Services will yield or accomplish a perfect

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City of La Crosse	<b>Cruise Ship Landing, Phase 2</b> La Crosse, Wisconsin	Rev. 08.01.18 SmithGroup 10093.001
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outcome for this Project; or ii) to obligate the SmithGroup to exercise professional skill or judgment greater than the standard of care exercised by other similarly situated design professionals currently practicing in the same locale as this Project, under the same requirements of this Agreement; or iii) as an assumption by the SmithGroup of liability of any other party.

SmithGroup will use reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as applicable to this Project. City of La Crosse acknowledges that requirements of ADA, as well as other federal, state and local laws, rules, codes, ordinances and regulations, will be subject to various and possibly contradictory interpretations. SmithGroup cannot and does not warrant or guarantee that the Project will comply with all interpretations of the ADA requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations

This document will serve as an agreement between us, and you may indicate your acceptance by signing in the space provided below and returning one (1) signed copy for our files.

  
\_\_\_\_\_  
SmithGroup (Signature)

\_\_\_\_\_  
Owner (Signature)

JOHN KRETSCHEMAN - VICE PRESIDENT  
\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

7/15/19  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Attachment 'A'



## STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.** In this section "Contracting Party" shall mean any party that is entering into this Agreement with the City of La Crosse. "La Crosse" shall mean the City of La Crosse. These definitions shall apply only to this section titled "Standard Terms and Conditions" and shall not replace, modify or supersede any definitions used in other sections of this Agreement.
2. **STANDARD OF PERFORMANCE.** Contracting Party agrees that the performance of the services, pursuant to the terms and conditions of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services. Contracting Party agrees to abide by all applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.
3. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.
4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement, including without limitation materials, equipment, supplies, and incidentals. The scope of services to be performed shall include, without limitation, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.
5. **CHANGE OF SCOPE.** The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement, including, if applicable, information supplied by Contracting Party. Scope may not be fully definable during initial phases. As projects progress, facts discovered may indicate that the scope must be redefined. Parties shall provide a written amendment to this Agreement to recognize such change.
6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingencies set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices must be itemized to include labor costs and the Contracting Party's direct expenses, including subcontractor costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement.
7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and other obligations 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 ~~but only to the extent attributable to any negligent or willful act, omission, or fault, or negligence~~, whether active or passive of Contracting Party, or of anyone acting under its direct 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 relief, of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

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

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

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

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

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

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

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

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

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

32. **TIME COMPUTATION.** Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notice is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed 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 in the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved: 10/07/08