

City of La Crosse

# Request for Proposals

**For 733 Kane Street from Highly Qualified Developers Seeking  
Low Income Housing Tax Credits for 2017**



***Deadline: Friday, July 29<sup>th</sup>, 2016***

Contact: Caroline Gregerson, Community Development  
Administrator, [gregersonc@cityoflacrosse.org](mailto:gregersonc@cityoflacrosse.org)  
6/28/2016

**Table of Contents**

Section 1. Background Information ..... 2

    1.1 Vision and Overview ..... 2

    1.2 About the Site ..... 3

    1.3 Architectural Design Expectations..... 4

Section 2. Project Requirements and Preferences ..... 5

    2.1 Requirements ..... 5

    2.2 Preferences ..... 5

    2.3 Financing Terms ..... 5

Section 3. Submission of Application..... 6

    3.1 Schedule..... 6

    3.2 Inquiries and Response Submission..... 6

Section 4. How to Respond..... 7

Section 5 Evaluation of RFP ..... 8

    5.6 Evaluation Conditions..... 8

ATTACHMENT A. CONTRACT TERMS AND CONDITIONS ..... 9

## **Section 1. Background Information**

### **1.1 Vision and Overview**

The City of La Crosse's Planning and Development Department, under its Community Development Block Grant, is seeking proposals from affordable housing developers that will apply for 2017-2018 Low-Income Housing Tax Credits (LIHTC) for a development on a site owned by the City of La Crosse at 733 Kane Street.

The City is looking for a high quality, high-end new residential development with units that also would be affordable for a range of income levels and unit types. Mayor Tim Kabat has signed on to the national Mayoral challenge to end Veteran's homelessness and the City of La Crosse is also setting ambitious goals to end chronic homelessness. Therefore, City Planning and Development staff is also looking for the inclusion of some supportive housing units that can be made available to individuals who are experiencing homelessness.

The City seeks early coordination with developers to assemble a competitive application to WHEDA for a multi-family housing development. The City would make its land available to the project for \$1, and the City has also committed \$450,000 of its HUD Community Development Block Grant funding towards the development of this property. This will be funded in the form of a loan to the project. The City also encourages proposals that would propose to expand footprint of the site through acquisition of nearby properties.

The developer will have experience with a development that has units for Veterans who are homeless or chronically homeless individuals. The selected developer must establish a local partnership(s) for the case management and supportive services on the units set aside for homeless individuals. This local partnership(s) would provide low-barrier, wrap-around social services and/or mental health services for individuals living in the units. This entity(ies) will author a section of this RFP. The local partnership(s) will be a co-applicant on the RFP response. These partners might include the City of La Crosse Continuum of Care, Couleecap, the Tomah VA, the Veteran's Assistance Foundation. The referrals for the units must from a shared prioritization list of homeless individuals in La Crosse, established in the HMIS system.

Finally, the City is seeking a developer that will work with the Kane Street Community Garden (located north of the property at 833 Kane Street) to provide shared classroom space for the community garden and access to electricity. The community garden space is operated by the Hunger Task for and the developer may consider how to partner with them on the project.

Additionally, the developer will be expected to work under City-staff direction to explore options for project-basing existing Section 8 Vouchers or Veterans Affairs Supportive Housing (VASH) Vouchers, accepting portable Section 8 vouchers, or applying for new ones. The developer would also be expected to secure other sources of financing for the project, in addition to LIHTC and City funding. This should be demonstrated in the sources and uses budget. They would also try to secure financing from La Crosse philanthropists and foundations.

The developer would complete an application for WHEDA Low-Income Housing Tax Credits for the 2017 QAP. If the Developer fails to secure 9% LIHTC credits in 2017, the City expects the developer to have a plan for developing the site without use of the 9% tax credits.

## 1.2 About the Site

The site for this development is a 1.18 acre property (~51,000 square feet) at 733 Kane Street that has been un-developed for several years. This site was originally built up for the railroad, then dedicated as a city park but instead became a community garden, until the City swapped the land to the north with the Kane Street Garden for purposes of developing residential units on this property.

The land surrounding this parcel is in the flood plain and the property is out of the flood plain. The current Base Flood Elevation for the area is 645. There are four markers on the property to demonstrate the below information. The NW end of the property is currently at 646, the NE corner is at 645, the SW corner is at 647, the SE corner is at 646.4.

City ordinance (unless a variance is granted) requires that the first floor be built at 647. The grading around the building has to be around 646. The City of La Crosse would work with the selected developer and City Engineering (the City's Flood Plain Manager) for design, fill, and elevation options to again make the property blend in as much as possible with the surrounding properties. Budget should include funding for site work.

### 1.3 Architectural Design Expectations

The City of La Crosse met with the surrounding neighborhood on this project. They will be invited to all meetings regarding the selection of the developer for this project. The largest concern for the neighborhood was parking considerations (preference for garages or at a minimum off-street parking) and that the housing be as least dense as possible to blend in with the single-story and one-and-half story detached single family homes that surround it. The neighborhood strongly preferred a development limited to 2 – 2.5 stories in height. The evaluation committee will strongly prefer proposals that meet this requirement. The architectural concepts for the development must also blend in with the surrounding neighborhood and enhance the historical character of a largely single family neighborhood. There was a strong preference by the neighborhood that the development not actually “look like apartments” but rather like residential homes or townhomes.

Once a developer is selected, with architectural plans, the site will need to be re-zoned. The City of La Crosse Planning and Development Department will facilitate re-zoning for the property for higher density, multi-family design review, and coordination with area stakeholders

**The images below are examples of LIHTC developments in other cities that reflect some of the architectural enhancements the City is looking for. However, they are not examples of existing housing in the neighborhood. Existing housing in the neighborhood should be also taken into consideration.**



Madison, WI



New Berlin



Maine



Milwaukee Westlawn



Oshkosh

## **Section 2. Project Requirements and Preferences**

### **2.1 Requirements**

1. The proposed concept development in this Request for Proposals must enhance the historical character of the neighborhood.
2. The greater of 10-15 units or 35% of the units should be set aside for individuals making 30% of the County Median Income. These units should be reserved for individuals transitioning out of homeless. Units should be designated homeless individuals in one of these categories: Veterans, Chronically Homeless, or Homeless Families.
3. The remaining units in the development should be a mix of income ranges.
4. Local partnership with case management services provider on the 30% units.
5. Must work under City direction to secure additional financing for operating subsidies (Section 8 or VASH Vouchers), and to utilize the City's Continuum of Care's prioritization list for referrals for the units set aside for the homeless.
6. 30-year period of affordability will be placed on the units through a deed restriction.
7. The organization applying must have ownership interest in the development.

### **2.2 Preferences**

1. History of successful LIHTC application experience in Wisconsin.
2. Secure site control on properties that would expand the footprint of the site.
3. Market-rate units in the development.
4. Next door is the Kane Street Garden (<http://lacrossehtf.org/the-kane-street-community-garden/>). A preference for proposals that propose creative ideas for tying project into the nearby asset.
5. Creative design and supportive service ideas that would enhance the experience of the formerly homeless individuals living in the units.

### **2.3 Financing Terms**

- The City will make the land available for \$1 as part of the development agreement.
- The City will also make available \$450,000 of Community Development Block Grant or HOME funding. This funding shall be applied only to non-construction costs on the project. The City of La Crosse anticipates that \$250,000 will be an interest only loan, payable annually at 1% interest rate, with the principal deferred until the project is refinanced with a balloon payment on the principal made at that time. **This is debt that must have a priority payment and City will not accept loan terms that are cash flow loans.**
- The remaining \$200,000 will be a 0% interest loan, deferred until refinancing of the property, at which accrued equity will be paid off in a balloon payment, and then if loan is not repaid at that time, deferred until sale or transfer of property ownership.

### **Section 3. Submission of Application**

#### **3.1 Schedule**

<b>Activity</b>	<b>Date</b>
RFP Release	June 28, 2016
Q&A with potential applicants by conference call or in-person meeting	July 6, 2016
Deadline for Submission of RFP	Friday, July 29, MIDNIGHT
Notification of Short-Listed Applications	Monday, August 1 <sup>st</sup> 5pm
Presentation / interviews with select developers with CDBG Housing Developer Selection Committee.	<b>Wednesday, August 3rd at 4:30 PM</b>
Notifications sent out for selected developer	August 9 <sup>th</sup> (will confirm)

#### **3.2 Inquiries and Response Submission**

Responses shall be submitted in complete original form. The RFP shall be marked “Kane Street Garden Development”. Print and sign one original. The complete original application should be submitted in a binder/booklet with tabs delineating sections of the application. An electronic PDF file, should be submitted as well, this may sent by Drop Box, Google Drive, or email to [gregersonc@cityoflacrosse.org](mailto:gregersonc@cityoflacrosse.org).

Electronic copy of the RFQ must be e-mailed by **Friday, July 29<sup>th</sup>, 2016 by midnight.** The original copy must be postmarked on this date to:

Caroline Gregerson  
Planning Department- 3<sup>rd</sup> Floor  
400 La Crosse Street  
La Crosse WI 54601

All inquiries or questions should be submitted by e-mail up to July 24<sup>th</sup>. Responses to all questions will be posted online: <http://www.cityoflacrosse.org/Planning>, under Requests for Proposals.

## **Section 4. How to Respond**

To respond to this RFP, applicants should complete the 733 Kane Street Developer Application and the RFP Forms. This application will allow the developer to describe their proposed development concept and their experience. All materials are posted on the City website here: <http://www.cityoflacrosse.org/planning>, under proposals.

- a. For the application, complete the **WORD** document containing the Narrative Questions, divided into **SECTIONS**. (Example 3.1 Project Summary)
- b. The tabs in the **EXCEL DOCUMENT** that is divided into **Forms (Form 2, etc.)**.
- c. Add Attachments A-C in appropriate sections.

### **4.1 Project Summary**

### **4.2 Project Description**

1. Project Narrative- Describe how the proposed project meets the City's goals.
2. Design Quality and Compatibility
3. Excel Tab 2a- Units by Bedroom Count and Income Levels
4. Excel Tab 2b- Project Schedule
5. Excel Tab 2c- LIHTC self-score using the recently proposed new scoring for the 2017-2018 QAP, as detailed here <https://www.wheda.com/LIHTC/QAP/>.
6. Attachment A- Preliminary architectural drawings or concept picture and site plan

### **4.3. Development Budget**

1. Narrative of sources and uses budget.
2. Excel Tab 3- Proposed Development Sources and Uses Budget

### **4.4. Financing Sources**

1. Financing Narrative
2. Excel Tab 4- Financing Sources

### **4.5. Project Operations**

1. Operating Pro-Form Narrative
2. Case Management and Residential Support Services
3. Excel Tab 5a- Proposed Rents
4. Excel Tab 5b- Operating, Service, and Rent Subsidy Sources
5. Excel Tab 5C- Operating Pro Forma

### **4.6 Organizational Capacity**

1. Developer Experience Narrative
2. Excel Tab 6- Sponsor Experience
3. Attachment B- Up to four (4) photographs of similar projects carried out by developer.
4. Attachment C- Résumé for lead coordinator of project.

### **4.7 Certification**

## **Section 5 Evaluation of RFP**

### **5.1 Project Description and Technical Approach (10 points)**

Evaluation of organization's technical approach to the project, proposed architectural design quality, and how well the plan meets the City's goals and vision for the project. In addition, the City will look for a technical approach that is innovative, thoughtful, and stands out from other submitted proposals. Evaluation of whether or not applicant completed all required sections.

### **5.2 Financial Soundness and Ability to Leverage Other Funding for Project (10)**

Evaluation of the financial soundness of proposed funding plan and the capacity of the developer to successfully obtain LIHTC and other funding for the project, including operating subsidies for subsidized units. The City will also look at proposed budget utilizing other application, general standards, and previous projects to determine the financial soundness of the concept and the cost effectiveness of what is proposed.

### **5.3 Supportive Housing Services (5)**

- Quality of plan by local provider to provide supportive services intended for individuals who are formerly homeless.
- Quality of plan to maintain property and provide services over 30 year period.

### **5.4 Organizational Capacity (10)**

**10 points** - The City is seeking to invest in a developer that represents a sound long-term investment of scarce housing resources and has an ability to find creative financing. The developer should have a commitment to housing formerly homeless individuals and low-income families and to partnering with local organizations. In addition, the developer should be able to work closely with the neighborhood stakeholders to get buy-in for the project. The City will evaluate whether the developer has demonstrated experience to execute the project within budget, secure all the necessary funding, and operate the development over the long-term. The City will also evaluate developer's experience with Community Development Block Grant(CDBG) or HOME funding.

### **5.5 Anticipated LIHTC Score (5)**

**5 points** – Applicants shall self-score their application, according to the new proposed criteria published by WHEDA for the 2016-2017 Low Income Housing Tax Credits.

**Total: 40 POINTS**

### **5.6 Evaluation Conditions**

The City reserves the right to reject any or all proposals or parts of proposals and to negotiate modifications of proposals submitted. All proposals become property of the City of La Crosse once submitted. The City also reserves the right to completely reject evaluation of any application which is not completed.

## **ATTACHMENT A. CONTRACT TERMS AND CONDITIONS**

These are subject to modification at any time by the City of La Crosse and the final agreement with the City will include other provisions not in this agreement.

### **(1). Federal Community Development Block Grant/HOME Terms and Conditions**

The multi-family housing development that will be executed will be subject to the following terms and conditions and will be made part of the contract with the successful developer.

- 1. The federal HOME Investments Partnership program (HOME)** has new rules which the developer may be unfamiliar with. Among the changes are the following:
  - a. The City of La Crosse will be required to examine annually the financial condition of rental projects with at least ten HOME-assisted units.
  - b. New minimum property standard requirements and inspection requirements would be established. The City implements HUD's current property standards by utilizing State and local codes, ordinances, and requirements.
  - c. Projects not completed within four years from the date of project commitment would be considered terminated and the participating jurisdiction must repay HOME funds invested in the project.
  - d. Repayment of HOME funds are required for any HOME unit that is not rented to eligible tenants within 18 months of project completion.
  - e. HOME requires different minimum rents than LIHTC and developer will be expected to meet both requirements.
- 2. COMPETITIVE BIDDING:** Projects must comply with federal bidding procedures for CDBG and HOME Funds for the selection of a general contractor and/or the selection of sub-contractors. Developers are encouraged but not required to use open and competitive processes for the selection of consultants such as architects and engineers.
- 3. DEVELOPER CAPACITY:** Developers must demonstrate the following:
  - a) Professional development experience, reasonable financial strength, and the ability to undertake the proposed project;
  - b) The ability to obtain sufficient financing; and
  - c) Sufficient capability to manage the project successfully after completion or hire a professional management company with experience in managing affordable housing.
  - d) In all cases, architectural costs, legal fees and initial reserves are deducted from the total development cost as the total developer fee to make the calculation. The total fee includes: Developer fee, development consultant fees, processing agent costs, non-profit administrative costs, profit, overhead, and all deferred fees.
- 4. INTEREST RATE FOR PERMANENT FINANCING:** All projects will use a current market interest rate for purposes of estimating mortgage financing in their proposals.
- 5. PROJECT FINANCING AND TIMELY COMPLETION CONDITIONS**

Developers are required to submit a project schedule that outlines the milestone stages of the project, including the acquisition of site, securing the other project funding, closing date, relocation, demolition, construction start date, and construction completion date. Funds must be used in a timely manner. Projects unable to meet the timelines may lose their funding allocation.

## **6. CDBG**

Eligible activities include: acquisition of property, relocation, moderate or substantial rehabilitation of units, and other reasonable and necessary expense related to the development of affordable, non-luxury rental housing.

## **7. FAIR CONTRACTING, WMBE UTILIZATION, AND SECTION 3**

Borrowers must comply with the City's Fair Contracting Practices Ordinance. Borrowers and their general contractors shall be encouraged to take actions, consistent with that ordinance, which would increase opportunities for women and minority business enterprises (WMBEs).

In addition, projects that are awarded federal funds must comply with Section 3 of the Housing and Urban Development Act of 1968, which requires that all economic opportunities generated by HUD funding be directed, to the greatest extent feasible, to low-income persons residing in the community where the project is located. Borrowers and their contractors must complete a Section 3 plan stating numerical goals for contracting and hiring that meet federal targets as well as a description of the efforts they will make to achieve these goals

Both WMBE and Section 3 should be addressed in the section of the application where a bidding/contracting process is proposed. Once construction begins, Borrowers will be required to report regularly on progress toward meeting WMBE and Section 3 goals, if applicable.

## **OTHER HUD STANDARD CONTRACT TERMS AND CONDITIONS**

1. Title VI and Title IX of the Civil Rights Act of 1964 (Public Law 88-352)(42 U.S.C. 2008d et seq.); and implementing regulations issued at 24 CFR Part 1; as amended by Executive Order 11375 and 12086, and implementing regulations at 41 CFR Chapter 60, which prohibits discrimination in any activity receiving federal financial assistance.
2. Title VIII of the Civil Rights Act of 1968, (Public Law 90-284)(42 U.S.C. 3601 et seq.); as amended, which prohibits discrimination in housing on the grounds of race, color, religion, national origin, sex, disability, or familial status.
3. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301 et seq.) which requires that no person will on the grounds of race, color, national origin or sex, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity funded in whole or in part with Community Development Block Grant funds.

4. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) which prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.

5. Section 504 of the Rehabilitation Act of 1973, (Public Law 93-112) as amended, and implementing regulations when published for effect. Said regulation provides for nondiscrimination based on disability in federally-assisted programs and activities.

6. Fair Labor Standards Provisions, which govern responsibilities for workers employed in connection with federally-assisted construction projects. Statutory provisions include:

Davis-Bacon Act (40 U.S.C. 276a-276a-5) which contains minimum wages (basic rate of pay), fringe benefits, and wage withholding.

Contract Work Hours and Safety Standards Act (U.S.C. 327 et seq.), provides that work in excess of 40 hours per week will be compensated for at rates not less than one and one-half times the basic rate of pay.

Copeland Act (Anti-Kickback Act)(40 U.S.C. 276c), makes it an offense for any person to induce any person employed in the construction or repair of any public work financed in whole or in part with federal loans or grants to give up any part of the compensation to which he or she is entitled under the contract of employment.

Fair Labor Standards Act (29 U.S.C. 102 et seq.) provides for minimum wages for construction workers, overtime pay, record keeping, and child labor standards.

7. It is the owner's responsibility to make all prospective contractors he is accepting proposals from, for doing the construction work, aware of the minimum wages required for all laborers and mechanics working upon the job site. A copy of the applicable Federal Wage Decision and the Federal Labor Standards Provisions is to be obtained from the City included in all bidding documents.

8. National Flood Insurance Program requirements which mandate the acquisition of a flood insurance policy in the amount of the cost of the construction and/or acquisition for a period of five (5) years from the date of disbursement of funds when the Subrecipient facility is located in Zone A of the National Flood Insurance Program Flood Insurance Rate Map. Said policy will name the City of La Crosse as an insured, and evidence of such policy will be provided to the City of La Crosse. Said policy must be purchased before disbursement of funds, and the Subrecipient's obligation to provide flood insurance coverage will terminate after the five (5) years of coverage has concluded.

9. Federal Executive Order 11246, as amended by Executive Order 12086 and regulations at 41 CFR Chapter 60, which require nondiscrimination in employment for federally-assisted contracts and assures that contractors are fully informed of affirmative action requirements.

10. Section 3 of the Housing and Urban Development Act of 1968, as amended, which provides, to the extent feasible, opportunities for training, and employment will be given to lower-income residents for HUD-assisted project areas and that contracts for work in connection with such projects be awarded to business concerns which are located in or are owned in substantial part by project area residents.

11. Use of debarred, suspended, or ineligible contractors (24 CFR Part 24).

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

## **(2) CITY OF LA CROSSE STANDARD CONTRACT TERMS AND CONDITIONS**

Successful applicant will agree to abide by the City's Standard Contract Terms and Conditions.

1. **DEFINITIONS.** In this section "Contracting Party" shall mean any party that is entering into this Agreement with the City of La Crosse. "La Crosse" shall mean the City of La Crosse. These definitions shall apply only to this section titled "Standard Terms and Conditions" and shall not replace, modify or supersede any definitions used in other sections of this Agreement.
2. **STANDARD OF PERFORMANCE.** Contracting Party agrees that the performance of the services, pursuant to the terms and conditions of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services. Contracting Party agrees to abide by all applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.
3. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.
4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement, including without limitation materials, equipment, supplies, and incidentals. The scope of services to be performed shall include, without limitation, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.
5. **CHANGE OF SCOPE.** The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement, including, if applicable, information supplied by Contracting Party. Scope may not be fully definable during initial phases. As projects progress, facts discovered may indicate that the scope must be redefined. Parties shall provide a written amendment to this Agreement to recognize such change.
6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingences set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices must be itemized to include labor costs and the Contracting Party's direct

expenses, including subcontractor costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement.

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

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

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

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

11. **DELAYS.** If performance of La Crosse's obligations is delayed through no fault of La Crosse, La Crosse shall be entitled to an extension of time equal to the delay.

12. **OPINIONS OF COST.** Any opinion of costs prepared by La Crosse is supplied for general guidance of Contracting Party only. La Crosse cannot guarantee the accuracy of such opinions as compared to actual costs to Contracting Party.

13. **USE OF LA CROSSE PROPERTY.** Any property belonging to La Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement.

14. **INSURANCE.** Contracting Party shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

1) Commercial General Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage;

2) Automobile Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury and property damage covering all vehicles to be used in relationship to this Agreement;

3) Umbrella Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage in excess of coverage carried for commercial general liability and automobile liability;

4) Professional Liability Insurance of not less than \$1,000,000.00 per claim and annual aggregate; and

5) To the extent that Contracting Party employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Wisconsin statutory limits.

On the certificate of insurance, La Crosse shall be named as an additional insured on any General Liability Insurance, Automobile Insurance, and Umbrella Liability Insurance. The certificate must state the following: The City of La Crosse, its officers, agents, employees, and authorized volunteers shall be Additional Insured. Prior to execution of the Agreement, Contracting Party shall file with La Crosse, a certificate of insurance signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Contracting Party shall provide La Crosse with a thirty (30) day notice prior to termination or cancellation of the policy. La Crosse reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement.

15. **INDEMNIFICATION.** To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, La Crosse, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-

house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Contracting Party, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on La Crosse. Contracting Party's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as La Crosse waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

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

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

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

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

19. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a

trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

20. NOTIFICATION. Contracting Party shall:

(1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify La Crosse in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contracting Party with respect thereto.

(2) Promptly notify La Crosse of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contracting Party contained in this Agreement to be untrue.

(3) Notify La Crosse, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Contracting Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contracting Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contracting Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

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

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

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

24. SUBCONTRACTING. None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of La Crosse. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall

be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to La Crosse for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

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

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

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

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

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

29. **ENTIRE AND SUPERSEDING AGREEMENT.** This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between

the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed 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 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	Copy to:	Attn. City Attorney
	City of La Crosse		City of La Crosse
	400 La Crosse Street		400 La Crosse Street
	La Crosse, WI 54601		La Crosse, WI 54601

Contracting party shall identify in writing and provide to La Crosse the contact person and address for notices under this Agreement.

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

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

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

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

38. **NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.
39. **COMPLIANCE WITH LAW.** The parties shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.
40. **FORCE MAJEURE.** La Crosse shall not be responsible to Contracting Party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.
41. **GOOD STANDING.** Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.
42. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.
43. **EXECUTION OF AGREEMENT.** Contracting Party shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council, and Contracting Party's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.
44. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.
45. **SURVIVAL.** All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.