

**PROFESSIONAL SERVICES CONTRACT
LA CROSSE HISTORICAL & CULTURAL MUSEUM FEASIBILITY STUDY**

This is a contract agreement dated the day of , 2019^{4th} ~~of September 2019~~ between The City of La Crosse, (herein after referred to as “the Sponsor”) and the Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-La Crosse and the University of Wisconsin-La Crosse’s UW-La Crosse Tourism Research Institute (herein after referred to as “the Consultant”). The sponsor wishes to have a completed Feasibility Study to enable the La Crosse Historical & Cultural Museum Task Force and the La Crosse County Historical Society to assess support for a regional history and cultural museum.

The contract will go into effect starting the day of , 2019^{4th} ~~day of September 2019~~ and ending the 1st day of August 2020, unless an extension agreement has been arranged by the sponsor and consultant prior to the 1st day of July 2020.

The consultant agrees to complete the following scope of work and project conditions:

1. The Museum Feasibility Study Goals and Objectives stated in UW-La Crosse Tourism Research Institute’s proposal that was approved by the La Crosse Historical and Cultural Museum Task Force at their July 11, 2019 meeting and attached as Attachment A.
2. The Consultant agrees that the end products will be the property of the Sponsor, with any printing and distribution to be done by the sponsor, unless a further arrangement is negotiated between the two parties.
3. The Consultant may submit a monthly invoice to the Sponsor for any completed work stated above or in the proposal attached as Attachment A. Monthly invoices shall be submitted to the sponsor by the 1st day of each month so it can be approved and processed in the Sponsor’s monthly billing cycle. The total of all fees may not exceed \$16,104.
4. The agreement is officially finalized when the Sponsor is satisfied that all of the work has been completed by the Consultant and the Consultant has received their payment in full.
5. The Consultant has filled out and signed Attachment B. Conflict of Interest Statement.
- ~~6.~~ The Consultant agrees to the Attachment C. Standard Contract Terms and Conditions.
- ~~6-7.~~ The Consultant agrees to the Attachment D. Consultant-Requested Changes.
- ~~7-8.~~ The Consultant has submitted a completed W9 Form to the Sponsor.

The Sponsor agrees to provide the following:

1. Schedule and provide a meeting rooms for, and prepare public notices for the public meetings.
2. Mailing labels with names and mailing addresses of all property owners in the nominated area.

Commented [NS1]: UWL Comment (9/5/19) – Language regarding the contract effective date for the first two paragraphs of this contract has been updated per 9/5/19 discussion between the parties. September 1st has already passed. Rather than having a backdated effective date, the parties have decided to add fill-in-the blank fields for the effective date such that a more accurate date can be added to the contract once the true effective date has been settled upon.

Commented [NS2]: UWL Comment (7/18/19): Please provide a copy of Attachment B for UWL’s review/signature.

Commented [NS3R2]: Resolved – Attachment B is now part of the contract.

The Consultant agrees to submit the following materials to the Sponsor:

1. One (1) hard copy original of the completed feasibility study.
2. One (1) electronic copy.
3. Any additional materials and/or deliverables mentioned under the proposal attached as Attachment A.

The Sponsor agrees to pay the consultant the sum of **\$16,104** for the work stated in this agreement.

SIGNATURES: **By signing below each below authorized person is acknowledging that s/he is authorized to sign on behalf of the undersigned party to the contract.**

Commented [NS4]: UWL Comment (9/5/19): Additional language regarding acknowledgement of authorized signatures added per 9/5/19 discussion between the parties.

Consultant – The Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-La Crosse and the University of Wisconsin-La Crosse’s Tourism Research Institutes

~~Daniel Plunkett~~ Robert J. Hetzel
Vice Chancellor for Administration & Finance
UW La Crosse Tourism Research Institute

Date

City of La Crosse

Mayor Tim Kabat
City of La Crosse

Date



La Crosse Historical & Cultural Museum Feasibility Study

The mission of the UW-La Crosse Tourism Research Institute is to conduct and facilitate tourism and recreation related research activities. Our vision is to operate as a resource for organizations looking to conduct research, provide faculty a resource hub for collaboration and partnership building, and provide opportunities for undergraduate and graduate students to engage in research activities.

The purpose of this proposal is to identify the areas in which UWL researchers can assist with the completion of a La Crosse Historical & Cultural Museum Feasibility Study. It summarizes identified key objectives throughout the study that the research team can undertake and complete, outlines a projected timeline of completion, lists UWL personnel who would be involved in its completion, and presents an estimated project budget based on resources needed to meet project goals and objectives.

Museum Feasibility Study Goals & Objectives

The following goals and objectives have been initially identified for the project.

Goal 1: Meet with Task Force, Advisory Committee, and City representatives for initial project discussion

Objective: Affirm and/or refine project goals and objectives

Objective: Identify list of stakeholder groups to involve in the process

Objective: Identify resources available through Task Force, Advisory Committee, and City representatives to help meet project objectives

Goal 1 Timeframe: August 2019

Goal 2: Involve local stakeholders

Objective 1: Conduct visioning workshops with Task Force, Advisory Committee, and other key stakeholder groups.

Objective 2: Identify resources (expertise, available exhibits, etc.) that local stakeholders can contribute to museum

Objective 3: Hold open meetings in La Crosse and surrounding communities to identify public perceptions regarding the idea of a new historical and cultural museum.

***Goal 2 Timeframe: September 2019 – May 2020**

Goal 3: Identify visitor (tourist) perceptions and attitudes towards museums

Objective 1: Through secondary data analysis research visitor perceptions and attitudes towards museums (i.e., reasons for visiting, desired exhibits, etc.)

Objective 2: Sample La Crosse area visitors to identify perceptions and attitudes towards visiting a new La Crosse museum

*Goal 3 Timeframe: September 2019 – May 2020

** An initial round of data collected for goals 3 & 4 in October and November would be analyzed and presented to the Task Force, Advisory Committee, and City representative December 2019. This data could be provided to an Exhibit Designer to create initial conceptual designs to have available for a second round of public input sessions held in April 2020.*

Goal 4: Obtain information from other museums to assess feasibility of a new La Crosse Museum

Objective 1: Conduct site visits to comparable museums in region to gather data and insight on operations, including use of exhibit space, storage, and staffing. This information will be used to make assessments and estimates in Goal 5.

Objective 2: Use secondary data analysis to obtain additional information from comparable existing museums regarding:

- a. Size and scope (define the market area)
- b. Evaluate characteristics of the defined market area (demographics, etc.)
- c. Research comparable areas with existing museums
- d. Evaluate funding sources & expenses of existing museums
- e. Research partnership opportunities

Goal 4 Timeframe: September 2019 – January 2020

Goal 5: Use primary and secondary data collected to conduct a site analysis of a potential La Crosse museum

Objective: Work with Task Force, Advisory Committee, City representatives, and other key stakeholders to identify potential site of the new museum

Objective: Identify opportunities and constraints of site.

Objective: Use data collected through study and for site to make financial projections.

- a. Operating Revenues
 - Identify potential revenue sources
 - Identify revenue estimates based on projected revenue obtained from identified sources.
- b. Expenses
 - Estimate costs of renovations or new construction pending identified potential sites
 - Estimate display design and fabrication
 - Estimated operating expenses

Goal 5 Timeframe: December 2019 – June 2020

Goal 6: Provide a final evaluation and summary of feasibility

Objective 1: Use data collected to make final recommendations via written report for the Task Force, Advisory Committee, and City representatives, and other local stakeholders.

Objective 2: Presentation of findings to the Task Force, Advisory Committee, and City representatives of La Crosse. Present at July 2020 meeting.

Goal 6 Timeframe: May – July 2020

Research Team

Area of Involvement: Tourism & Recreation Studies

Dan Plunkett, Co-Project Director, Ph.D. Community Resources and Development, Arizona State University

- Involvement: Coordinate involvement between departments; provide regular updates on progress to the Task Force, Advisory Committee, and City representatives; principal on design of visitor study; assist with secondary data collection and analysis; and, overseeing completion of project as a whole

Kate Evans, Co-Project Director, Ph.D. Parks, Recreation, and Tourism Management, Clemson University

- Involvement: Principal on civic engagement processes; instructor leading REC 351 students through the process of involving stakeholders and organizing public input session

Area of Involvement: Archeology & Anthropology

Constance Arzigian, PhD in Anthropology (Archaeology)

- Involvement: Principal on identifying and visiting comparable museum sites for data collection; instructor of record guiding independent study students in the creation of a museum studies class, who will also assist with data collection for this project

Katherine Stevenson, PhD in Anthropology (Archaeology)

- Involvement: Archeology consultant with extensive experience in western Wisconsin and the La Crosse area; resource for identifying local key stakeholders

Bonnie Jancik, MEPD Masters of Education - Professional Development

- Involvement: Archeology consultant with expertise in education and public outreach; resource for identifying local key stakeholders

Michael Bednarchuk, M.A. Museum Studies, University of Leicester

- Involvement: Archeology consultant with experience in curation and collections management; assisting with secondary data collection and site analysis

Area of Involvement: Economics

SaraJane Parsons, M.A. Economics, Michigan State University

- Involvement: Expertise in data collection and analysis using large databases; will guide economic and business students in conducting a portion of the market analysis research

Area of Involvement: History

Víctor M. Macías-González, Ph.D. Latin American History and Letters, Texas Christian University

Gerald Iguchi, Ph.D. History, University of California at San Diego

Tiffany Trimmer, Ph.D. History, Northeastern University

- Involvement: All three history consultants will provide assistance with question design, and analysis and interpretation of stakeholder data collection

Student Involvement

Course Involvement Fall 2019 & Spring 2020

- REC 340: Evaluation Methods and Practices
 - Approximately 35 students over two semesters will assist with primary data collection by surveying two markets – tourists and local college students.
- REC 351: Civic Engagement in the Recreation Profession
 - Approximately 30 students over two semesters will assist with primary data collection by holding local stakeholder focus groups and public input sessions

Individual Student Involvement

- Archaeology & Anthropology Independent Study students helping to design an on-line Museum Studies course can assist with development and implementation of a survey instrument to assess other museums, both larger and of comparable size to the proposed La Crosse facility. Internship students may further be able to assist with completing project objectives.
- Economics/Business
 - Up to 5 students are currently interested in assisting with the collection of primary and secondary market analysis data. These students have the opportunity to apply for UWL grant/scholarship funding to complete research and present their findings.

In total, this project would involve an estimated 60-70 UWL students.

**La Crosse Historical & Cultural Museum Feasibility Study
Estimated Project Budget**

Based on project time estimates and resource needs to complete the identified study goals and objectives, the project budget is estimated as follow:

August 2019 – July 2020

1.	Personnel – Faculty and Student Research Assistants	\$8,400
2.	UWL & Tourism Research Institute Fringe and Indirect Costs	\$5,264
3.	Travel Related Expenses – Rental Vehicles and Gas	\$930
4.	Materials & Supplies – Input Session Supplies, Printing, Media Promotion, and Visitor Study Participant Incentives	\$1,510
	Total Estimated Budget	<hr/> \$16,104

Professional Services Contract - Attachment ATTACHMENT B

CERTIFICATION

The UNDERSIGNED hereby declares to the best of the UNDERSIGNED's knowledge that he/she or they are the only person(s), firm, institution, or corporation interested in a preparing a Feasibility Study for the City of La Crosse's Historic and Cultural Museum Planning Task Force as principal and that it is made without any connection with any other person(s), firm or corporation submitting a proposal for the same.

The UNDERSIGNED hereby declares that they have read and understand all standard contract conditions outlined in the Professional Services Contract (including contract terms and conditions as detailed under Attachments C and D), Attachment A in the Professional Services Agreement, that their proposal (which is attached as Attachment A) is made in accordance with the same, and the undersigned will agree to these standard contract terms and conditions, which may be subject to change but only upon mutual consent between the parties in writing.

The UNDERSIGNED hereby declares to the best of the UNDERSIGNED's knowledge that any person(s) employed by the City of La Crosse, who has direct or indirect personal or financial interest in this Professional Services Agreement, or in any portion of the profits that may be derived there from, has been identified and the interest disclosed below. (Please include in your disclosure any interest which you know of. An example of a direct interest would be a City of La Crosse employee, City of La Crosse Council Member, City of La Crosse Historic and Cultural Museum Planning Task Force, who would be paid to perform services under this proposal. An example of indirect interest would be a City of La Crosse employee who is related to any officers, employees, principal or shareholders of your firm or to you. If in doubt as to status or interest, please disclose to the extent known).

Declaration of any Conflict of Interest with the City of La Crosse.

None

By signing below, the below authorized person is acknowledging that he/she is authorized to sign on behalf of the UNDERSIGNED.

The Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-La Crosse and the University of Wisconsin-La Crosse's Tourism Research Institute

Robert J. Hetzel
Vice Chancellor for Administration & Finance

Date

Commented [NS1]: UWL Comment (8/1/19): UWL has rewritten portions of this paragraph as standard contract Ts/Cs are really found under Attachments C and D and UWL's proposal is already included as attachment A. The last part of the paragraph relating to the ability to change the terms/conditions has been modified so that the City cannot unilaterally change the terms/conditions.

STANDARD TERMS AND CONDITIONS (Service Contracts)

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 document titled "Standard Terms and Conditions (Service Contracts)" 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 at least equal to 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 all applicable state and local laws and any other applicable laws or regulations 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, and reasonably inferable from, 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. The scope of service may not be fully definable during initial phases, and as the project progresses, facts discovered may indicate that the scope must be redefined. Contracting Party agrees to make any and all changes, furnish necessary materials, and perform the work that La Crosse may require, without nullifying this Agreement, at a reasonable addition to, or reduction from, the total cost of the project. Under no circumstances shall Contracting Party make any changes, either as additions or deductions, without the written consent of La Crosse, and La Crosse shall not pay any extra charges made by Contracting Party that have not been agreed upon in advance in writing. Disputed work shall be performed as ordered in writing by La Crosse, and the proper cost or credit breakdowns therefor shall be submitted without delay by Contracting Party to La Crosse.
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 identify labor costs and the Contracting Party's direct expenses, including subcontractor and supplier 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 not be made until La Crosse, in its sole discretion, determines the work is complete and accepts the services performed by the Contracting Party under this Agreement. Without prejudice to any other right or remedy it may have, La Crosse reserves the right to setoff at any time any amount owing to it by Contracting Party against any amount payable by La Crosse to Contracting Party.
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, both as determined by La Crosse in its sole discretion, 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. 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 virtue of the Contracting Party's performance of this Agreement, 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 for convenience at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date. 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 Contracting Party's obligations under this Agreement is delayed through no fault of Contracting Party, as determined by La Crosse in its sole discretion, Contracting Party shall be entitled to a reasonable extension of time as proposed by Contracting Party and as accepted or amended by La Crosse in its sole discretion. If performance of La Crosse's obligations is delayed through no fault of La Crosse, as determined by La Crosse in its sole discretion, La Crosse shall be entitled to an extension of time equal to the delay.
12. **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.
13. **INSURANCE.** Unless otherwise specified in this Agreement, Contracting Party shall, at its sole expense, maintain in effect at all times during the Agreement, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.
 - a. *Worker's Compensation and Employers Liability Insurance.* Contracting Party shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the laws of the State of Wisconsin. Contracting Party shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least for employer's liability of one hundred thousand dollars (\$100,000.00) per each accident, one hundred thousand dollars (\$100,000.00) per each employee and five hundred thousand dollars (\$500,000.00) total policy limit.
 - b. *Commercial General Liability and Automobile Liability Insurance.* Contracting Party shall provide and maintain the following commercial general liability and automobile liability insurance:
 - i. Coverage for commercial general liability and automobile liability insurance shall, at a minimum, be at least as broad as the following:
 1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).
 2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).
 - ii. Contracting Party shall maintain limits no less than the following:
 1. General Liability. Two million dollars (\$2,000,000.00) per occurrence (\$2,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.
 2. Automobile Liability. Two million dollars (\$2,000,000.00) for bodily injury and property damage per occurrence covering all vehicles to be used in relationship to the Agreement.
 3. Umbrella Liability. Five million dollars (\$5,000,000.00) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverage. Coverage is to duplicate the requirements as set forth herein.
 - c. *Professional Liability Insurance.* When Contracting Party renders professional services to La Crosse under the Agreement, Contracting Party shall provide and maintain two million dollars (\$2,000,000.00) of professional liability insurance. If such policy is a "claims made" policy, all renewals thereof during the life of the Agreement shall include "prior acts coverage" covering at all times all claims made with respect to Contracting Party's work performed under the Agreement. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the La Crosse.
 - d. *Required Provisions.* The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
 - i. La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for

general liability coverage) as respects: liability arising out of activities performed by or on behalf of Contracting Party; products and completed operations of Contracting Party; premises occupied or used by Contracting Party; and vehicles owned, leased, hired or borrowed by Contracting Party. The coverage shall contain no special limitations on the scope of protection afforded to La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers' compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of La Crosse.

- ii. For any claims related to this Agreement, Contracting Party's insurance shall be primary insurance with respect to La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by La Crosse, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
 - iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to La Crosse, its elected and appointed officers, employees or authorized representatives or volunteers.
 - iv. Contracting Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - v. Each insurance policy required by this Agreement shall state, or be endorsed so as to the state, that coverage shall not be canceled by the insurance carrier or the Contracting Party, except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to La Crosse.
 - vi. Such liability insurance shall indemnify La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, Contracting Party for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
 - vii. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
 - viii. All of the insurance shall be provided on policy forms and through companies satisfactory to La Crosse, and shall have a minimum AM Best's rating of A-VIII.
- e. *Deductibles and Self-Insured Retentions.* Any deductible or self-insured retention must be declared to and approved by La Crosse. At the option of La Crosse, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.
- f. *Evidences of Insurance.* Prior to execution of the Agreement, Contracting Party shall file with La Crosse a certificate of insurance (Accord Form 25-S or equivalent) 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. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.
- g. *Sub-Contractor.* In the event that Contracting Party employ other contractors (sub-contractors) as part of this Agreement, it shall be the Contracting Party's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.
- h. *Amendments.* La Crosse may amend its requirements for insurance upon sixty (60) days written notice. Contracting Party shall procure updated insurance to comply with the new requirements of La Crosse. Contracting Party may appeal any requirement to amend the insurance coverage to La Crosse's City Council who may, in its sole discretion, mutually agree to waive such changes.

14. **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, authorized representatives and volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, reasonable attorney (including, without limitation, in-house counsel legal fees) and professional fees and costs, costs and expenses of whatsoever kind, character or nature (including, without limitation, the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) 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. Contracting Party's obligation to indemnify, defend and hold harmless shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees, authorized representatives or volunteers.

Nothing in this Agreement is intended or shall be construed to be a waiver or estoppel of La Crosse or its insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained within Wis. Stat. §§ 345.05 and 893.80, or other applicable law. To the extent that indemnification is available and enforceable against La Crosse, (a) La Crosse or its insurer shall not be liable in indemnity, contribution, or otherwise for an amount greater than the limits of liability of municipal claims established by applicable Wisconsin or federal law; and (b) La Crosse's obligations under this Agreement are further conditioned upon the following: (i) the indemnified party shall promptly notify La Crosse in writing of any such claims, demands, liabilities, damages, costs and expenses within five days of discovery; (ii) La Crosse shall have sole control of, and the indemnified party shall reasonably cooperate in all respects, in the defense of the claims, demands, liabilities, damages, costs and expenses and all related settlement negotiations; and (iii) the indemnified party shall not make any admission or disclosure or otherwise take any action prejudicial to La Crosse except as required by law. Neither party shall be liable for indirect, special, exemplary, consequential or incidental damages, including, without limitation, any damages for lost profits, revenue or business interruption. The parties represent that, as of the effective date, neither party has any notice or knowledge of any claims, demands, liabilities, damages, costs and expenses asserted or threatened by any third party with respect to the matters contemplated in this Agreement.

This indemnity provision shall survive the termination or expiration of this Agreement.

15. **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.

16. **TIMELINESS OF CLAIMS.** All causes of action against La Crosse arising out of or relating to this Agreement shall expire unless brought within one (1) year of the date of the first date of performance or breach which, in whole or in part, gives rise to the claim.

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 event of default by either party, 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 to cure or mitigate the default.
- (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 permitted assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of request to assign, sublet or transfer any services provided under this Agreement. The decision to allow an assignment by Contracting Party rests solely with La Crosse, in its discretion.

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 persons 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 within the City of La Crosse 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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 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.

37. 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.

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

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

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

Revised: 12.04.18

**PROFESSIONAL SERVICES CONTRACT
LA CROSSE HISTORICAL & CULTURAL MUSEUM FEASIBILITY STUDY**

ATTACHMENT D – CONSULTANT-REQUESTED CHANGES

The Parties agree to modify the Professional Services Contract for the La Crosse Historical & Cultural Museum Feasibility Study (hereinafter the “Contract”) as follows:

1. **Insurance.** The parties hereby agree that the following paragraphs under this Section 2 of this Attachment D shall hereby supplement and/or modify Section 13 of Attachment C concerning insurance:
 - 1.1 The parties acknowledge that Consultant is part of the University of Wisconsin System, which is self-insured for purposes of Commercial General Liability insurance (also known as simply “Liability” insurance) under the State of Wisconsin’s Self-Funded Property and Liability Program (WI Statutes 893.82 and 895.46) and also self-insured via a State of Wisconsin self-insurance program with regard to Worker’s Compensation/Employer’s Liability (WI Statutes Ch. 102) and Automobile Liability (Section 895.46). The parties hereby stipulate that the coverage provided under the above-referenced Wisconsin state statutory provisions shall be deemed to satisfy the Commercial General Liability, Worker’s Compensation/Employer’s Liability, Umbrella Liability, and Automobile Liability insurance requirements stated in Section 13, Paragraphs (a), (b), and (d)-(f) of Attachment C of the Contract. A copy of Consultant’s insurance certificate reflecting the above-mentioned self-insurance coverage is hereby attached and incorporated herein as part of this Attachment D.
 - 1.2 The parties acknowledge that the services being performed by Consultant under this agreement do not give rise to the need for professional liability coverage protections. Therefore, the requirement for Consultant to carry professional liability insurance in accordance with Section 13, Paragraph (b) of Attachment C shall be treated as waived.
 - 1.3 The parties hereby acknowledge and agree that Section 13, Paragraph (h) of Attachment C regarding Sponsor being able to amend its insurance requirements shall not apply as long as Consultant is self-insured pursuant to Wisconsin state law via the statutory provisions mentioned under Section 2.1 of this Attachment D.
2. **Indemnification.** Because Consultant is a Wisconsin state entity, Consultant is limited under Wisconsin state law as to its ability to indemnify, defend, and hold harmless another party. As such, the parties agree that any obligations of Consultant to indemnify, defend, and/or hold harmless Sponsor and/or any other party (including but not limited to Section 35 titled “Public Records Law” of Attachment C) shall be limited to the extent allowable by law.
3. **Execution of Agreement.** The parties acknowledge at the time of Consultant’s signing of the Contract that Consultant has signed this Contract within 60 days of the Contract effective date and that therefore, approval of the Contract by the La Crosse Common Council at least 60 days prior to the start of the project would be impossible to obtain. The parties therefore agree that Section 42 of Attachment C (i.e., stating that Consultant must sign and execute the Contract on/before 60 days of the Contract’s approval by the La Crosse Common Council or else the

approval of the Contract by the La Crosse Common Council will be deemed null and void unless otherwise authorized) shall be treated as if deleted.

4. **Project Budget.** The parties acknowledge that the project budget provided by the Consultant under Attachment A is provided as an estimate only of the specific budget line items making up the not-to-exceed price of \$16,104. As such, Consultant reserves the right to redistribute expenditures for project budget line items during the project for the purpose of meeting project objectives. Furthermore, any funds under the budget remaining after the specified project end date may be spent and redistributed as necessary to account for unforeseen project expenses. The redistribution or spending of budget funds will not at any time exceed \$16,104 without prior written consent from the Sponsor.
5. **Publication.** Consultant reserves the right to publish, present or otherwise make public results from the resulting feasibility study from this project. Materials intending to be published or made public shall be submitted to Sponsor prior to publication for review and comment.

University of Wisconsin-La Crosse

CERTIFICATE OF COVERAGE STATE OF WISCONSIN

This is to certify that coverage described below is effective per the statutory authority referenced. This certificate is not a policy or a binder of insurance and does not in any way alter, amend or extend the coverage afforded by any reference herein. The coverage is subject to all terms and conditions of the statutory authority.

STATE AGENCY: Board of Regents University of Wisconsin System PO Box 8010 Madison, WI 53708	CAMPUS NAME: UW - LA CROSSE	DATE ISSUED: SEPTEMBER 5, 2019
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KIND OF COVERAGE	XX*	STATUTORY REFERENCES
Workers' Compensation	XX	Ch. 102
Liability	XX	Sec. 895.46(1) and 893.82
Automobile Liability	XX	Sec. 895.46
Property	XX	Ch. 20.865 and 16.865

* The entry of an XX in this column means that the coverage is afforded per this certificate and the statute referenced.

DATE(S) OF COVERAGE: 9/5/19 – 8/1/20

DESCRIPTION OF COVERAGE: Coverage as afforded by statutory references listed above for employees, agents, and students of the University of Wisconsin-La Crosse with regard to services performed by the University of Wisconsin-La Crosse and the University of Wisconsin-La Crosse's Tourism Research Institute pursuant to the "Professional Services Contract – La Crosse Historical & Cultural Museum Feasibility Study" with an effective date of on/around 9/5/19 between The City of La Crosse and the Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-La Crosse and the University of Wisconsin-La Crosse's Tourism Research Institute.

ISSUED TO:

City of La Crosse
400 La Crosse Street
La Crosse, WI 54601
Attn: City Clerk & City Attorney

ISSUED BY:

Thomas M. Joestgen
Risk Manager
University of Wisconsin System Administration,
on Behalf of the University of Wisconsin – La Crosse
(608) 890-4792

Signed: _____

Risk Management

University of Wisconsin-La Crosse, 125 Graff Main Hall, 1725 State Street, La Crosse, WI 54601
Office: 608.785.8569 Fax: 608.785.8544 www.uwlax.edu