



ENGINEERING SERVICES AGREEMENT

Wastewater Treatment Facility Improvements Project: Final Design (Project)

This Agreement is by and between:

City of La Crosse (Owner)
400 La Crosse Street
La Crosse, WI 53081

and

Donohue & Associates, Inc. (Donohue)
3311 Weeden Creek Road
Sheboygan, WI 53081

Who agree as follows:

Owner hereby engages Donohue to perform the Services set forth in Part I for the compensation set forth in Part III. Donohue will be authorized to commence the Services upon execution and receipt of this Agreement from Owner. Owner and Donohue agree that this signature page, together with Parts I through IV attached, constitute the entire agreement for this Project.

APPROVED FOR OWNER

By: [Signature] \_\_\_\_\_

Printed Name: Bernard Lenz, PE \_\_\_\_\_

Title: Utility Manager \_\_\_\_\_

Date: 4/16/2020 \_\_\_\_\_

APPROVED FOR DONOHUE -

By: [Signature] \_\_\_\_\_

Printed Name: Mike Gerbitz, PE \_\_\_\_\_

Title: Senior Vice President \_\_\_\_\_

Date: Apr 16, 2020 \_\_\_\_\_

**PART I  
PROJECT DESCRIPTION/SCOPE OF SERVICES/TIMING**

**A. PROJECT DESCRIPTION**

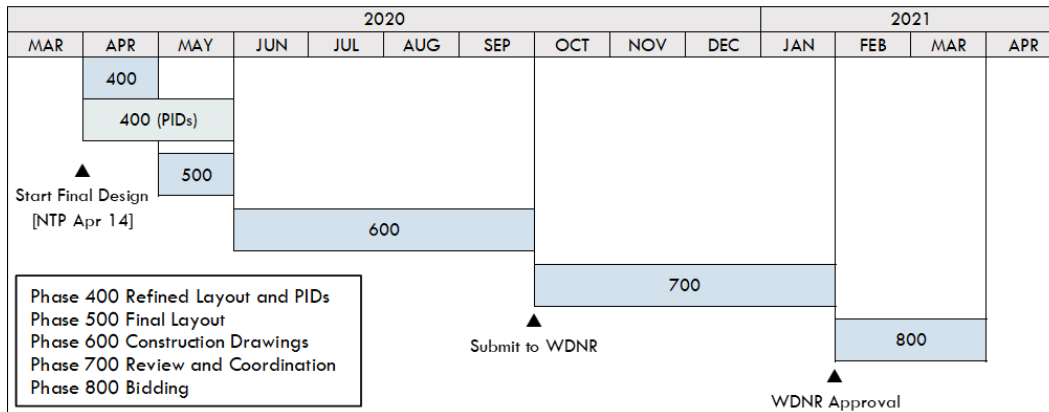
The purpose of this Project is to (1) develop reliable and accurate Bidding Documents for the improvements outlined in the Facility Plan and the Request for Qualifications issued by the Owner, (2) support the Owner during public bidding, and (3) provide funding services.

**B. SCOPE OF SERVICES**

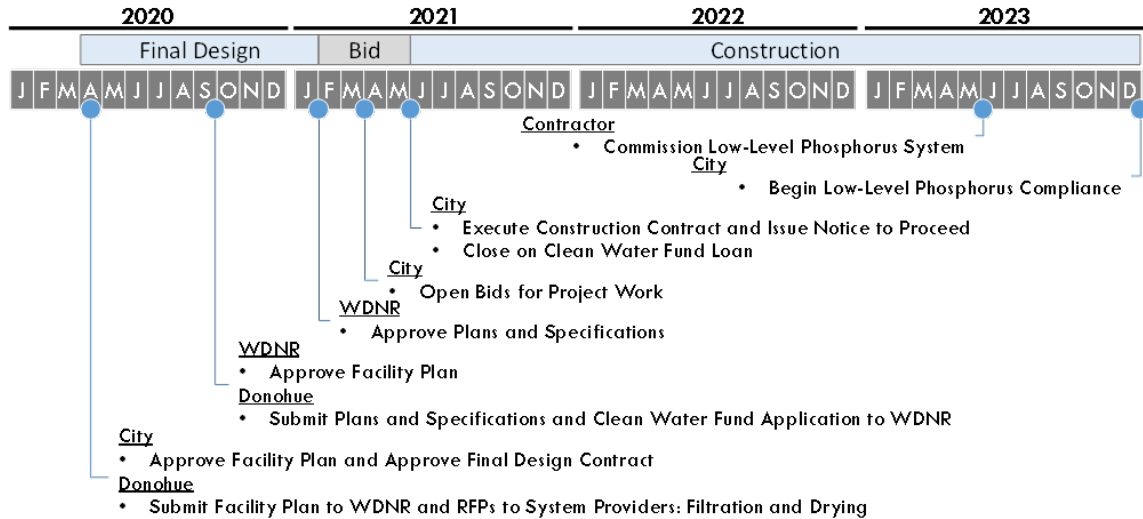
Services to be provided by Donohue for this Project under this Agreement are delineated in the Final Design Services, Funding Services, and Bidding Services subsections included in the Scope of Services section in Appendix A.

**C. PROJECT TIMING**

1. Donohue shall be authorized to commence the Services set forth herein upon execution of this Agreement. The schedule for the Final Design, Funding, and Bidding Services are shown in the graphic below.



The overall timeline for the proposed Wastewater Treatment Facility Improvements is shown in the graphic that follows at the top of the next page.



2. Donohue’s services under this Agreement will be considered complete when Donohue has delivered to Owner the all deliverables defined under Scope of Services.

**PART II  
OWNER RESPONSIBILITIES**

- A. In addition to other responsibilities of Owner set forth in this Agreement, Owner shall:
  1. Identify a person authorized to act as the Owner’s representative to respond to questions and make decisions on behalf of Owner, accept completed documents, approve payments to Donohue, and serve as liaison with Donohue as necessary for Donohue to complete its Services.
  2. Furnish to Donohue copies of existing documents and data pertinent to Donohue’s Scope of Services, including but not limited to and where applicable: design and record drawings for existing facilities; property descriptions, land use restrictions, surveys, geotechnical and environmental studies, or assessments.
  3. Owner shall be responsible for all requirements and instructions that it furnishes to Donohue pursuant to this Agreement, and for the accuracy and completeness of all reports, data, programs, and other information furnished by Owner to Donohue pursuant to this Agreement. Donohue may use and rely upon such requirements, instructions, reports, data, programs, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations provided by Owner applicable to the furnished items.
  4. Provide to Donohue existing information regarding the existence and locations of utilities and underground facilities.
  5. Provide Donohue safe access to premises necessary for Donohue to provide the Services.

6. Inform Donohue whenever Owner observes or becomes aware of a Hazardous Environmental Conditions, as defined in Part IV.3. of this Agreement, that may affect Donohue's Scope of Services or time for performance.

**PART III  
COMPENSATION, BILLING AND PAYMENT**

- A. Compensation for the work as defined in the Scope of Services (Part I) of this Agreement shall be in accordance with Donohue's standard chargeout rates in effect at the time the Services are performed. Routine expenses will be billed at cost. The total cost for these Services and expenses will not exceed \$2,424,075.
- B. Donohue will bill Owner monthly, with net payment due in 30 days.
- C. Donohue will notify Owner if Project scope changes require modifications to the above-stated contract value. Services relative to scope changes will not be initiated without written authorization from Owner.

## STANDARD TERMS AND CONDITIONS

### Donohue & Associates, Inc.

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

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

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

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

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

6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingencies set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices must be itemized to include labor costs and the Contracting Party's direct expenses, including subcontractor costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement.

7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.

8. **TERMINATION FOR CAUSE.** If, through any cause, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, La Crosse shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of La Crosse, become the property of La Crosse. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to La Crosse for damages sustained by La Crosse by virtue of this Agreement by the Contracting Party, and La Crosse may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to La Crosse from the Contracting Party is determined.

9. **TERMINATION FOR CONVENIENCE.** La Crosse may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by La Crosse.

10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse and Contracting Party specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property, except for its own employees.

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 \$2,000,000.00 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, reasonable 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 to the extent caused or contributed to in whole or in part, by reason of any by any negligent act, omission, or fault, or negligence, whether active or passive of Contracting Party, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on La Crosse. Contracting Party's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as La Crosse waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Contracting Party shall reimburse La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contracting Party's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

16. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of La Crosse have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claim any such personal liability.

17. **INDEPENDENT CONTRACTORS.** The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

18. **GOVERNING LAW.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.

19. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

20. **NOTIFICATION.** Contracting Party shall:

- (1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify La Crosse in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contracting Party with respect thereto.
- (2) Promptly notify La Crosse of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contracting Party contained in this Agreement to be untrue.
- (3) Notify La Crosse, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Contracting Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contracting Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contracting Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

21. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

22. **ASSIGNMENT, SUBLET, AND TRANSFER.** Contracting Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of La Crosse. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

23. **NO WAIVER.** The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

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

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

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

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

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

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

29. **ENTIRE AND SUPERSEDING AGREEMENT.** This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed 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 notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

33. **NOTICES.** Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one

(1) business day after depot 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 hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

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

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

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

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

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

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

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

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

Revised: April 2014 June 2015

# **Appendix A**

Scope of Services



# Scope of Services

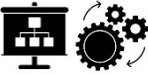
## Final Design Services

### General Matters Related to Final Design

Task(s)	Description	Services
1	Status Reports	Provide monthly Status Reports. Topics of the Status Reports will include Activities This Period, Near-Term Activities, Outstanding Issues, Budget Position, and Schedule.
2	Meeting Notes	Provide Meeting Notes documenting discussions, decisions, City comments, and City direction.
3	Quality Reviews	Perform quality reviews throughout the duration of the Project.
4	Communication	Conduct informal meetings and conference calls with the City to review progress, get direction, and enhance coordination in advance of or outside of Workshops.
5	Construction Contract	Produce Bidding and, following execution, Contract Documents using the Standard General Conditions of the Construction Contract prepared by the Engineers Joint Contract Documents Committee (EJCDC) and amended by the Supplementary Conditions for the Project




### Phase 400 – Refined Layout and PIDs

At this Phase of the Project, Donohue will have provided the City a Preliminary Design Report (PDR) that documents the design progress to this Phase. Drawings will include Preliminary Layout Drawings and Preliminary Layout Process and Instrumentation Drawings (PIDs). The Preliminary Layout Drawings reflect preferences, requirements, and direction provided by the based on cursory reviews in Workshop settings. These Drawings are, as the name implies, preliminary. The Preliminary Layout PIDs included in the PDR are largely schematics showing major equipment, valves, and flow streams without instrumentation, tag numbers, and I/O.

Task(s)	Description	Services
1	Workshop 	Prepare for, conduct, and document a Final Design Workshop. Attendees will review and discuss the Preliminary Design Report in its entirety, focusing largely on the configurations represented in the Preliminary Layout Drawings, operating strategies, and major process equipment selections. We will also bring DRAFT Requests for Proposals (RFPs) for two major systems: the effluent filtration system and the biosolids dryer system. <u>The first purpose of this multi-day Workshop is to collaboratively refine the Layout Drawings, operating strategies, and major process equipment selections to better accommodate and reflect City requirements, preferences, and supplemental information Donohue obtained as the design progressed.</u> <u>The second purpose of this Workshop is to collaboratively review and refine the RFPs.</u> We will send the RFPs to the system manufacturers several days after the Workshop. The responses to these RFPs will provide the base of information the City can and will use to select their preferred system providers.





		<p>Candidate filtration system providers are Kruger and Aqua Aerobics. Attendees will discuss additional filtration systems manufacturers and determine if others warrant consideration and an opportunity to submit a proposal.</p> <p>Candidate dryer system providers are Huber and Kruger. Attendees will discuss additional dryer system styles and manufacturers, and determine if others warrant further consideration.</p> <p><u>The third purpose of this Workshop will be to define or productively advance towards defining a Facility-wide NFPA 820 compliance strategy.</u> Donohue will prepare exhibits showing present-day NFPA 820 room ratings and potential Facility modifications to enhance compliance and safety.</p> <p> Meeting Materials Meeting Notes DRAFT RFPs: Filtration System, Dryer System</p>
2	<p>Refine Equipment Selections</p> <p>Web Meeting</p> <p></p>	<p>Perform the necessary engineering analyses and work with reputable and/or preferred equipment manufacturers to refine the type and sizing of major process equipment. Types and sizing will reflect City requirements and preferences provided at the previous Workshop.</p> <p>As part of this Task, Donohue will receive the RFPs for the filtration and dryer systems and summarize relevant proposal information in a memorandum. Prepare for, conduct, and document a web meeting to review the RFPs and memorandum. <u>The purpose of this web meeting is to select the preferred filtration and dryer system.</u> From this point in the Project, Donohue will advance the design with the selected systems. The City and Donohue will begin negotiations with the selected system providers and work collaboratively to define the final scope of supply and specifications for these systems.</p> <p>Produce a motor list documenting the motor types and sizes for the major process equipment.</p> <p> RFP Review Memorandum: Filtration System, Dryer System Meeting Notes</p>
3	<p>Refine and Advance Layout Drawings</p>	<p>Refine the Preliminary Layout Drawings and hydraulic profile to reflect City requirements and preferences provided at the previous Workshop and web meeting. The refined Drawings will reflect the selected filtration system, the selected dryer system, properly sized pieces of major process equipment, the clearances required for unencumbered operating and maintenance activities, and necessary lifting equipment.</p>
4	<p>Refine and Advance PIDs</p>	<p>Refine the Preliminary Layout PIDs to reflect the selected filtration system, the selected dryer system, and City requirements and preferences provided at the previous Workshop and web meeting. Advance the Preliminary Layout PIDs to add instrumentation, tag numbers, and I/O.</p>
5	<p>Refine and Advance Operating Strategies</p>	<p>Refine the mass balance and Operating Strategies to reflect the selected filtration system, the selected dryer system, and City requirements and preferences provided at the previous Workshop and web meeting.</p>





6	Refine and Advance Energy Balance/Strategy	Refine the energy balance/strategy so it is consistent with the refined mass balance and to reflect the selected filtration system, the selected dryer system, and City requirements and preferences provided at the previous Workshop and web meeting. Refine the economic analysis so it is consistent with the energy balance/strategy.
7	Refine Cost Opinion	Update and refine the Construction Cost Opinion to reflect the selected filtration system, the selected dryer system, and City requirements and preferences provided at the previous Workshop and web meeting.
8	Informal On-Site Meetings and Site Visits	Donohue will likely visit the site several times (two trips assumed) during this Task to obtain or verify Facility information. Team members that visit the Facility may review design-related concepts or strategies with Facility staff.
9	Survey	Complete a topographic survey of existing structures, pavement, perimeter fence, gates, utilities, and other topographic features for design and construction. Use the appropriate datum (vertical reference system) for City of La Crosse infrastructure improvements. Establish at least three survey reference markers.
10	Geotechnical	Perform a geotechnical investigation that includes soil borings at the proposed location for new structures. Produce a geotechnical report that includes recommendations for new structure foundations, piping installation, and discusses potential construction difficulties posed by local soil and groundwater conditions.

**Phase 500 – Final Layout**



Task(s)	Description	Services
1	Complete Manufacturer Selections	<p>Collaborate with the City to negotiate and define the final scope of supply and associated cost for the City-selected filtration and dryer systems. At the completion of this Task, all major process equipment will be sized and defined: dimensions, weights, lifting requirements, access requirements, and utility requirements.</p> <p>Continue to coordinate with electric, natural gas, and water utilities.</p>
2	Produce Final Layout Drawings and PIDs	<p>Develop Final Layout Drawings for all structures affected by the Work of the Project. These drawings will be suitable for a close and thorough review by the City and incorporate City requirements, preferences, and cost-saving measures accepted by the City. The Final Layout Drawings will be developed to a higher degree of completion than the Preliminary and Refined Layout Drawings, and reflect the City-selected approach to address NFPA 820 compliance. In general, these drawings will include or show items like those listed below that were not included on previous drawings.</p> <ul style="list-style-type: none"> <li>• Site plans with details such as yard piping; grading; sidewalks; and pavement.</li> <li>• Process details such as sample sinks; meters; and equipment water connections.</li> <li>• Structural details such as roof framing; wall and roof types; floor, roof, and wall openings; elevators, overhead doors and lifting equipment; equipment pads; floor hatches; floor slopes; roof drain systems; framing; beams; and columns.</li> </ul>



		<ul style="list-style-type: none"> <li>• HVAC equipment such as ducts; air handling equipment; windows, louvers, intakes, and grilles; fire protection system; and hazardous ratings</li> <li>• Electrical components such as electrical duct banks; panels; and building lighting</li> <li>• Plumbing components such as fixtures; the floor drain system; eyewashes and emergency showers; and fire protection systems.</li> <li>• Electrical one-line diagrams and elevations.</li> <li>• PIDs with instruments, tag numbers, and I/O.</li> <li>• Process Control Network Diagram.</li> </ul> <p>At the completion of this Task, the drawings are approximately 60%-complete.</p>
3	Produce Outline Specifications	<p>Produce Outline Specifications that document major equipment sizes/characteristics and potential or already-selected major equipment manufacturers. The Outline Specifications will also define Construction Constraints for the Contractor and summarize a potential Construction Work Sequence.</p> <p>At the completion of this Task, the specifications are approximately 60%-complete.</p>
4	Refine Cost Opinion	Update and refine the Construction Cost Opinion to reflect the design to this point of the Project.
5	Perform Air Permit Evaluation	After the various emitters and their locations are defined, perform an air permitting analysis that considers each of these emitters and determine if the Facility will be eligible for or what measures will make it eligible for a Registration Operating Permit (ROP), avoiding a more exhaustive and onerous Title V Permit. Perform dispersion modeling as part of this analysis. This analysis will be performed by SEH. Donohue has worked with SEH in a similar capacity on similar projects – e.g., Milwaukee MSD and Sheboygan.
6	<p>Workshop</p> 	<p>Prepare for, conduct, and document a Final Design Workshop. Attendees will review and discuss incorporations made to the Final Layout Drawings, PIDs, other design work products, and the Cost Opinion. This is generally considered the best and final opportunity for the City to review the Final Layout Drawings and PIDs before the design advances to produce Reviewable Construction Drawings and Specifications.</p>  <p>Meeting Materials Meeting Notes</p>
7	Incorporate City Revisions	Refine the Final Layout Drawings to reflect City requirements and preferences provided at the previous Workshop. If these work products are acceptable to the City, the design work will advance to the subsequent Phase, producing reviewable Construction Drawings and Specifications.
8	Informal On-Site Meetings and Site Visits	Donohue will likely visit the site several times (two trips assumed) during this Task to obtain or verify Facility information. Team members that visit the Facility may review design-related concepts or strategies with Facility staff.



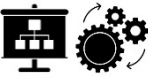

## Phase 600 – Construction Drawings

Task(s)	Description	Services
1	Produce Reviewable Construction Drawings and Specifications	Produce Construction Drawings showing and Specifications defining all Work associated with the Project. A tremendous amount of effort is expending during this Task as, at the completion of this Task, each individual design engineer feels their portion of the Bidding Documents are bid-ready. Of course the Documents are not ready for bidding as the various engineering disciplines have not yet coordinated their designs and they have not yet received a thorough Quality Control review. That critical coordination and Quality Control review happens during the subsequent Phase.
2	Refine Cost Opinion	Update and refine the Construction Cost Opinion to reflect the design to this point of the Project.
3	Submit Reviewable Bidding Documents to the WDNR	Submit Reviewable Bidding Documents to the WDNR by the September 30, 2020 funding deadline. We have a long successful history of submitting Documents at this Phase of a design Project to the WDNR and successfully satisfying the funding requirement. Donohue has always preserved funding eligibility and obtained WDNR approval.
4	Respond to WDNR Comments	If necessary, provide follow-up clarifications/explanations or design modifications in response to WDNR comments.
5	Workshop 	Prepare for, conduct, and document a Construction Drawings Workshop. Attendees will review and discuss the Reviewable Construction Drawings and Specifications, as well as the Cost Opinion.   Meeting Materials Meeting Notes
6	Incorporate City Revisions	Refine the Reviewable Construction Drawings and Specifications to reflect City requirements and preferences provided at the previous Workshop.
7	Informal On-Site Meetings and Site Visits	Donohue will likely visit the site several times (two trips assumed) during this Task to obtain or verify Facility information. Team members that visit the Facility may review design-related concepts or strategies with Facility staff.
8	Refine Cost Opinion	Update and refine the Construction Cost Opinion to reflect City requirement and preferences provided at the previous Workshop.

## Phase 700 – Review and Coordination

Task(s)	Description	Services
1	Perform Designer Review	Perform an internal Designer Review and conduct internal Designer Coordination meetings. These coordination meets are particularly important for coordination of process, electrical, and controls elements of the Bidding Documents.
2	Perform Plans-in-Hand Review	Perform on on-site Plans-in-Hand review. Each designer and select Quality Control reviewers visit the site with the near-final drawings in hand. The purpose of this important effort is to field-verify, one final time, that existing structures and equipment are properly represented, removal Work is



		properly defined, and new Work will fit and function as shown on the drawings.
3	Incorporate Designer Review Revisions	Submit Reviewable Bidding Documents to the WDNR by the September 30, 2020 funding deadline. We have a long successful history of submitting Documents at this Phase of a design Project to the WDNR and successfully satisfying the funding requirement. Donohue has always preserved funding eligibility and obtained WDNR approval.
4	Workshop 	Prepare for, conduct, and document a Construction Drawings Workshop. Attendees will review and discuss the Reviewable Construction Drawings and Specifications, as well as the Cost Opinion.   Meeting Materials Meeting Notes
5	Incorporate City Revisions	Refine the Drawings and Specifications to reflect City requirements and preferences provided at the previous Workshop.
6	Perform Final QC Review	Perform a thorough and final Quality Control Review. Senior engineers and technical advisors that did not develop the drawings, specifications, or Cost Opinion closely review the Bidding Documents and Cost Opinion, focusing primarily on their area of expertise – i.e., construction administration, civil, structural, process, mechanical, electrical, and controls. Review comments are distributed to the design team and must be addressed.
7	Incorporate Final QC Revisions	Revise the Bidding Documents to address Quality Control comments.
8	Refine Cost Opinion	Update and refine the Construction Cost Opinion to reflect City requirement and preferences provided at the previous Workshop as well as the Quality Control review comments/revisions.

## Funding Services

Task(s)	Description	Services
1	Produce DRAFT Clean Water Fund Application	Produce and submit a DRAFT Clean Water Fund Application. Use information requested of and provided by the City to complete the application. Review and discuss the DRAFT with the City.
2	Produce FINAL Clean Water Fund Application and Submit to WDNR	Produce a FINAL Clean Water Fund Application that addresses City comments related to the DRAFT. Submit the FINAL Clean Water Fund Application to the WDNR by September 30, 2020.
3	Secure Focus on Energy Funds and energy-rebates	Produce and submit a proposal for Focus on Energy incentive grants for eligible components of the Work. We will collaborate with the City and Focus on Energy to determine the most favorable time to secure these grants [Sep 2020 or Jan 2021].



## Bidding Services

Task(s)	Description	Services
1	Advertise the Project and Provide Hardcopies	Advertise the Project on QuestCDN and using other venues requested or required by the City. Provide the City with three hardcopy sets of the Bidding Documents.
2	Conduct Pre-Bid Conference	Prepare for, conduct, and document a Pre-Bid Conference to review the Project and Bidding Documents.
3	Respond to Questions	Respond to questions posed by Bidders.
4	Issue Addenda	Issue necessary Addenda.
5	Provide a Recommendation	Review the Bids and provide a written recommendation for award. This recommendation will consider the Project budget, the base bid prices, and the alternate prices.



# **Appendix B**

Compensation Worksheet for Final Design, Funding, and Bidding Services



**Construction Budget** **\$48,300,000**

**Design and Bidding Phase Services Fee Worksheet | La Crosse, Wisconsin**

Phases and Tasks	Project Management			QC	Process Engineering and Operations					Civil Engineering		Structural Engineering		Electrical Engineering		Controls Engineering		Mechanical Engineering		Support		Total Hours	Costs						
	Client Team Leader	Project Manager	Design Manager	Senior Reviewers	Lead Liquid	Lead Solids	Operations	Lead Energy	Support	Lead	Support	Lead	Support	Lead	Support	Lead	Support	Lead	Support	Funding	CAD Mgmt		Labor	Subs	Expenses	Grand Total			
	\$240	\$180	\$180	\$195	\$160	\$160	\$215	\$195	\$115	\$145	\$115	\$145	\$130	\$235	\$180	\$195	\$115	\$195	\$115	\$160	\$130								
<b>400 - Refined Layout and PIDs</b>	10	40		40																	40	130				\$22,600			\$22,600
1 Workshop - Preliminary Design Report (2 d)		20	20		20	20	20	20						10		10						140				\$26,100		\$2,000	\$28,100
2 Refine Equipment Selections			40		10	20	10	10	80					10		10						170				\$26,000			\$26,000
3 Refine and Advance Layout Drawings			40		20	30	15	20	80	40	100	100	200	20	100	10	50	10	50			885				\$127,425			\$127,425
4 Refine and Advance PIDs			10		20	20	40	20	80							30	300					520				\$70,250			\$70,250
5 Refine and Advance Operating Strategies			10		20	30	60	10	80							20			20			250				\$41,650			\$41,650
6 Refine and Advance Energy Balance/Strategy			10					50														60				\$11,550			\$11,550
7 Refine Cost Opinion			15		5	10		5	80	5	15	5	15	5	15	5	15	5	15			215				\$29,675			\$29,675
8 Informal Site Visits and On-Site Meetings (2)		10	10		10	10		10	20	5	5	5	5	5	5	5	5	5	5			120				\$18,900		\$1,000	\$19,900
9 Survey			5							10												15				\$2,350	\$30,000		\$32,350
10 Geotechnical Investigation and Report			5									10										15				\$2,350	\$40,000		\$42,350
<b>500 - Final Layout</b>	10	40		40																	40	130				\$22,600			\$22,600
1 Complete Manufacturer Preferences/Selections			40		10	30	10	10	100					10	40	10	40	10	40			350				\$51,850			\$51,850
2 Produce Final Layout Drawings and PIDs			40		20	30	80	20	200	40	160	80	200	20	200	40	160	15	150			1455				\$208,175			\$208,175
3 Produce Outline Specifications			20		10	15	10	10	200	5	20	5	20	5	20	5	20	5	20			390				\$52,375			\$52,375
4 Refine Cost Opinion			10		10	10		10	50	5	10	5	10	5	10	5	10	5	10			170			5	\$24,625			\$24,625
5 Perform Air Permit Evaluation																						0				\$0	\$7,500		\$7,500
6 Workshop - 60%-Complete Docs (2 d)		20	20		20	20	20	20		5	5	5	5	5	5	5	5	5	5			170				\$29,650		\$2,000	\$31,650
7 Incorporate Owner Revisions			10		5	5		5	40		10		10		10		10		10			115				\$15,525			\$15,525
8 Informal Site Visits and On-Site Meetings (2)		10	10		10	10		10	20	5	5	5	5	5	5	5	5	5	5			120				\$18,900		\$1,000	\$19,900
<b>600 - Construction Drawings</b>	10	160		200																	40	410				\$75,400			\$75,400
1 Produce Reviewable Bidding Documents		80	160		200	200		200	800	200	400	400	800	200	400	200	400	160	320			5120				\$747,200			\$747,200
2 Refine Cost Opinion			30		10	10		10	20	10	20	10	20	10	20	10	20	10	20			205				\$31,825			\$31,825
3 Submit Reviewable Bid Docs to WDNR			20																	60	20	100				\$15,800		\$500	\$16,300
4 Respond to WDNR Comments			40																			40				\$7,200			\$7,200
5 Workshop - WDNR Bid Docs (2 d)		20	20		20	20		20		5	5	5	10	5	10	5	10	5	10			170				\$28,050		\$2,500	\$30,550
6 Incorporate Owner Revisions			10		5	5		5	40		10		10		10		10		10			115				\$15,525			\$15,525
7 Informal Site Visits and On-Site Meetings (2)		10	10		10	10		10	20	5	5	5	5	5	5	5	5	5	5			120				\$18,900		\$1,000	\$19,900
8 Refine Cost Opinion			10		10	10		10	80	5	10	5	10	5	10	5	10	5	10	5		200			5	\$28,075			\$28,075
<b>700 - Review and Coordination</b>	10	120		480																	40	170				\$29,200			\$29,200
1 Perform Designer Review		20	40		40	40		40	160	20	40	40	80	40	240	100	240	20	80			1240				\$186,300			\$186,300
2 Perform Plans-in-Hand Review		10	10		10	10		10	20	10	10	10	10	10	10	10	10	10	10			150				\$23,350			\$23,350
3 Incorporate Designer Review Revisions			10		5	5		5	40		10		10		10		10		10			115				\$15,525			\$15,525
4 Workshop - 90%-Complete Docs (2 d)		20	20		20	20		20		5	5	5	10	5	10	5	10	5	10			170				\$28,050		\$3,000	\$31,050
5 Incorporate Owner Review Revisions			20		5	5		5	40		10		10		10		10		10			125				\$17,325			\$17,325
6 Perform Final QC Review			480		20	20	20	20	100	10	20	20	40	20	40	10	40	10	40			520			20	\$101,100			\$101,100
7 Incorporate Final QC Revisions			40		5	5		5	20	5	10	5	10	5	10	5	10	5	10			450				\$65,850			\$65,850
8 Refine Cost Opinion			20																			130				\$19,600			\$19,600
<b>800 - Project Bidding</b>	10	60		25																	95					\$18,075			\$18,075
Pre-Select/Negotiate Equipment			20			40																60				\$10,000			\$10,000
Conduct Pre-Bid Conference			20						10					15								45				\$8,275		\$250	\$8,525
Respond to Questions			30		5	5		5	10	5	10	5	10	5	10	5	10	5	10			130				\$20,250			\$20,250
Issue Addenda			30					40				10		10		10		10				130				\$17,850			\$17,850
Review Bids and Make Recommendation			10																			10				\$1,800		\$250	\$2,050
<b>Total Hours</b>	50	640	865	785	555	665	285	595	2,430	390	905	730	1,515	425	1,215	520	1,415	310	865	90	190	15,440							
<b>Labor Cost by Role</b>	\$12,000	\$115,200	\$155,700	\$153,075	\$88,800	\$106,400	\$61,275	\$116,025	\$279,450	\$56,550	\$104,075	\$105,850	\$196,950	\$99,875	\$218,700	\$101,400	\$162,725	\$60,450	\$99,475	\$14,400	\$24,700	\$2,333,075	\$77,500	\$13,500	\$2,424,075				

People	Project Management			QC	Process Engineering and Operations					Civil Engineering		Structural Engineering		Electrical Engineering		Controls Engineering		Mechanical Engineering		Support		Totals
	Gerbitz	Lynne	Lockett	Sr Engs	Raisbeck	Bergstrom	Marten	Wills	Jr Engs	Holzgart	Jr Engs	Reimes	Jr Engs	Stohl	Jr Engs	Goecks	Jr Engs	Wills	Larson	Wojtkiewicz	Bremer	
Phase 400 Hours	10	70	145	40	105	140	145	145	420	60	120	120	220	50	120	90	370	40	70	0	40	2,520
Phase 500 Hours	10	70	150	40	85	120	120	85	610	60	210	100	250	50	290	70	250	45	240	5	40	2,900
Phase 600 Hours	10	270	300	200	255	255	0	255	960	225	450	425	855	225	455	225	445	180	365	65	60	6,480
Phase 700 Hours	10	170	160	480	105	105	20	105	380	40	105	80	170	80	330	130	330	40	170	20	40	3,070
Phase 800 Hours	10	60	110	25	5	45	0	5	60	5	20	5	20	20	20	5	20	5	20	0	10	470
% of Total Hours	0.32%	4.15%	5.60%	5.08%	3.59%	4.31%	1.85%	3.85%	15.74%	2.53%	5.86%	4.73%	9.81%	2.75%	7.87%	3.37%	9.16%	2.01%	5.60%	0.58%	1.23%	100%
% of Total Labor Cost	0.51%	4.94%	6.67%	6.56%	3.81%	4.56%	2.63%	4.														