



**CITY OF ELKHORN  
COMMON COUNCIL MEETING AGENDA**

**September 3, 2019 5:30 p.m.**

**Council Chambers, City Hall, 9 S. Broad St., Elkhorn, Wisconsin**

- 1) **Call to Order**
- 2) **Pledge of Allegiance**
- 3) **Roll Call**
- 4) **Public Comment** *Although the public may speak on any item that is not included on this agenda as a "Public Hearing or Forum", the Council may not respond or discuss the issue brought forward at this time. In accordance with open meeting laws the Council must notice an item on the agenda to allow discussion on that matter. Your comments will be considered and may be placed on a future agenda for further discussion.*
- 5) **Consent Agenda** *(One motion & a second will approve all of the following items listed. Any item may be pulled from the list and handled separately.)*
  - a) Council Meeting Minutes: August 19, 2019
  - b) Committee Meeting Minutes: August 26, 2019: Public Safety and Committee of the Whole
- 6) **Report of City Officers**
  - a) Mayor
    - i) Appreciation Award Presented to Sam Tapson in Recognition of Years of Service
  - b) City Administrator
- 7) **Committee Reports**
  - a) Public Safety
    - i) Recommendation to draft updates to Ordinance Section 5.17 regarding open burning
- 8) **Unfinished Business**
  - a) Zoe Makhsous Appeal of Council Denial of Conditional Use Permit Extension
- 9) **New Business**
  - a) Resolution No. 19-10 Naming Ehlers as Pay Agent for the City of Elkhorn General Obligation & Revenue Bond Principal and Interest Payments
  - b) Ordinance 19-06 An Ordinance to Adopt Wisconsin Administrative Code SPS 316 and 324 related to Electrical Code
  - c) WE Energies Distribution Easement for Gas (YU SW00053G)
  - d) Agreement with Sand Creek Consultants for Seymour Court for Phase 1 Environmental Report
  - e) 2019 Pond Maintenance Change Order for Integrated Lakes Management
- 10) **Adjourn**

DATED at Elkhorn, Wisconsin, this 30<sup>th</sup> day of August 2019

Cairie L. Virrueta, City Clerk

Should you have any questions or comments regarding any items on this agenda, please contact the City Clerk's office at 723-2219. Upon reasonable notice to the City Clerk, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services.

---

**CITY OF ELKHORN COMMON COUNCIL  
MEETING MINUTES  
AUGUST 19, 2019  
COUNCIL CHAMBERS, 9 S. BROAD ST., ELKHORN, WI 53121**

**Mayor Reynolds called the Common Council meeting to order at 5:33 p.m. in the Council Chambers followed by the Pledge of Allegiance.**

**ROLL CALL**

Present: Mayor Howie Reynolds, Aldermen Tim Shiroda, Frank Boggs, Karel Young, Tom Myrin, Ron Dunwiddie, Scott McClory

Others present: City Administrator Sam Tapson, Attorney Dan O'Callaghan, Finance Director James Heilman, Deputy Clerk Lacey Reynolds, Police Chief Joel Christensen, Utility Director John Murphy, DPW Manager Matthew Lindstrom, Fire Chief Rod Smith, others with attendance list on file in the City Clerk's office

**PUBLIC COMMENT**

None.

**CONSENT AGENDA**

***Motion (Young/Dunwiddie) to approve the minutes of the August 5, 2019 Common Council meeting, August 5, 2019 Legislative & Regulatory meeting, August 12, 2019 Financial & Judicial meeting and Walworth County Ag Society Temporary Class "B" Beer license for Plaza de Mexico September 22, 2019 Noon-10pm. Voice vote, all approved, motion carried.***

**BILLS PAYABLE**

***Motion (Shiroda/Young) to approve the City and Utility Bills in the amount of \$2,884,891.89 (Checks 160054-160308). Roll call, all approved, motion carried.***

**REPORT OF CITY OFFICERS**

**MAYOR'S REPORT**

Oath of Office for Officer Emanuel Valadez

**CITY ADMINISTRATOR'S REPORT**

None.

**LIAISON COMMITTEE MEETING REPORTS**

**Fire Advisory Board** – met last month and went over ongoing issues/percentages, possible referendum.

**Library Board** – no report

**Recreation Advisory Board** – meeting on Wednesday August 21, 2019 at 5:30 pm. Last day for Sunset pool is Sunday August 25, 2019.

**Chamber** – no meeting last week due to the passing of Gary Wallem. The meeting is rescheduled for Tuesday August 20, 2019 in the morning.

**Fire & EMS Advisory Board** – Steering committee will meet Thursday August 22, 2019

**COMMITTEE REPORTS**

**LEGISLATIVE AND REGULATORY**

**Recommendation to approve Class "B" Fermented Malt Beverage/"Class C" Wine License for Brian Taylor dba Mama T's Italian Eatery, 781 E. Geneva St.**

***Motion (Young/Dunwiddie) to approve Class "B" Fermented Malt Beverage/"Class C" Wine License for Brian Taylor dba Mama T's Italian Eatery, 781 E. Geneva St. Voice vote, all approved, motion carried.***

**FINANCIAL AND JUDICIAL**

**Recommendation to renew engineering services contract with Kapur & Associates for two years.**

***Motion (McClory/Shiroda) to approve the renewal of engineering services with Kapur & Associates for two years at an increase of 3%. Roll call vote, all approved, motion carried.***

**Recommendation to provide police department exempt employees over-time benefits through April 1, 2020.**

***Motion (McClory/Shiroda) to approve a one-time exemption for exempt employees of the police department to receive over time benefits until April 1, 2020. Voice vote, all approved, motion carried.***

**Recommendation to renew the City's liability insurance with CVMIC and retain dividends.**

***Motion (McClory/Dunwiddie) to approve the renewal of the City's liability insurance with CVMIC at option 1, which is \$17,478 retained and carried forward. Voice vote, all approved, motion carried.***

### **UNFINISHED BUSINESS**

#### **Matheson Memorial Library Fencing Options**

DPW Manager Matthew Lindstrom went over the different options for the fence. Out of the three options the chain link fence with vinyl slats is the most rugged and cost effect option. ***Motion (McClory/Young) to approve a chain link fence at a cost not to exceed \$4,226.***

### **NEW BUSINESS**

#### **Community Development Block Grant Program to Close Repayment Agreement**

Finance Director James Heilman reported the funds the City has from the grant program with the State need to be returned. The program has been terminated at the federal level and an agreement needs to be signed by the City and State to begin the process of sending the funds back. ***Motion (Myrin/Young) to send the funds back and approve the agreement. Voice vote, all approved, motion carried.***

#### **Conditional Use Permit Application for New Beginnings Support Center at 20 N. Church Street**

Mayor Reynolds opened the floor for brief public comment pertaining to the New Beginnings Shelter.

Rita the director of people services and special education from EASD, Caitlin Buck & Bonnie Shor residents of Elkhorn spoke in support of the shelter. Heidi Lloyd Director of New Beginnings introduced Dennis Lynch from Burlington the attorney representing New Beginnings. Dennis reviewed the Plan Commission minutes and T1 zoning for the shelter. All plans were submitted per the request of the City and referenced the photo of the driveway, submitted last week. The building at 20 N Church has been vacant for 5 years with no reasonable offers and Aurora is willing to donate the building, as Aurora believes the New Beginnings shelter is the best use for the space. Lloyd said the safety and security plan has been created and updated, taking in to consideration concerns from the community. Attorney John Maier of Sweet and Maier located at 114 N Church St Elkhorn spoke in regards to the opposition of the New Beginnings shelter being located at 20 N Church St Elkhorn. He said the shelter does not fit the T1 comprehensive plan that is to allow for a mix of uses, which "respect the surrounding properties". Mayor Reynolds stated the council would need to make a motion; there are 1 of 3 options: Approve, Deny, Approve with conditions.

Alderman Shiroda shared his concerns about the new survey of the property arriving on Friday August 16, 2019. He has questions in regards to the easement, driveway, substandard access to the back parking lot and the parking spots. The measurements of a standard width of a driveway for a commercial business is 24 feet. He stated there is not enough space with the easement looking at the photo submitted by New Beginnings and there are not enough parking spaces. Alderman Myrin stated his disagreement with the zoning of the property and plan commission. The project is a shelter not a multi-family housing project. Architect for New Beginnings stated the survey and scale are correct. Architect for New Beginnings said their site plan is laid on top of the plat of survey and is being submitted tonight. One copy was passed around for the council to look over. Mayor Reynolds stated a decision based on facts needs to be made.

***Motion (Shiroda/Myrin) to deny the application for the New Beginnings conditional use permit due to***

*fact that the comprehensive plan does not fit. Roll call vote: Young, yes; Myrin, yes; Dunwiddie, yes; Shiroda, yes; McClory, no; Boggs, no. Motion to deny carried.*

**ADJOURN TO CLOSED SESSION**

*Motion (Boggs/Young) to adjourn to closed session pursuant to Wisconsin Statute 19.85(1)(e) "Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session." Voice vote, all approved, motion carried. Adjourned to closed session at 6:37 p.m. to discuss City Hall location options.*

**RECONVENE IN OPEN SESSION**

Reconvened in open session at 6:57 p.m.

Bill Henry went over with the Council the comparisons of the Sunset Park and Business Park sites. Both sites have great size and shape to allow for the opportunity of future city expansion. There are advantages and disadvantages for each site. Possibility of soil testing at both sites and a vapor mitigation system will need to be installed at the Sunset Park site. The budget for both sites are comparable and both sites are currently owned by the City. *Motion (Myrin/Dunwiddie) to approve the environmental testing for both the Sunset Park and Business Park sites. Voice vote, all approved, motion carried.*

**ADJOURN**

*Motion (Boggs/McClory) to adjourn at 7:40 p.m. Voice vote, all approved, motion carried.*

Lacey Reynolds  
Deputy Clerk

**CITY OF ELKHORN**  
**Committee of the Whole Minutes**  
**Common Council Chambers, 9 S. Broad Street, Elkhorn, Wisconsin**

DATE, 2019

The Committee of the Whole meeting was called to order by Mayor Reynolds at 5:30 p.m.

**Roll Call**

Present: Mayor Howie Reynolds, Aldermen Frank Boggs, Ron Dunwiddie, Karel Young, Scott McClory, Tom Myrin, Tim Shiroda

Others present: Administrator Tapson, Finance Director James Heilman, City Clerk Cairie Virrueta, Fire Chief Rod Smith, Library Director Lisa Selje, Police Chief Joel Christensen, Recreation Director Karl Sorvick, DPW Manager Matthew Lindstrom, Kellen Olshefski, Bill Henry

**Great Lakes Components Request for Easement**

Administrator Tapson said Scott Dahlberg needs to run a new gas service and there are conflicts on his property with underground utilities. He pointed out the easement is actually granted to WE Energies and they have already prepared the paperwork. Once the City gets closure on the land, Great Lakes Components will own it. ***Motion (Shiroda/Dunwiddie) to grant the easement to WE Energies for Great Lakes Components gas line. Voice vote, all approved, motion carried.***

**Sunset Park Storm Water Evaluation for Proposed Location of City Hall**

City Engineer Calhoun looked at the proposed plans and said storm water management would be needed on 10% of site. Mayor Reynolds asked if there was room; Bill Henry said there was but it would be kicking the can down the road for any additions or expansion. He said the space would be tight. Alderman McClory said the City should give more consideration to the commercial park site as it could be made into a municipal campus with City Hall as the anchor. City Engineer Calhoun said the Sunset site would be difficult to keep the retention pond in one area and it would need two or more spots. Administrator Tapson suggested doing the environmental evaluation at Sunset for future construction on the site for a senior center. Mayor Reynolds said the City might have access to free funds to build the senior center from the State. Finance Director Heilman said the City needs to apply for the funds by January 2021 and the funds could also be used to tear down the former DPW building.

**Environmental Services Agreement with Sand Creek Consultants for Sunset Park and Elkhorn Industrial Site**

Finance Director Heilman said an assessment might not be needed for the commercial site as it was farmland and there will be a Geotech firm doing borings prior to construction. Henry said there is not anything suspect with the fill at the site and the he would have the Geotech firm target the fill area to get recommendations. Administrator Tapson said if the City ends up selling the property it would be worthwhile to do a Phase 1 review of the property record. Mayor Reynolds suggested not doing the environmental review at Sunset Park since it was no longer a consideration for City Hall. Administrator Tapson said the review of the Commerce Court site would cost around \$2,000. Alderman Boggs asked if Lakeland Little Leaguers could be contacted regarding what they encountered on the site for their construction. ***Motion (McClory/Young) to do a record review of the Commerce Court site or staff receives sufficient documentation of that satisfies the property's condition. Voice vote, all approved, motion carried.*** Administrator Tapson said he will bring Phase 1 pricing to the next meeting.

**Adjourn**

***Motion (Boggs/Young) to adjourn. Voice vote, all approved, motion carried.*** Adjourned at 5:44 p.m.

Cairie L. Virrueta  
City Clerk

**CITY OF ELKHORN**  
**Public Safety Committee Minutes**  
**First Floor Conference Room, City Hall, 9 S. Broad St., Elkhorn, Wisconsin**

August 26, 2019

Public Safety Committee was called to order at 5:00 p.m. by Alderman Dunwiddie followed by roll call.

**Roll Call**

Present: Aldermen Ron Dunwiddie, Karel Young, Frank Boggs

Also Present: City Administrator Sam Tapson, Finance Director James Heilman, City Clerk Cairie Virrueta, Fire Chief Rod Smith, Police Chief Joel Christensen, Jeff Rakovich, Kellen Olshefski

**Open Burning Ordinance – Modifications to Code Section 5.17**

Administrator Tapson said policy issues need to be considered before rewriting the ordinance. He said given current setback requirements, the spring and fall leaf curbside collection, and leaf and brush drop-off hours, should open burning even be allowed? Residents can also request a special pick-up and the City has extended the pick-up schedule. Alderman Dunwiddie felt there was no need for open burning and supported eliminating it. He said the smoke is not good for health issues or being a good neighbor. Alderman Young agreed and felt fire pits were OK. Alderman Boggs said while his neighborhood has many residents who burn their leaves, he also has many who spend time raking to the curb, and he supported eliminating leaf burning. He asked if the drop-off location at DPW could be open 24 hours. Administrator Tapson said it was done in the past and became a place to drop off appliances and other garbage. He said the new DPW will have cameras and it may be a consideration there. Fire Chief Smith said he agreed there was no need for open burning, but the PD would have more work enforcing it as many residents do it. Alderman Boggs asked what should be done about burn pits. The committee agreed that campfires should be allowed. Fire Chief Smith said a permit is required for them, which regulates when they can be operated. The committee discussed if propane or LP fires should allowed and felt they should be. They agreed to eliminate all seasonal burning and continue allowing campfires. Police Chief Christensen pointed out that outdoor wood furnaces are not addressed in the ordinance and they produce a lot of heat and smoke. Fire Chief Smith recommended not allowing them. ***Motion (Boggs/Young) to draft ordinance with changes and forward to the Common Council. Voice vote, all approved, motion carried.***

**Adjournment**

***Motion (Boggs/Young) to adjourn at 5:25 p.m. Voice vote, all approved, motion carried.***

Cairie L. Virrueta  
City Clerk

## **COMMON COUNCIL MEMO**

**Meeting Date: September 3, 2019**

**Agenda Item: Paying Agent, Ehlers**

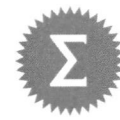
**Report Prepared By: Finance Director/Comptroller**

The Resolution that Ehlers was sending for the Paying Agent, was inadvertently not submitted on time for this packet. It will be available for the Tuesday meeting.

The enclosed sheet under II, shows the cost and services that Ehlers will provide in relation to the City of Elkhorn debt service payments.

Presently, other than the 2018 bonds, the City submits debt payments directly to the Bond Clearing house. Pending procedural changes are going to make bond payments tougher to administer and any mistakes that cause payments to miss the due dates can eventually affect our bond rating.

Ehlers is the Paying Agent for the City's 2018 bonds and we are looking to add them as Paying Agent for our other 7 bond and note issues.



**REGISTRAR AND PAYING AGENT FEE SCHEDULE FOR  
BOOK-ENTRY ONLY TRANSACTION**

**I. Initial Fee: \$450.00**

The initial fee payable at closing covers:

- 1) Review of final bond documents;
- 2) Communication with Financial Advisor and Bond Counsel;
- 3) Coordination of delivery of Bond(s) for closing; and
- 4) Set up of necessary accounts and records.

**II. Annual Administration Fee: \$400.00**

The annual fee, payable in advance, covers:

- 1) Invoicing and collection of scheduled debt service payments;
- 2) Documentation and wiring of scheduled debt service payments;
- 3) Handling all correspondence and communications with The Depository Trust Company;
- 4) Maintenance of Issuer's account;
- 5) Destruction of Bond(s); and
- 6) Processing of optional redemption notices.
- 7) Processing of mandatory sinking fund notices.

**III. Additional Services:**

- 1) Processing of Mandatory Sinking Fund Notices - \$100 per notice

Fees for services other than those listed above not contemplated at the time of issuance will be charged based on the type of service performed, expenses incurred, time involved, and responsibility assumed.

*The above fees may be subject to periodic review and/or adjustment.*



**CITY OF ELKHORN  
ORDINANCE NO. 19-06**

**An Ordinance Adopting Wisconsin Administrative Code Chapters SPS 316 and SPS 324**

The Common Council of the City of Elkhorn, Wisconsin, does hereby ordain as follows:

**ARTICLE B.** Section 16.02 of the Electrical Code of the City of Elkhorn is hereby amended as follows:

**16.02 – Adoption of the Wisconsin State Electrical Code**

The Wisconsin Administrative Code ~~Chapters ILHR 16 and 17~~ **Chapter SPS 316 and 324** and all amendments thereto are hereby adopted by reference and made a part hereof. The City of Elkhorn hereby takes the responsibilities of electrical inspection of all ~~public city buildings and places of employment, pursuant to ILHR 17, subchapter II.~~ **public city buildings.** The City shall employ a State certified Commercial Electrical Inspector. Except as otherwise regulated by this chapter, all installations of electrical equipment shall conform to and comply with the **National and** State Electrical Code, the Statutes of the State, and any orders, rules or regulations issued by authority thereof, and with approved electrical standards for safety to persons and property.

This Ordinance shall be in force from and after its introduction and publication as provided by Statutes.

APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Howard Reynolds, Mayor

ATTEST:

\_\_\_\_\_  
Cairie Virrueta, City Clerk

1st Reading \_\_\_\_\_  
2nd Reading \_\_\_\_\_  
Adopted \_\_\_\_\_  
Published \_\_\_\_\_

**DISTRIBUTION EASEMENT  
GAS**

Document Number

WR NO. **4419946**

IO NO.

**MES17207500**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **CITY OF ELKHORN**, hereinafter referred to as "Grantor", owner of land, hereby grants and warrants to **WISCONSIN ELECTRIC POWER COMPANY, a Wisconsin corporation doing business as We Energies**, hereinafter referred to as "Grantee", a permanent easement upon, within, beneath, over and across a part of Grantor's land hereinafter referred to as "easement area".

The easement area is described as strips of land 12 feet in width being a part of the Grantor's premises located in the **Northeast 1/4 of Section 1, Township 2 North, Range 16 East**, City of Elkhorn, Walworth County, Wisconsin.

The location of the easement area with respect to Grantor's land is as shown on the attached drawing, marked Exhibit "A", and made a part of this document.

RETURN TO:  
We Energies  
PROPERTY RIGHTS & INFORMATION GROUP  
231 W. MICHIGAN STREET, ROOM P129  
PO BOX 2046  
MILWAUKEE, WI 53201-2046

YU SW00053G  
(Parcel Identification Number)

- 1. Purpose:** The purpose of this easement is to construct, install, operate, maintain repair, replace and extend underground utility facilities, pipeline or pipelines with valves, tie ins, main laterals and service laterals, together with all necessary and appurtenant equipment under and above ground, including cathodic protection apparatus used for corrosion control, as deemed necessary by Grantee, for the transmission and distribution of natural gas and all by-products thereof, or any liquids, gases, or substances which can or may be transported or distributed through a pipeline, including the customary growth and replacement thereof. Trees, bushes, branches and roots may be trimmed or removed so as not to interfere with Grantee's use of the easement area.
- 2. Access:** Grantee or its agents shall have the right to enter and use Grantor's land with full right of ingress and egress over and across the easement area and adjacent lands of Grantor for the purpose of exercising its rights in the easement area.
- 3. Buildings or Other Structures:** Grantor agrees that no structures will be erected in the easement area or in such close proximity to Grantee's facilities as to create a violation of all applicable State of Wisconsin gas codes or any amendments thereto.
- 4. Elevation:** Grantor agrees that the elevation of the ground surface existing as of the date of the initial installation of Grantee's facilities within the easement area will not be altered by more than 4 inches without the written consent of Grantee.
- 5. Restoration:** Grantee agrees to restore or cause to have restored Grantor's land, as nearly as is reasonably possible, to the condition existing prior to such entry by Grantee or its agents. This restoration, however, does not apply to the initial installation of said facilities or to any trees, bushes, branches or roots which may interfere with Grantee's use of the easement area.
- 6. Exercise of Rights:** It is agreed that the complete exercise of the rights herein conveyed may be gradual and not fully exercised until sometime in the future, and that none of the rights herein granted shall be lost by non-use.
- 7. Binding on Future Parties:** This grant of easement shall be binding upon and inure to the benefit of the heirs, successors and assigns of all parties hereto.
- 8. Easement Review:** Grantor acknowledges receipt of materials which describe Grantor's rights and options in the easement negotiation process and furthermore acknowledges that Grantor has had at least 5 days to review this easement document or voluntarily waives the five day review period.

**Grantor:**

**CITY OF ELKHORN**

By \_\_\_\_\_

(Print name and title): \_\_\_\_\_

By \_\_\_\_\_

(Print name and title): \_\_\_\_\_

Personally came before me in \_\_\_\_\_ County, Wisconsin on \_\_\_\_\_, 2019,  
the above named \_\_\_\_\_, the \_\_\_\_\_  
and \_\_\_\_\_, the \_\_\_\_\_  
of the **CITY OF ELKHORN**.

\_\_\_\_\_  
Notary Public Signature, State of Wisconsin

\_\_\_\_\_  
Notary Public Name (Typed or Printed)

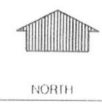
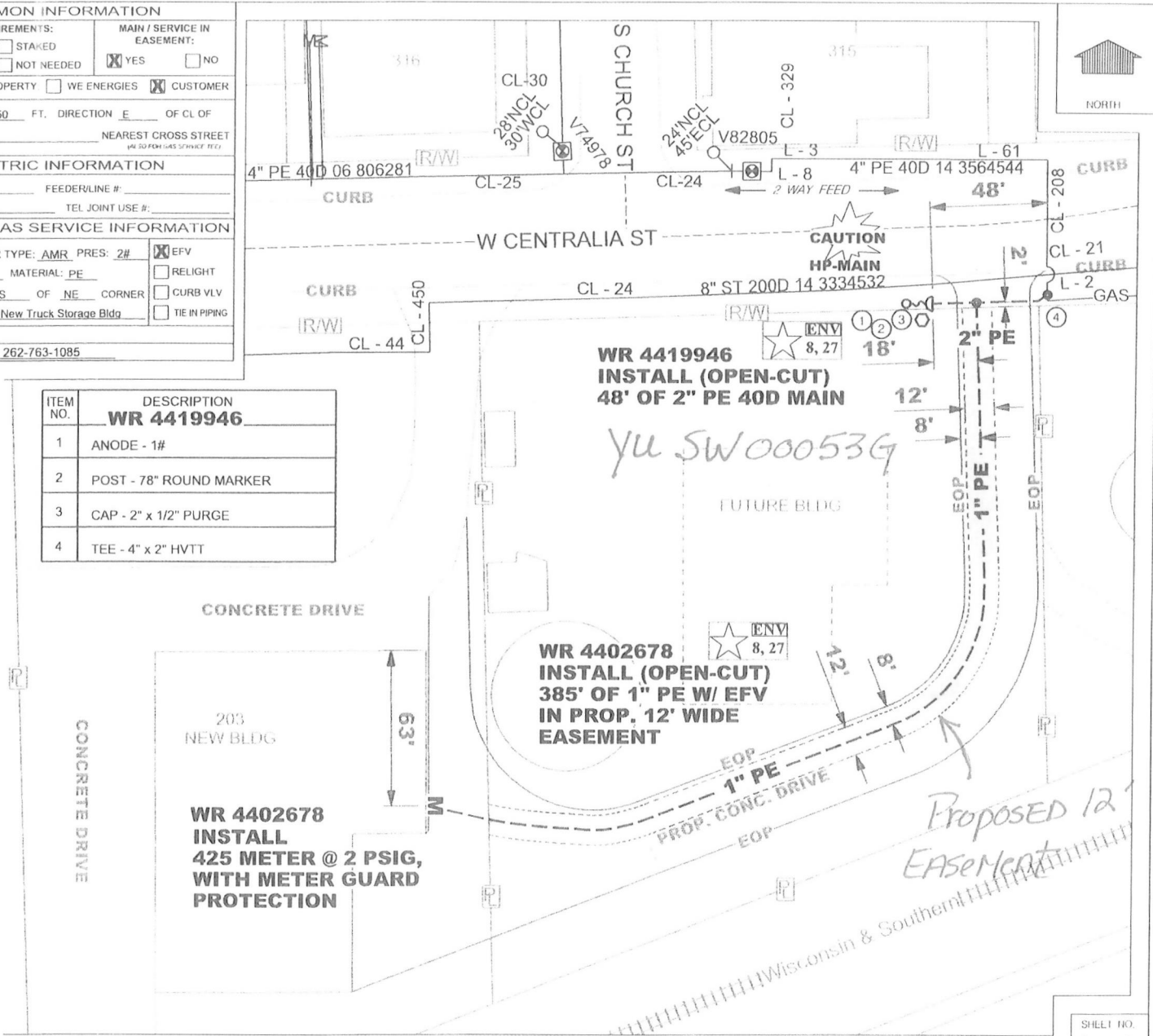
(NOTARY STAMP/SEAL)

My commission expires \_\_\_\_\_

# TEMPORARY Exhibit "A"

	GAS WR (MAIN) <b>BU 4419946</b>	<b>COMMON INFORMATION</b>	
	GAS WR (SERVICE) <b>BU 4402678</b>	<b>STAKING REQUIREMENTS:</b> <input checked="" type="checkbox"/> SURVEYOR <input type="checkbox"/> STAKED <input type="checkbox"/> DESIGNER <input type="checkbox"/> NOT NEEDED	<b>MAIN / SERVICE IN EASEMENT:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
CITY / TOWN / VILLAGE: <u>C/ ELKHORN</u>		RESTORE PRIVATE PROPERTY: <input type="checkbox"/> WE ENERGIES <input checked="" type="checkbox"/> CUSTOMER	
CUST/PROJ NAME: <u>GREAT LAKES COMPONENTS</u>		WORK IS APPROX <u>150</u> FT. DIRECTION <u>E</u> OF CL OF	
PROJECT LOCATION: <u>203 W CENTRALIA ST</u>		<u>S CHURCH ST</u> NEAREST CROSS STREET	
WORK DESCRIPTION: <u>EXTEND GAS MAIN &amp; INSTALL NEW GAS SERVICE</u>			
PREPARED BY: <u>TRAVIS LARSON</u>		<b>ELECTRIC INFORMATION</b>	
E-MAIL: <u>TRAVIS.LARSON@WE-ENERGIES.COM</u>		OPER MAP #: _____ FEEDERLINE #: _____	
OFFICE # <u>262-763-1088</u> CELL #: _____ (MAIN) (SERVICE)		CATV JOINT USE #: _____ TEL JOINT USE #: _____	
PAGER # _____ IO # <u>MES17207500, SN172500</u>		<b>PROPOSED GAS SERVICE INFORMATION</b>	
PROJECT ID: _____ CGS # _____		MTR SIZE: <u>425</u> MTR TYPE: <u>AMR, PRES: 2#</u> <input checked="" type="checkbox"/> EFV	
DATE PREPARED: <u>8-5-19</u> DATE REVISED: _____		SERV PIPE SIZE: <u>1"</u> MATERIAL: <u>PE</u> <input type="checkbox"/> RELIGHT	
RAILROAD PERMITTING/FLAGGING REQUIRED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		MTR LOC: <u>63</u> FT. <u>S</u> OF <u>NE</u> CORNER <input type="checkbox"/> CURB VLV	
CORROSION CONTACT: <u>MARK SCERBA</u>		CONSTRUCTION TYPE: <u>New Truck Storage Bldg</u> <input type="checkbox"/> TIE IN PIPING	
RR NAME _____		PHONE #: <u>262-763-1085</u>	

ITEM NO.	DESCRIPTION
	<b>WR 4419946</b>
1	ANODE - 1#
2	POST - 78" ROUND MARKER
3	CAP - 2" x 1/2" PURGE
4	TEE - 4" x 2" HVTT





## PROFESSIONAL SERVICES AGREEMENT

August 29, 2019

**Sand Creek Consultants, Inc.**

151 Mill Street, P.O. Box 218  
Amherst, WI 54406  
Phone: 715.824.5169  
President: Mark Dawson

**Client:** City of Elkhorn  
PO Box 920  
9 South Broad Street  
Elkhorn, WI 53121  
Phone: 262.723.2219  
Representative: Mr. James Heilman/Finance Director

**Project:** Phase I Environmental Assessment for Potential New City Hall in the Business Park

**Project Location:** Part of Parcel YV SE 00024  
City of Elkhorn Business Park  
Elkhorn, Wisconsin

Sand Creek Consultants, Inc. ("Sand Creek") and the above named client ("Client") do hereby enter into this Professional Services Agreement (this "Agreement") as of the date stated below, for the performance of the Services described herein at the project identified above (the "Project Location"). The following documents are attached and made a part of this Agreement.

**Attachment A:** Proposal dated August 29, 2019, to City of Elkhorn, Mr. Jim Heilman, from Mr. Ken Ebbott/Sand Creek Consultants, Inc.,  
Re: Phase I Environmental Site Assessment, Business Park Lot for Potential Future City Hall, Subject: Proposal for Phase I Environmental Site Assessment

Sand Creek will perform the Project for a lump sum fee of \$2,500. Sand Creek warrants to the Client that total costs of the Project, identified in the above-referenced letter dated August, 29, 2019, will not exceed the costs presented therein without approval by Client.

If Client requests a reliance letter, one can be provided at a cost of \$250 each.

The undersigned have agreed to the terms and conditions of this Agreement as defined below (Sections 1 through 12g) and as of the date stated below.

**SAND CREEK CONSULTANTS, INC.**

By:   
Mark Dawson – President

**CITY OF ELKHORN**

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Date: \_\_\_\_\_

Client and Sand Creek do hereby covenant and agree to the following terms and conditions:

- 1. Description of Services.** Sand Creek agrees to perform the services for and on behalf of Client described in one or more proposals or statements of work agreed to by Sand Creek and Client (the “Services”), which are attached hereto or that otherwise reference this Agreement (collectively the “Proposal” whether one or more). Subject to the terms and conditions of this Agreement, Sand Creek shall control the means of performing the Services rendered hereunder. Sand Creek shall comply with all applicable laws, ordinances, codes and regulations applicable to the Services (collectively the “Regulations”). Notwithstanding the foregoing, the parties acknowledge and agree that the interpretation of the Regulations by any public authority may differ from the interpretation of Sand Creek and as a result, Sand Creek shall not be responsible for any interpretations of the Regulations that are more restrictive or exceed common application of such Regulations. Sand Creek may, at its discretion, engage subcontractors and/or consultants to perform all or any part of the Services. Sand Creek and Client may, by written amendment to this Agreement, make changes to the Services. In addition to the foregoing, Sand Creek may rely on verbal field orders provided by Client’s authorized representative described in Section 3 below. All Services performed pursuant to either an oral field order or written amendment to this Agreement shall be executed under the terms and conditions of this Agreement. If any oral field order or written amendment to this Agreement causes an increase or decrease in the compensation to be paid by Client to Sand Creek or an extension or shortening of the estimated completion date of the Services, then an equitable adjustment will be made.
- 2. Compensation and Payment.** As consideration for Sand Creek’s performance of the Services, Client shall compensate Sand Creek as described in the Proposal. In the event additional services are requested by the Client, Sand Creek will perform such Services on a time-and-materials basis based on Sand Creek’s then current rates. Client shall further reimburse Sand Creek for all disbursements made by Sand Creek in association with the performance of the Services. Client shall pay all amounts due Sand Creek hereunder within thirty (30) days following Client’s receipt of an invoice from Sand Creek. Any amounts due that remain unpaid shall bear interest at a rate of 18% per year, provided such interest shall not exceed the maximum rate permitted by law.
- 3. Client Responsibilities.** Client shall make available to Sand Creek all relevant information or data pertinent to the Project and Services to be performed by Sand Creek. Sand Creek shall be entitled to rely upon the accuracy and completeness of all information and data furnished by Client, including information and data originating with other consultants employed by Client. Client shall designate a person authorized to act as Client’s representative with respect to the Services to be performed hereunder. Client or Client’s representative shall receive and examine documents submitted by Sand Creek and shall be empowered to interpret and define Client’s policies and render decisions and authorizations orally and in writing promptly to prevent unreasonable delay in the performance of the Services. Whenever applicable, Client shall arrange and make provision for Sand Creek’s entry to the Project site as well as other public and private property as necessary for Sand Creek to perform the Services. Client shall obtain any required approvals, licenses, and permits from governmental or other authorities having jurisdiction over the Project so as not to delay the performance of the Services.
- 4. Sand Creek Responsibilities.** Sand Creek shall furnish the necessary qualified personnel to perform the Services with reasonable skill and diligence in a manner consistent with that level of care and skill ordinarily exercised under similar circumstances by other professional consultants practicing in similar locations. No other representations or warranties, express or implied, are given and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, professional advice or otherwise. Sand Creek does not warrant the Services to any third party and shall not be liable for any third party’s unauthorized use or reliance on the Services.
- 5. Suspension of Services.** In the event Client provides Sand Creek with written notice to suspend the Services, or the Project is suspended, and such suspension continues for more than thirty (30) days in the aggregate,

Client shall compensate Sand Creek for the Services performed prior to the date Sand Creek receives notice of such suspension. Upon resumption of the Services, Sand Creek shall be entitled to an equitable adjustment to its fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment to estimated completion date of the Services as a result of such suspension. In the event the Services are suspended for more than ninety (90) days in the aggregate, Sand Creek may, at its option, terminate this Agreement immediately upon written notice to Client.

- 6. Term and Termination.** The term of this Agreement shall commence on the date stated above and shall continue until all of the Services described in the Proposal have been completed by Sand Creek and payment has been made by Client, unless terminated earlier as provided herein. Either party may voluntarily terminate this Agreement at any time by providing the other party with fifteen (15) days prior written notice. In addition to the foregoing, in the event either party materially breaches this Agreement and such breach continues for a period of seven (7) days following receipt of written notice from the other party, then the non-breaching party may terminate this Agreement immediately and without further notice. In the event of a termination of this Agreement, Client shall pay Sand Creek for all Services performed in accordance with this Agreement.
- 7. Project Site and Hazardous Substances.** Sand Creek shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities, but shall not be responsible for any damage to such structures or utilities if they were not called to Sand Creek's attention and correctly identified in the information to be provided by Owner as described in Section 3 above. Sand Creek does not assume control of or responsibility for the Project site, the safety of anyone other than its employees at the Project site, or undertake responsibility for reporting to any federal, state, or local public agencies any conditions at the Project site that may present a potential danger to public health, safety, or the environment. Client does hereby agree to assume such control or responsibility, and further agrees to notify the appropriate federal, state, or local public agencies as required by law. Except as specifically described in this Agreement, Sand Creek's field investigation, laboratory testing, and engineering recommendations will not address or evaluate pollution of soil or pollution of groundwater. Except to the extent cause by the negligence or willful misconduct of Sand Creek, Client shall indemnify and hold Sand Creek harmless from and against all claims, costs, liabilities, or damages whatsoever arising from any stormwater pollution, erosion, sedimentation, or discharge of silt or other deleterious substances into any waterway, wetland, or woodland and any resulting charges, fines, legal action, cleanup, or related costs.
- 8. Test Samples.** If the Services include obtaining samples or specimens for testing (collectively "Samples"), actions that may result in the production of investigative waste (Waste), such Samples and Waste shall remain the sole and exclusive property of Client. Samples are generally consumed or substantially altered during the conduct of tests and Sand Creek may, in its sole discretion, dispose of any remaining Samples or residue thereof immediately upon completion of the tests. Waste shall be, unless requested otherwise by Client, managed according to regulatory requirements for such Waste. Client shall be solely responsible for all costs and fees associated with the handling, storage, transport and disposal of any Waste.
- 9. Insurance.** Sand Creek shall maintain worker's compensation and employer's liability insurance as required by law. Sand Creek shall further maintain the insurance coverages identified in the Proposal and agrees to provide Client with evidence of such coverages upon execution of contract. Such coverages shall be maintained by Sand Creek during the duration of its performance of the Services and may not be cancelled without thirty (30) days prior written notice to Client. Client and Sand Creek waive all rights against each other for damages caused by fire or other perils to the extent reimbursed by any builder's risk or any other insurance, except such rights as they may have to the proceeds of such insurance.

**10. Indemnification and Limitation of Liability.**

- (a) Sand Creek shall indemnify and hold Client harmless from and against all claims, losses, damages, costs (including reasonable attorneys' fees), actions and other proceedings made, sustained, brought, or prosecuted in any manner based upon, occasioned by, or attributable to any injury, default, or damage arising from, and to the extent caused by, any negligent act, error, omission, or willful misconduct of Sand Creek, its employees, agents, or persons for whom it has assumed responsibility in the performance of the Services described herein. The foregoing indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Sand Creek under Worker's Compensation Act, disability benefits, or other employee benefit acts.
- (b) Client shall indemnify and hold Sand Creek harmless from and against all claims, losses, damages, costs (including reasonable attorneys' fees), actions and other proceedings made, sustained, brought, or prosecuted in any manner based upon, occasioned by, or attributable to any injury, default, or damage arising from, and to the extent caused by, any negligent act, error, omission, or willful misconduct of Client, its employees, agents, or persons for whom it has assumed responsibility. The foregoing indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Client under Worker's Compensation Act, disability benefits, or other employee benefit acts.
- (c) Notwithstanding the foregoing and except as otherwise expressly stated in Section 10(a) and 10(b) above, the liability of either party to the other party for any claim whatsoever related to this Agreement, including any cause of action arising in contract, tort, or strict liability, shall not exceed the total amount of insurance coverage available at the time of settlement or judgment. IN NO EVENT WILL EITHER BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE SERVICES DESCRIBED HEREIN OR THE PROJECT EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11. Instruments of Service.** All reports, surveys, data, and other documents delivered to Client by Sand Creek pursuant to the terms of this Agreement shall be deemed instruments of service of Sand Creek for use solely with respect to the Project (the "Instruments of Service"). Sand Creek shall be deemed the author and owner of the Instruments of Service and shall retain all common law, statutory, and other reserved rights, including copyrights. Upon completion of the Services and payment by Client to Sand Creek for said Services, Sand Creek grants to Client a limited nonexclusive and nontransferable license to use and reproduce the Instruments of Service solely in relation to the Project. Any termination of this Agreement prior to completion of the Services shall terminate this license immediately and without notice. Except for the foregoing, no other license or right shall be deemed granted or implied under this Agreement. Client shall not modify, sell, assign, delegate, sublicense, pledge, or otherwise transfer the limited license granted herein, without Sand Creek's express written consent. Any unauthorized use of the Instruments of Service shall be Client's sole risk and without liability to Sand Creek. Sand Creek further does not guarantee the authenticity, integrity, or completeness of data files supplied in electronic format that do not contain stamps or seals and Sand Creek shall not be liable for any claims or damages arising from the use of any such electronic files, which shall remain the sole and exclusive property of Sand Creek.

**12. Interpretation and Construction.**

- (a) All Services performed by Sand Creek under the terms of this Agreement shall be as an independent contractor of Client and not as an employee. The parties agree to report and file their tax returns in a manner consistent with this independent contractor relationship. Nothing in this Agreement or otherwise shall be construed as constituting an appointment of Sand Creek as agent, legal representative, joint venture, partner, or employee of Client for any purpose whatsoever. Neither party is authorized to



transact business, incur obligations, or assign or create any obligation of any kind, express or implied, on behalf of the other party, or bind it in any way whatsoever, or to make any contract promise, warranty, or representation on the other party's behalf.

- (b) This Agreement shall be governed by the laws of the State of Wisconsin and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior and contemporaneous representations, proposals, agreements, statements, or understandings, whether oral or written. No amendment to this Agreement shall be binding on either party unless such amendment is in writing and signed by the parties hereto. No provision of this Agreement shall be construed for or against either of the parties based on whether it or its representative drafted this Agreement.
- (c) Each party agrees that no failure or delay by the other party in exercising any rights, power, or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.
- (d) Any notice, consent or other communication given pursuant to this Agreement shall be in writing and shall be given by personal delivery or mailed to the address designated in the introductory paragraph of this Agreement, or such other address as the parties may designate in writing, mailed by registered or certified mail, return receipt requested, with postage prepaid. Notice shall be deemed effective when personally delivered or when deposited in the United States mail in the manner described above.
- (e) If any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding, and enforceable and in full force and effect, and such invalid or unenforceable provision shall be construed in a manner so as to give the maximum valid and enforceable effect of the intent of the parties expressed herein.
- (f) The provisions contained in Sections 7, 9, 10, 11, this Section, and any other provisions of this Agreement which by their very nature are intended to survive the termination of this Agreement will survive the termination or expiration of this Agreement and will inure to the benefit of and be binding upon the parties hereto.
- (g) This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement. The parties agree that original signatures of a party transmitted by facsimile or in portable document format (pdf) or electronic signatures affixed to this Agreement shall be as valid as an original signature of such party to this Agreement.

**Attachment A**

**Proposal dated August 29, 2019, to City of Elkhorn, Mr. Jim Heilman,  
from Mr. Ken Ebbott/Sand Creek Consultants, Inc.,**

**Re: Phase I Environmental Site Assessment, Business Park Lot for Potential Future City Hall,  
Subject: Proposal for Phase I Environmental Site Assessment**



August 29, 2019

Mr. Jim Heilman  
City of Elkhorn  
9 S. Broad Street  
Elkhorn, WI 53121

Sent via email only to [Jheilman@cityofelkhorn.org](mailto:Jheilman@cityofelkhorn.org)

**RE: Phase I Environmental Site Assessment**  
Business Park Lot for Potential Future City Hall  
Part of Parcel YV SE 00024  
Elkhorn, Wisconsin

**Subject: Proposal for Phase I Environmental Site Assessment**

Dear Jim,

Per your request, this letter presents our proposal for a Phase I Environmental Site Assessment (ESA) of the property referenced above. The parcel to be included in the Phase I ESA consists of the roughly 6-acre parcel located east of Court Street and north of Arnold Avenue that is owned by the City of Elkhorn. The parcel identification number YV SE 00024 includes 15.42 acres that includes several other parcels; the Phase I assessment is only being completed on the portion of the parcel that may be used for the new City Hall building.

#### **PHASE I ENVIRONMENTAL SITE ASSESSMENT**

Sand Creek will perform the Phase I ESA in general accordance with ASTM Standard E1527-13, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*. The primary purpose of the Phase I ESA is to provide the User with information about the general environmental character of the property. Another purpose is to permit the User to satisfy one of the requirements to qualify for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) landowner liability protections. A Phase I ESA in conformance with ASTM E1527-13 constitutes "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice" as defined in 42 U.S.C. §9601(35) (B). However, since the City of Elkhorn already owns the Property, the environmental protections will not apply in this situation.

Our **Proposed Scope of Work for the Phase I ESA** is enclosed.

#### **STATEMENT OF QUALIFICATIONS**

Sand Creek is an environmental consulting firm that relies on a highly experienced staff of professionals.

Sand Creek provides a broad range of environmental compliance services for property transactions and redevelopment. We have expertise in municipal redevelopment projects, converting abandoned, tax-delinquent industrial properties into functional, tax-generating businesses. We specialize in

cost-effective strategies for investigation and remediation of soil, groundwater, and vapor contamination. Specialties include remediation of solvents, including dry-cleaning sites, and agricultural chemical contaminants. For agrichemicals, we pursue strategies beyond the standard investigation and remediation services, including containment system design and construction oversight, and stormwater permitting and mitigation. We have also conducted work on numerous agronomy facilities and other sites nationwide where we have planted hybrid poplars and willows to remediate stormwater, soil contamination, and groundwater contamination. In addition, Sand Creek specializes in environmental compliance for landfill owners and in phytoremediation technologies.

#### **CERTIFICATION OF PROFESSIONAL STATUS**

All professional staff at Sand Creek are qualified to conduct the Phase I ESA. The following four members will be the main personnel working on the project.

**Ken Ebbott** is a professional hydrogeologist as defined in NR 712.03(1), WAC, and an environmental professional as defined in §312.10 of 40 CFR 312. The following information documents his qualifications:

M.S., Hydrogeology (1985)

B.A., Geology (1983)

Licensed Professional Geologist by Wisconsin Department of Regulation and Licensing: License No. G-263

Certified Groundwater Professional by the National Water Well Association, License No. 382

**Hollie DePuydt** is a professional engineer as defined in NR 712.03(2) and an environmental professional as defined in §312.10 of 40 CFR 312. The following information documents her qualifications as a professional:

B.S., Chemical Engineering (2001)

Licensed Professional Engineer by Wisconsin Department of Regulation and Licensing: License No. 42130

**Pete Arntsen** is a professional hydrogeologist as defined in NR 712.03(1), WAC, and an environmental professional as defined in §312.10 of 40 CFR 312. The following information documents his qualifications as a scientist:

M.S., Natural Resources with Water Resources Emphasis (1993)

B.S., Water Resources, Natural Resource Management (1987)

Licensed Professional Geologist by Wisconsin Department of Regulation and Licensing: License No. 1342

Licensed Professional Hydrologist by Wisconsin Department of Regulation and Licensing: License No. 111

**Nichole Besyk** is a soil scientist. The following information documents her qualifications:

B.S., Forest Ecosystem Restoration & Management (2008)

M.S., Forest, Watershed and Wildland Science (2015)

#### **ESTIMATED COSTS AND SCHEDULE**

Sand Creek proposes to complete the Phase I ESA for a lump sum amount of \$2,500, and we can complete the work within two weeks of receipt of the enclosed signed **Agreement for Professional Services** and completed **Phase I ESA User Questionnaire**.


The report will be delivered in electronic format only. If the Client requests, a hard (paper) copy will be provided at an additional cost of \$50 each.

We will complete and submit a draft Phase I ESA report for clients' review with the final report delivery by the required project deadline. To initiate the Phase I ESA, Sand Creek will require a signed Agreement and completed user questionnaire. You will be notified during the course of the project if we believe that the information being gathered suggests the need for further efforts, such as an expanded investigation or a Phase II ESA.

We appreciate the opportunity to assist you with this project. If you have any questions, please contact me at 920.918.9024 or [ken.ebbott@sand-creek.com](mailto:ken.ebbott@sand-creek.com)

Sincerely,

**SAND CREEK CONSULTANTS, INC.**



Ken Ebbott, PG  
Project Manager/Senior Hydrogeologist

Enclosure: Proposed Scope of Work for a Phase I ESA  
Phase I ESA User Questionnaire  
Agreement for Professional Services

**PROPOSED SCOPE OF WORK  
PHASE I ENVIRONMENTAL SITE ASSESSMENT  
FOR  
PART OF PARCEL YV SE 00024  
ELKHORN, WISCONSIN**

**PURPOSE**

The Phase I Environmental Site Assessment (ESA) is designed to identify “recognized environmental conditions” in connection with the property. A recognized environmental condition (REC) is defined as:

*the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment. De minimis conditions are not recognized environmental conditions.” [ASTM E 1527-13: 3.2.78]*

**SCOPE OF SERVICES**

The Phase I ESA services will be completed in accordance with ASTM Standard E1527-13, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*, which includes the following tasks:

- Obtain a computer search of available public record environmental databases, including those specified in ASTM Standard Practice E1527-13, and using search radii no less than those specified in the standard. Review the database report for indications of RECs on the property or with a significant potential to affect the property. The following federal and state environmental databases will be reviewed:
  - o National Priorities List (NPL)
  - o Delisted NPL
  - o Federal Comprehensive Environmental Response, Compensation, and Liability Index System List (CERCLIS)
  - o CERCLIS No Further Remedial Action Planned List (NFRAP)
  - o Federal RCRA - List of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities (RCRA)
  - o Federal RCRA Corrective Action Report (CORRACTS)
  - o Federal Emergency Response Notification System List (ERNS)
  - o Wisconsin Department of Commerce Underground and Aboveground Storage Tank List (UST/AST)
  - o Wisconsin Department of Natural Resources (DNR) Leaking Underground Storage Tank List (LUST)
  - o Wisconsin DNR Registry of Waste Disposal Sites
  - o Wisconsin DNR List of Licensed Landfills
  - o Wisconsin DNR Environmental Repair Program (ERP) List

- Evaluate a United States Geological Survey (USGS) 7.5-Minute Topographic Map to ascertain the relative location of the property with respect to adjacent properties and regional drainage features.
- If conditions are identified in which contaminants are likely to migrate to the property or from or within the property into the groundwater or soil, additional physical setting sources will be reviewed to obtain information regarding local hydrogeologic conditions.
- Perform a review of the previous uses or occupancies of the property and adjoining properties using at least one of the following historical record sources:
  - o Fire insurance maps.
  - o Aerial photographs.
  - o Local street directories.
- Review any property records provided for indications of significant prior uses or RECs in connection with the property.
- Inspect the subject property, and observe those portions of adjoining properties visible from the subject property for indications of RECs including, but not limited to, improper storage or use of petroleum products, chemicals, or wastes, and the presence of ASTs, USTs, oil-filled electrical equipment, stains, stressed vegetation, and filled areas.
- Identify general property characteristics, such as:
  - o Current uses of the property.
  - o Past uses of the property, to the extent those indications of past uses of the property are visually observed during the property visit.
  - o Current uses of adjoining properties.
  - o Past uses of adjoining properties, to the extent that indications of past uses are visually observed during the property visit.
  - o Topographic conditions of the property.
  - o Structures, roads, or other improvements on the property.
  - o Available utility services.
- Depending on available information, a visit to the office of a state regulatory agency might be necessary to more thoroughly review agency files. Sufficient information is often readily available on-line, but if a file review at the agency office is needed, we will discuss the need and additional cost with you prior to proceeding with the task.
- Correspond with the owner, key site manager, and/or occupants of the property to obtain information regarding the historical uses of the property and potential RECs in connection with the property.
- Correspond with past owners, operators, and/or occupants of the property, if identified, and if they are likely to have non-duplicative information regarding potential RECs in connection with the property.
- Correspond with a member of the local fire department or other government agency to obtain information indicating RECs in connection with the property.
- Prepare a Phase I ESA Report in general accordance with ASTM Standard E1527-13 that summarizes the findings from the Phase I ESA. The report submittal to the client will

include an electronic version, unless a paper copy is specifically requested, for an additional charge.

## **ASSUMPTIONS**

The following is a list of Sand Creek's assumptions:

- For the site inspection, Sand Creek will be provided full access to the site along with resources to explain the current and post operating conditions at the facility. An on-site contact with knowledge of the history of the facility is ideal.
- Any review of recorded land title records and judicial records for environmental liens and activity use limitations, if desired, will be performed under a separate agreement, either by Sand Creek or other service provider.
- For the purpose of estimating costs to complete this Phase I ESA, Sand Creek assumes that there will be no data gaps determined to have significant impact on the ability to identify RECs after review of standard historical sources and conducting interviews as described above. Therefore, any additional review of historical records needed to close data gaps will be considered additional services. Sand Creek will contact the client if significant data gaps or potential RECs occur. Sand Creek proposes to complete additional historic document review at a cost of \$90 per hour, upon authorization by the client.
- If any additional relevant documents are discovered by the client or Sand Creek, the review of these documents will be considered additional services with additional costs. Sand Creek will contact the client if additional property record review is warranted. Sand Creek proposes to complete additional property record review at a cost of \$90 per hour, upon authorization by the client.
- The scope of work does not include investigations regarding asbestos, lead, mold, wetlands or other efforts beyond the scope of an ASTM Phase I ESA. Investigations beyond the scope of the Phase I ESA can be completed under a separate scope of work and agreement.



## Phase I Environmental Site Assessment – User Questionnaire

Property: \_\_\_\_\_

Address: \_\_\_\_\_

In order to qualify for one of the Landowner Liability Protections (LLPs) offered by the Small Business Liability Relief and Brownfields Revitalization Act of 2001 (the "*Brownfields Amendments*" to CERCLA), the *user* must provide the following information (if available) to the *environmental professional* who conducts a Phase I Environmental Site Assessment (Phase I). Failure to provide this information could result in a determination that "*all appropriate inquiry*" is not complete.

Note: All terms in *italics* have the meanings defined in ASTM Standard Practice E1527-13.

### 1.0 Environmental cleanup liens that are filed or recorded against the *property* (40 CFR 312.25).

Are you aware of any environmental cleanup lien against the *property* that has been filed or recorded under federal, tribal, state or local law?

Yes \_\_\_ No \_\_\_ If yes, describe it and identify where recorded:

### 2.0 Activity and land use limitations that are in place on the *property* or that have been filed or recorded in a registry (40 CFR 312.26).

Are you aware of any Activity and Use Limitation, such as an *engineering control*, land use restriction or *institutional control* that is in place at the *property* and/or has been filed or recorded in a registry under federal, tribal, state or local law?

Yes \_\_\_ No \_\_\_ If yes, describe it and identify where recorded:

### 3.0 Specialized knowledge or experience of the person seeking to qualify for the LLPs (40 CFR 312.28).

As the *user* of this *ESA* do you have any specialized knowledge or experience related to the *property* or nearby properties? For example, are you involved in the same line of business as the current or former *occupants* of the *property* or an adjoining *property* so that you would have specialized knowledge of the chemicals and processes used by this type of business?

Yes \_\_\_ No \_\_\_ If yes, describe:

**Phase I Environmental Site Assessment – User Questionnaire**

**4.0 Relationship of the purchase price to the fair market value of the *property* if it were not contaminated (40 CFR 312.29).**

Do you believe that the purchase price being paid for this *property* reasonably reflects the fair market value of the *property*?

Yes\_\_\_ No\_\_\_ If no, discuss why not. If you conclude that there is a difference, have you considered whether the lower purchase price is because contamination is known or believed to be present at the *property*?

**5.0 Commonly known or *reasonably ascertainable* information about the *property* (40 CFR 312.30).**

Are you aware of commonly known or *reasonably ascertainable* information about the *property* that would help the *environmental professional* to identify conditions indicative of releases or threatened releases? As a *user* of the ESA report:

(a) Do you know any of the past uses of the *property*?

Yes\_\_\_ No\_\_\_ If yes, describe:

(b) Do you know of specific chemicals that are or formerly were present on the *property*?

Yes\_\_\_ No\_\_\_ If yes, which chemicals and when:

(c) Do you know of spills or other chemical releases that have taken place on or near the *property*?

Yes\_\_\_ No\_\_\_ If yes, describe each:

**Phase I Environmental Site Assessment – User Questionnaire**

(d) Do you know of any environmental cleanup(s) that has taken place on or adjacent to the *property*?  
Yes\_\_\_ No\_\_\_ If yes, describe each:

**6.0 The degree of obviousness of the presence or likely presence of contamination at the *property*, and the ability to detect the contamination by appropriate investigation (40 CFR 312.31).**

As the *user* of this ESA, based on your knowledge and experience related to the *property*, are there any *obvious* indicators that point to the presence or likely presence of contamination at the *property*?  
Yes\_\_\_ No\_\_\_ If yes, describe each:

**7.0 Additional Information.**

The following information is intended to assist the *environmental professional*, but is not necessarily required to qualify for one of the Landowner Liability Protections.

(a) The reason(s) why the Phase I ESA has been requested:

(b) Any other knowledge concerning the environmental condition of the *property*, or documents related to it that may be pertinent to the *environmental professional*, such as prior ESA reports, cleanup records, correspondence, etc. (Please list any available documents.)

Completed by:

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Title

---

## MEMORANDUM TO THE CITY OF ELKHORN

**To: Matt Lindstrom**  
**From: Greg Calhoun**  
**Date: August 30<sup>th</sup>, 2019**  
**Re: Elkhorn Pond Maintenance – Additional Work Change Order**

---

Integrated Lakes Management (ILM) was awarded the contract for Elkhorn's Pond Maintenance project earlier this year to dredge and restore three ponds within the City. While their base bid work is substantially complete, throughout the project additional maintenance work was recognized as necessary for the ponds' function that was not included at the time the project was bid. This work includes removal and replacement of critical inlet and outlet structures at two of the ponds that we're either damaged, fallen under disrepair, or simply not functioning as intended. A summary of the work proposed by ILM, as well as costs, is shown in their attached proposals.

In addition, in order to properly dredge and restore each of the ponds, substantial clearing and grubbing of invasive trees and shrubs was completed as part of the project. ILM is recommending additional foliar treatment to prevent regrowth of the invasive plants. This would be completed in both fall 2019 and spring 2020. A summary of this work and costs is shown in the attached proposal.

Overall, recommended Change Orders total to **\$15,132**. The total base bid cost of the project was **\$156,578.03**. As each of these improvement items are vital to the ponds' function now and in the future, I am recommending all additional work to be approved at the proposed price.

Date of Issuance: 9/3/2019  
 Owner: City of Elkhorn  
 Contractor: Integrated Lakes Management  
 Engineer: Kapur & Associates  
 Project: 2019 Elkhorn Pond Maintenance

Effective Date: 9/3/2019  
 Owner's Contract No.:  
 Contractor's Project No.:  
 Engineer's Project No.:  
 Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description: Contractor (Integrated Lakes Management) is proposing additional work to be done to inlet and outlet structures at Ponds 2 & 3 to ensure proper function, as well as additional foliar to treatment to prevent regrowth of invasive vegetation. See attached summaries.

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: <b>\$ 156,578.03</b>	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ___ to No. ___: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: <b>\$ 156,578.03</b>	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: <b>\$ 15,132</b>	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: <b>\$ 171,710.03</b>	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

RECOMMENDED:  
 By: *Greg Calk*  
 Title: City Engineer  
 Date: 8-29-19

ACCEPTED:  
 By: \_\_\_\_\_  
 Title: Owner (Authorized Signature)  
 Date: \_\_\_\_\_

ACCEPTED:  
 By: *Debbie Budyak*  
 Title: Environment Mgr, ILM  
 Date: 8/29/19

Approved by Funding Agency (if applicable)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Title: \_\_\_\_\_



# Proposal

#P2756

7/31/2019

ILM  
110 Le Baron St  
Waukegan IL 60085

PH: 847.244.6662  
Info@ilmenvironments.com

**Bill To**  
Office of the City Clerk  
City of Elkhorn  
9 S. Broad Street  
Elkhorn WI 53121  
United States

**Contract Start Date:** August 2019

**Contract End Date:** October 2019

**Submitted To:** City of Elkhorn : c/o Greg Calhoun

**SITE:** Ponds 2 & 3, Elkhorn

**Project:** 2019 Elkhorn Ponds - Additional Work

Environment Manager: Debra Budyak

Item	Visits	Price Per Visit	Amount
<b>Pond 2 - Riser Structure</b> Installation of a riser structure and 36" birdcage on Pond 2 utilizing 36" galvanized steel tube and 18" ABS pipe with coupler. Bedding stone and rip rap will be appropriately placed. Includes all labor and materials.	1	\$7,607.00	\$7,607.00
<b>Pond 3 - Birdcage Installation</b> Installation of a 36" birdcage. Includes all labor and materials.	1	\$920.00	\$920.00
<b>Pond 3 - W. Inflow Pipe Replacement</b> Installation of 15" x 8ft concrete pipe with 2 tiebacks and appropriate seal. Includes all labor and materials.	1	\$4,705.00	\$4,705.00
		<b>Subtotal</b>	\$13,232.00
		<b>Discount Item</b>	
		<b>Total</b>	\$13,232.00

By: \_\_\_\_\_ Date \_\_\_\_\_

Debra Budyak

Accepted: \_\_\_\_\_ Date Accepted \_\_\_\_\_

By signing I agree to ILM's standard terms and conditions



#### **TERMS AND CONDITIONS**

**Scope of Work and Time Limit.** This proposal is valid for a period of 15 days from the date of submission. The scope of work is identified in the proposal. If Client acceptance and authorization is not received within 30 days, Integrated Lakes Management (ILM) reserves the right to renegotiate the estimated costs, schedule for completion, and overall scope of work. ILM also reserves the right to renegotiate the contract, if the client alters the scope of work presently included in the proposal.

**Fees for Professional Services.** Services which are billed at Time and materials (specified in proposal) will be charged in accordance with current labor rates. Billings will also include costs of travel time spent on the project or time spent on report preparation by professional, technical or clerical staff. Such Time and Materials projects presented on our proposal are for budgeting purposes only and the proposal is not a fixed lump-sum bid. If it is apparent that the budgetary estimate is not sufficient to complete the project in a satisfactory manner ILM shall notify client prior to exceeding the prescribed total cost estimate or proceeding to the next step when the cost overrun occurs at a particular step.

**Right of Entry and Property Ownership.** The client will furnish right-of access on the land and water for ILM staff to perform necessary fieldwork and investigations. ILM will take reasonable precautions to minimize damage to the land or water. Client also certifies that they own the property and/or have permission to approve services proposed.

**Physical Conditions - Underground Facilities.** ILM shall have full responsibility for reviewing and checking all information and data provided by owners of all Underground Facilities (including Utilities), the cost of all of which will be considered as having been included in the Contract Price.

**Insurance.** ILM is currently licensed by the State of Illinois, Wisconsin, and Georgia for application of aquatic herbicides for commercial purposes. This certification/permit requires the existence of insurance underwriting meeting state requirements for liability coverage. ILM has increased this coverage to provide additional general liability and professional services liability up to a limit of \$2,000,000.00. This policy covers: Comprehensive, Completed Premises /Operations, Personal Injury, Broad Form Property Damage, Products/Completed Operations. A \$5,000,000.00 Umbrella policy is separately underwritten by Chartis Insurance. Our Workman's Compensation is underwritten separately. Certificates are available upon request. ILM shall add Client, at the Client's request, as a named insured to its liability insurance policy and provide Client with a Certificate of Insurance evidencing such endorsement, prior to commencing work. If applicable, Client shall pay the cost of being added as an additional insured.

**Limitation of Professional Liability.** The Client acknowledges and understands the potential risks associated with the project, and agrees to limit the risk to ILM to what is a commercially reasonable amount of protection from various types of liability in connection with various types of risks associated with the project. The Client therefore agrees to limit ILM's liability to the Client and to all contractors and subcontractors on the project, due to any claim of any nature whatsoever arising out of or relating to the performance of professional services under this agreement except if the damage or injury claimed resulted from ILM's negligence such that its total aggregate liability shall not exceed the total insurance proceeds paid on behalf of or to ILM by ILM's insurers. ILM shall procure and maintain professional liability insurance in an amount not less than \$1,000,000.00 and provide proof of same to Client per the Client's request.

**Collateral Damages.** ILM will make every effort to minimize any damage to surrounding areas. Services that utilize larger equipment will be planned and executed to minimize turf or landscaping damage. Any damage incurred because of negligence or improper execution will be resolved at no cost to the client.

**Warranty.** Professional services will be performed, data obtained and report (recommendations) prepared in accordance with currently accepted lake management principles and practices.

**Termination.** This Agreement may be terminated for good cause only, upon ten (10) days written notice to either party. Notification of termination shall be made in writing to client. In the event of termination the client agrees to pay for all of the services and expenses incurred by ILM as a result of the signed contract. These costs may include mobilization fees, material costs, and clerical time.

**Lien Notice.**  
*As required by Illinois and Wisconsin lien laws, ILM hereby notifies owner that persons or companies furnishing labor or materials for improvement on the owner's land may have lien rights if not paid.*

**Interpretation and Enforcement.** This agreement shall not be modified except by written agreement signed by both the client and ILM. This agreement shall be binding upon the client and ILM, their heirs, successors, and assignees. Lake County Illinois shall be the venue for the resolution of any dispute arising under this agreement.



# Proposal

#P2869

8/27/2019

ILM  
110 Le Baron St  
Waukegan IL 60085

PH: 847.244.6662  
Info@ilmenvironments.com

**Bill To**  
Office of the City Clerk  
City of Elkhorn  
9 S. Broad Street  
Elkhorn WI 53121  
United States

**Contract Start Date:** August 2019

**Contract End Date:** October 2020

**Submitted To:** City of Elkhorn : Greg Calhoun

**SITE:** Ponds 1, 2 & 3, Elkhorn

**Project:** 2019-2020 Maintenance - Resprout Treatments

Environment Manager: Debra Budyak

Item	Visits	Price Per Visit	Amount
<b>Woody Re-Sprout Treatment</b> Fall 2019: Foliar treatment for regrowth of invasive woody species in Ponds 1, 2 and 3.  Assumes treatment will occur in conjunction with Additional Pond work.	1	\$760.00	\$760.00
<b>Woody Re-Sprout Treatment</b> Spring 2020: Foliar treatment for regrowth of invasive woody species in Ponds 1, 2 and 3.  Work will be performed in the spring to limit growth during the 2020 growing season.	1	\$1,140.00	\$1,140.00
<b>Subtotal</b>			\$1,900.00
<b>Discount Item</b>			
<b>Total</b>			\$1,900.00

By: \_\_\_\_\_ Date \_\_\_\_\_

Debra Budyak

Accepted: \_\_\_\_\_ Date Accepted \_\_\_\_\_

By signing I agree to ILM's standard terms and conditions



#### **TERMS AND CONDITIONS**

**Scope of Work and Time Limit.** This proposal is valid for a period of 15 days from the date of submission. The scope of work is identified in the proposal. If Client acceptance and authorization is not received within 30 days, Integrated Lakes Management (ILM) reserves the right to renegotiate the estimated costs, schedule for completion, and overall scope of work. ILM also reserves the right to renegotiate the contract, if the client alters the scope of work presently included in the proposal. Further, certain services must be approved before particular dates or a 5% late fee may be applied. These services include: Fountain removal, storage, and winter repair work must be received prior to October 15<sup>th</sup> of service season, Fountain re-installation must be approved prior to Feb 15<sup>th</sup> of service season, and algae control and monitoring must be approved prior to April 1<sup>st</sup>. Please note, that if services are approved past these dates quality and timeliness of results may be affected.

**Fees for Professional Services.** Services which are billed at Time and materials (specified in proposal) will be charged in accordance with current labor rates. Billings will also include costs of travel time spent on the project or time spent on report preparation by professional, technical or clerical staff. Such Time and Materials projects presented on our proposal are for budgeting purposes only and the proposal is not a fixed Lump-sum bid. If it is apparent that the budgetary estimate is not sufficient to complete the project in a satisfactory manner ILM shall notify client prior to exceeding the prescribed total cost estimate or proceeding to the next step when the cost overrun occurs at a particular step.

**Right of Entry and Property Ownership.** The client will furnish right-of access on the land and water for ILM staff to perform necessary fieldwork and investigations. ILM will take reasonable precautions to minimize damage to the land or water. Client also certifies that they own the property and or have permission to approve services proposed.

**Physical Conditions - Underground Facilities.** ILM shall have full responsibility for reviewing and checking all information and data provided by owners of all Underground Facilities (including Utilities), the cost of all of which will be considered as having been included in the Contract Price.

**Samples.** Samples obtained from the Client's premises will be destroyed approximately 30 days after they were collected unless otherwise directed by the Client.

**Insurance.** ILM is currently licensed by the State of Illinois, Wisconsin, and Georgia for application of aquatic herbicides for commercial purposes. This certification/permit requires the existence of insurance underwriting meeting state requirements for liability coverage. ILM has increased this coverage to provide additional general liability and professional services liability up to a limit of \$2,000,000.00. This policy covers: Comprehensive, Completed Premises /Operations, Personal Injury, Broad Form Property Damage, Products/Completed Operations. A \$5,000,000.00 Umbrella policy is separately underwritten by Chartis Insurance. Our Workman's Compensation is underwritten separately. Certificates are available upon request. ILM shall add Client, at the Client's request, as a named insured to its liability insurance policy and provide Client with a Certificate of Insurance evidencing such endorsement, prior to commencing work. If applicable, Client shall pay the cost of being added as an additional insured.

**Limitation of Professional Liability.** The Client acknowledges and understands the potential risks associated with the project, and agrees to limit the risk to ILM to what is a commercially reasonable amount of protection from various types of liability in connection with various types of risks associated with the project. The Client therefore agrees to limit ILM's liability to the Client and to all contractors and subcontractors on the project, due to any claim of any nature whatsoever arising out of or relating to the performance of professional services under this agreement except if the damage or injury claimed resulted from ILM's negligence such that its total aggregate liability shall not exceed the total insurance proceeds paid on behalf of or to ILM by ILM's insurers. ILM shall procure and maintain professional liability insurance in an amount not less than \$1,000,000.00 and provide proof of same to Client per the Client's request.

**Collateral Damages.** ILM will make every effort to minimize any damage to surrounding areas. Services that utilize larger equipment will be planned and executed to minimize turf or landscaping damage. Herbicide applications to tall vegetation or hard to reach areas make the possibility of non-target damage increase. As such, the client accepts the inherent risk of non-target damage and any remediation to said areas are not included unless specifically addressed in the proposal. Any damage incurred because of negligence or improper execution will be resolved at no cost to the client.

**Invoices.** Invoices could be submitted to the Client at three times: **a)** Upon acceptance of this proposal (as a mobilization fee); **b)** monthly with the submission of progress reports; or **c)** upon completion of project or service. Payment is due upon receipt of invoice. A 1.5% per month service charge is added to all accounts more than 30 days past due. Client shall reimburse ILM for all costs and expenses, including court costs and reasonable attorney fees, incurred by ILM in collecting delinquent fees for services performed as part of this agreement.

**Warranty.** Professional services will be performed, data obtained and report (recommendations) prepared in accordance with currently accepted lake management principles and practices.

**Termination.** This Agreement may be terminated for good cause only, upon ten (10) days written notice to either party. Notification of termination shall be made in writing to client. In the event of termination the client agrees to pay for all of the services and expenses incurred by ILM prior to the date of withdrawal. These costs may include mobilization fees, material costs, and clerical time.

**Lien Notice.**  
*As required by Illinois and Wisconsin lien laws, ILM hereby notifies owner that persons or companies furnishing labor or materials for improvement on the owner's land may have lien rights if not paid.*

**Interpretation and Enforcement.** This agreement shall not be modified except by written agreement signed by both the client and ILM. This agreement shall be binding upon the client and ILM, their heirs, successors, and assignees. Lake County Illinois shall be the venue for the resolution of any dispute arising under this agreement.