



**CITY OF ELKHORN
COMMON COUNCIL MEETING AGENDA**

November 4, 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: October 21, 2019
 - b) Temporary Class "B" Fermented Malt Beverage Licenses for Walworth County Agricultural Society at the Walworth County Fairgrounds:
 - i) Rock the Barns, November 23, 2019 from 5:00 – 11:00 p.m.
 - ii) Plaza de Elkhorn, November 30, 2019 from 1:00 – 11:00 p.m.
- 6) **Report of City Officers**
 - a) Mayor
 - i) Appointment of Jeff Beardsley to the Park and Recreation Advisory Board
 - b) City Administrator
- 7) **Plan Commission**
 - a) Recommendation to Approve Lot Line Adjustment CSM for W4407 HWY 11 in the Town of Lafayette
- 8) **Unfinished Business**
 - a) TID #4 Improvements Project – Super Western Utility Delay Claim in the Amount of \$14,578.72
 - b) Ordinance No. 19-07 Related to Firearms and Weapons Amendments (Second Reading)
- 9) **New Business**
 - a) Resolution No. 19-12 Police Department Minimum Standards for Towing and Recovery Call-Out Lists
 - b) Request to Use Park Funds for Rotary Park Playground Equipment Replacement
 - c) Letter of Engagement with Dan O'Callaghan of Carlson, Black, O'Callaghan & Battenberg, LLP and Budget Adjustment of \$10,000 for Service Provided
- 10) **Adjourn**

DATED at Elkhorn, Wisconsin, this 1st day of November 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
October 21, 2019
COUNCIL CHAMBERS, 9 S. BROAD ST., ELKHORN, WI 53121**

The Common Council meeting was called to order by Mayor Reynolds at 5:30 p.m. in the Council Chambers followed by the Pledge of Allegiance.

ROLL CALL

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

Others present: City Administrator James Heilman, Attorney Ward Phillips, City Clerk Cairie Virrueta, Police Chief Joel Christensen, Utility Director John Murphy, DPW Manager Matthew Lindstrom, Fire Chief Rod Smith, Recreation Director Karl Sorvick, Library Director Lisa Selje, City Engineer Greg Calhoun, Chris Clapper, Kellen Olshefski, other interested persons

PUBLIC COMMENT

None.

CONSENT AGENDA

Motion (Shiroda/Young) to approve the minutes of the October 7, 2019 Common Council meeting. Voice vote, all approved, motion carried.

BILLS PAYABLE

Motion (McClory/Myrin) to approve the City and Utility Bills in the amount of \$2,724,835.43 (Check numbers 160569-160771). Roll call vote: Shiroda, yes; Young, yes; McClory, yes; Myrin, yes. Motion carried.

REPORT OF CITY OFFICERS

MAYOR'S REPORT

Renewal of Contract for Fireworks Display

Mayor Reynolds said the contract for the fireworks display ends this year and asked if the Council wants to renew it or send out for quotes. The current company has had good fireworks shows and if the price is comparable to previous years, they prefer to keep the contract with them. The Council also discussed the date for the fireworks display, which has always been the Friday before July 4th. Chris Clapper said she has had complaints about the show being early some years. The Mayor said to let him or the City Clerk know if they want to discuss this in the future.

Mayor Reynolds said he and Alderman Myrin have had some people ask why the City does not remodel the current building rather than build new. Mayor Reynolds said the current building is not functional with all the different levels, the customer service area is very small, the space is larger than needed, the foundation is leaking and there is mold problems in the basement. The cost to remodel is not much different from building and there is no parking at the current building.

CITY ADMINISTRATOR'S REPORT

Administrator Heilman said he was contacted by a resident who said the downtown is lacking in handicapped parking and he is looking at adding some stalls. He asked the Council for any input in where to place the stalls. He said a local business owner had concerns with the parking lot behind the Nickel Plate Hotel not having sufficient lighting. He and the Public Works Manager will meet with the business owner to walk around the area; Mayor Reynolds would like to participate. Administrator Heilman said the Strand report on the sewer evaluation capacity arrived and it will go to Applied Technologies along with the 2009 report.

LIAISON COMMITTEE MEETING REPORTS

Fire Advisory Board – no report

Library Board – the Board met October 9th and passed its 2020 budget; they are working on updating the strategic plan

Chamber – the next meeting is October 8th

Recreation Advisory Board – the next meeting is November 20th

Fire/EMS Advisory Steering – the next meeting is this Thursday; funding projection & referendum wording has been finalized, the next step is how to get information out to the public

COMMITTEE REPORTS

PUBLIC SAFETY

Recommendation to approve Standards for Towing and Recovery Call-out Lists, Electronic Mail, Disabled Vehicles, and Protected Information (Resolution under New Business)

Bill from Elkhorn Collision Center and Towing spoke in support of keeping the call-out list to City businesses only. Another person spoke in support of the call-out list going outside the City limits. Police Chief Christensen said the list would allow calling companies located within a 10 minute drive of the City and the plan would be to rotate through the list but different companies have different abilities. Adding these companies would add two more to the list. Chief Christensen said he would publish and ask for interested towing companies. Alderman McClory supported using City businesses as the primary. The Council wants to continue discussion at the next Committee of the Whole meeting.

Recommendation to correct City Ordinances: Chapter 9.02. 9.045 and 19.01.11 regarding Weapons

No discussion.

UNFINISHED BUSINESS

TID #4 Improvements Project – Super Western Utility Delay Claim

City Attorney Phillips said he read the contract and there is language that deals with delays and that they are entitled to a reasonable adjustment, specifically for delays because of utilities. The City Engineer looked at the claim and made adjustments by removing the extra charges regarding using a different dumpsite. No action taken.

NEW BUSINESS

Resolution No. 19-11 Police Department Policy Updates: Standards for Towing and Recovery Call-out Lists, Electronic Mail, Disabled Vehicles, and Protected Information

Motion (McClory/Young) to pass Resolution No. 19-11 removing the section regarding Standards for Towing and Recovery Call-out Lists. Voice vote, all approved, motion carried.

Ordinance No. 19-07 Related to Firearms and Weapons Amendments (First Reading)

2020 BUDGET DISCUSSION

Administration, Utilities, Recreation and Library

Each department discussed their budget and projects anticipated for 2020.

ADJOURN

Motion (McClory/Young) to adjourn at 6:46 p.m. Voice vote, all approved, motion carried.

Cairie L. Virrueta
City Clerk

PLAN COMMISSION – FINDING OF FACT

DATE: October 31, 2019
PROJECT: Fuerstenberg/Neuman ETP CSM
PC ID: E19.08.013

ACTION: Lot Line Adjustment CSM

The City of Elkhorn Plan Commission officially convened on October 17, 2019 to consider the Certified Survey Map dated 05/21/2019, submitted by Dan Fuerstenberg and Duane Neuman for a lot line adjustment CSM at W4407 Hwy. 11 in the Town of Lafayette.

After considering the Certified Survey map, the staff reports, oral and written testimony, the Elkhorn 2040 Comprehensive Development Plan, the Zoning on the subject property, and other materials presented at the meeting, the Plan Commission does hereby make the following "finding of fact":

FINDING OF FACT

1. The CSM is in conformance with Chapter 236 of the Wisconsin State Statutes.
2. The CSM is in conformance with the intent of the Elkhorn 2040 Community Development Plan.
3. The CSM is in conformance with the requirements of Chapter 18 (Subdivisions) of the City of Elkhorn Municipal Code.
4. The extension of public utilities to the parcel is cost-prohibitive or otherwise infeasible.
5. The parcel to be divided was not created by a Minor Subdivision (Certified Survey Map) within the preceding ten (10) years.
6. No Minor Subdivision that is used to create a lot of less than five (5) acres under this Paragraph may include more than one such lot. No new lots are being created.

Based upon the "Findings of Fact", the Plan Commission motioned, seconded and voted to recommend **APPROVAL** of the Certified Survey Map dated 05/21/2019 to the Common Council.

WALWORTH COUNTY CERTIFIED SURVEY MAP NO. _____

PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 30, AND PART OF THE NORTHWEST QUARTER AND SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, AND PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, ALL IN TOWNSHIP 3 NORTH, RANGE 17 EAST OF THE 4TH PRINCIPAL MERIDIAN, LAFAYETTE TOWNSHIP, WALWORTH COUNTY, WISCONSIN

OWNED & ORDERED BY:

Daniel H. & Christine T. Fuerstenberg
W4407 State Highway 11
Elkhorn, WI. 53121

Duane Neuman-DRM LAND LLC
N5488 Neuman Dr.
Elkhorn, WI. 53121

SURVEYED & MAPPED BY:

AMBIT LAND SURVEYING
8120-312th Avenue
Wheatland, WI. 53105-8934
262-537-4874

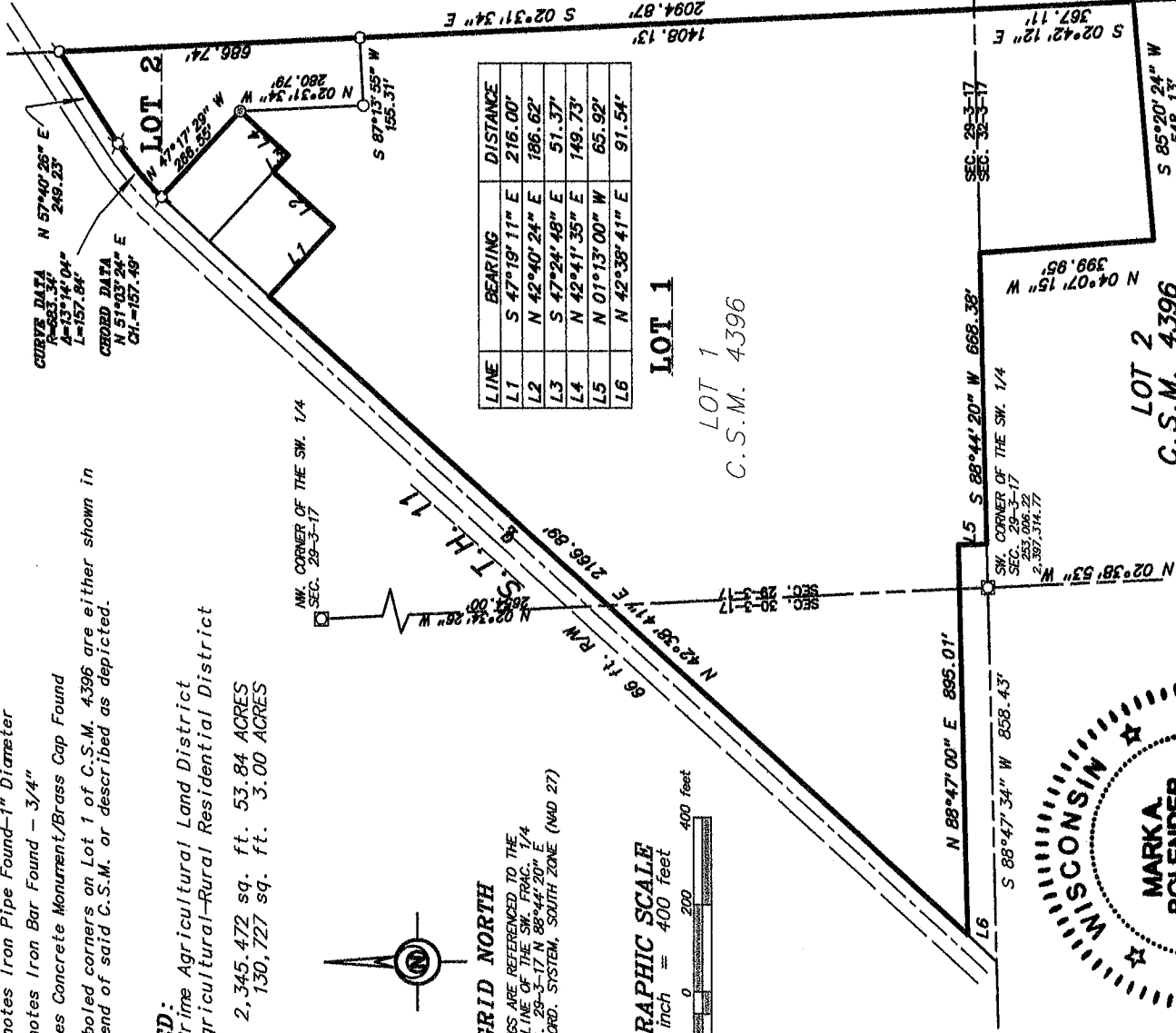
LEGEND:

- Denotes Iron Pipe Set-1" Diameter x 18" Not Less Than 1.13 Pounds Per Linear Foot
 - ⊕ Denotes Iron Pipe Found-1 3/8" Diameter
 - ⊗ Denotes Iron Pipe Found-1" Diameter
 - ⊗ Denotes Iron Bar Found - 3/4"
 - ⊕ Denotes Concrete Monument/Brass Cap Found
- Non-symbolized corners on Lot 1 of C.S.M. 4396 are either shown in the legend of said C.S.M. or described as depicted.

ZONED:

- A-1 Prime Agricultural Land District
- A-5 Agricultural-Rural Residential District

LOT 1: 2,345,472 sq. ft. 53.84 ACRES
LOT 2: 130,727 sq. ft. 3.00 ACRES



Mark A. Bolender
Mark A. Bolender
Wisconsin Professional Land Surveyor - 1784
May 21, 2019

WALWORTH COUNTY CERTIFIED SURVEY MAP NO. _____

PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, AND PART OF THE NORTHWEST QUARTER AND SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, AND PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, ALL IN TOWNSHIP 3 NORTH, RANGE 17 EAST OF THE 4TH PRINCIPAL MERIDIAN, LAFAYETTE TOWNSHIP, WALWORTH COUNTY, WISCONSIN

A lot line adjustment, parcel consolidation CSM, located in the Southeast Quarter of the Southeast Quarter of Section 29, and the Northwest Quarter and the Southwest Quarter of the Southwest Quarter of Section 29, and the Northwest Quarter of the Northwest Quarter of Section 32, all in Township 3 North, Range 17 East of the 4th Principal Meridian, Lafayette Township, Walworth County, Wisconsin.

SURVEYOR'S CERTIFICATE

I, Mark A. Bolender, Professional Land Surveyor, hereby certify that I have surveyed, divided and mapped a lot line adjustment, parcel consolidation CSM, located in the Southeast Quarter of the Southeast Quarter of Section 30, and the Northwest Quarter and the Southwest Quarter of the Southwest Quarter of Section 29, and the Northwest Quarter of the Northwest Quarter of Section 32, all in Township 3 North, Range 17 East of the 4th Principal Meridian, Lafayette Township, Walworth County, Wisconsin, described as follows: COMMENCING at the southeast corner of the Southeast Quarter of said section 30; THENCE South 88 degrees 47 minutes 34 seconds West along the south line of said quarter section 858.43 feet on the southeasterly line of State Trunk Highway "11"; THENCE North 42 degrees 38 minutes 41 seconds East along the southeasterly right of way of said highway 91.54 feet to the southwest corner of Lot 1 of Walworth County Certified Survey Map 4396 as recorded on January 09, 2012 in the office of the Walworth County Register of Deeds as Document 829857 and the PLACE OF BEGINNING; THENCE continue North 42 degrees 38 minutes 41 seconds East along the southeasterly right of way of said highway 2,166.89 feet; THENCE South 47 degrees 19 minutes 11 seconds East 216.00 feet; THENCE North 42 degrees 40 seconds 24 seconds East 186.62 feet; THENCE South 47 degrees 24 minutes 48 seconds East 51.37 feet; THENCE North 42 degrees 41 minutes 35 seconds East 149.73 feet; THENCE North 47 degrees 17 minutes 29 seconds West 266.55 feet to the southeast line of said State Trunk Highway "11"; THENCE along the southeasterly right of way of said highway 157.84 feet along the arc of a curve to the right having a radius of 883.34 feet on a chord which bears North 51 degrees 03 minutes 24 seconds East 157.49 feet; THENCE continue along the southeasterly right of way of said highway North 57 degrees 40 minutes 26 seconds East 249.23 feet to a point on the east line of the West Half of the Southwest Quarter of said section 29; THENCE South 02 degrees 31 minutes 34 seconds East along said east line of said West Half of the Southwest Quarter of said section 29, 2,094.87 feet to the southeast corner of the Southwest Quarter of the Southwest Quarter of said section 29; THENCE South 02 degrees 42 minutes 12 seconds East 367.11 feet along the east line of the West Half of the Northwest Quarter of said section 32 being the southeast corner of Lot 1 of said Certified Survey Map 4396; Thence South 85 degrees 20 minutes 24 seconds West 548.13 feet; THENCE North 04 degrees 07 minutes 15 seconds West 399.95 feet to a point on the south line of the Southwest Quarter of the Southwest Quarter of said section 29; THENCE South 88 degrees 44 minutes 20 seconds West along said south line 668.38 feet; THENCE North 01 degrees 13 minutes 00 seconds West 65.92 feet; THENCE South 88 degrees 47 minutes 00 seconds West 895.01 feet to the PLACE OF BEGINNING. Containing 2,476,199 square feet, 56.84 acres, more or less.

That I have made such survey, land division and map by the direction of Daniel H. Fuerstenberg, Christine T. Fuerstenberg and Duane Neuman owners of said land.

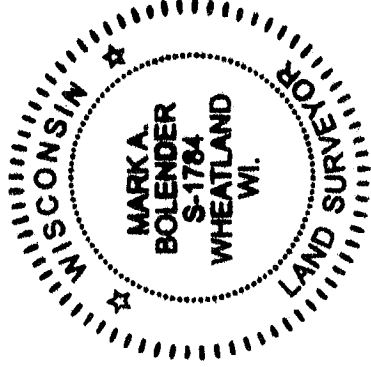
That such map is a correct representation of the exterior boundary of the land surveyed and the division thereof.

That I have fully complied with the provisions of s.236.34, Wisconsin Statutes, Chapter 18, Land Division Ordinance of the Town of Lafayette and Chapter 58, Subdivision Ordinance Walworth County in surveying, dividing and mapping the same.



Mark A. Bolender, P.L.S. No. S-1784

Dated this 21ST day of MAY, 2019.



TOWN OF LAFAYETTE APPROVAL

STATE OF WISCONSIN

SS
WALWORTH COUNTY

Approved by resolution by the Town Board of the Township of Lafayette, Walworth County, Wisconsin, this _____ day of _____, 2019.

Town Chairperson

CITY OF ELKHORN EXTRATERRITORIAL APPROVAL

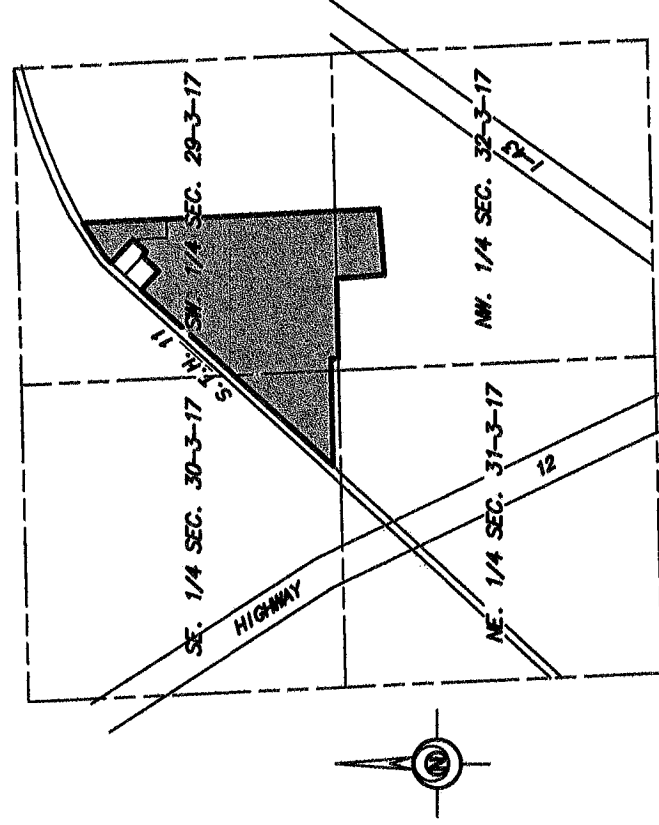
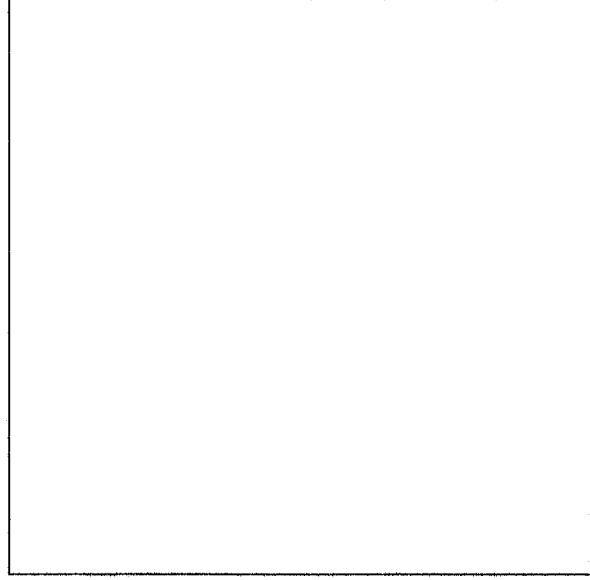
Approved by the City of Elkhorn Common Council, Walworth County, Wisconsin, on this _____ day of _____ 2019.

Mayor - Howie Reynolds

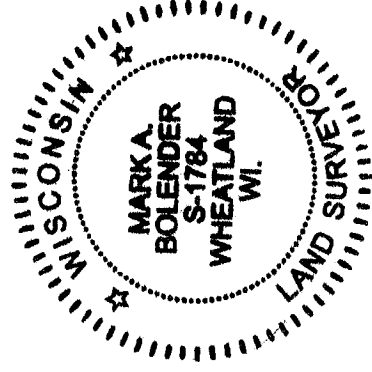
Clerk - Cairie Virrueta

WALWORTH COUNTY CERTIFIED SURVEY MAP NO. _____

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LOCATION SKETCH
NOT TO SCALE



Mark A. Bolender
Mark A. Bolender
Wisconsin Professional Land Surveyor - 1784
May 21, 2019

MEMORANDUM TO THE CITY OF ELKHORN

To: Matt Lindstrom, Jim Heilman
From: Greg Calhoun
Date: October 30th, 2019
Re: TID #4 Improvements Project – Super Western Utility Delay Claim

At the Common Council on October 21st, 2019, City Attorney Ward Phillips addressed the Council regarding his determination of Super Western's delay claim after reviewing both the claim and Kapur's contract with the prime contractor, Payne & Dolan. In the Standard General Conditions of the contract documents, under section 4.05 *Delays in Contractor's Progress*, it states:

If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment...

Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

Acts or failures to act of utility owners

Thus, it was approved by the Council that the Contractor's claims specified within their submittal determined to be reasonable and valid shall be reimbursed. The remainder of this memo is my summary from 10/7/2019 of the Contractor's claim and recommendation of the amount to be reimbursed.

As part of the TID #4 Project this past year, several delays were encountered due to underground utility conflicts which inhibited the contractor's ability to progress the project as anticipated. Several of the delays were outside of the contractor's ability to control, and they had to adjust their operations and schedule as a result.

Specifically, Super Western, the earthwork contractor, has submitted a claim to the City to be reimbursed for several losses they feel were caused by the utility delays. Their claim and all received supporting documentation is attached to this memo. In summary, Super Western is requesting to be reimbursed for:

- 2 extra days of crew time for common excavation due to Spectrum and Charter conflicts at O'Connor and Tasch Drives - **\$4,654.47**
- 2 extra days equipment for common excavation due to Spectrum and Charter conflicts at O'Connor and Tasch Drives - **\$4143.74**
- ½ month rent for excavator rented for project due to 10 days of delays caused by TDS pedestals on Commerce Court - **\$5780.50**
- Dumpsite charges due to Super Western losing ability to use a free dumpsite they were planning on using, but had filled up before they could - **\$8800.00**
- **Total = \$23,378.72**

Kapur has reviewed this claim, compared provided dates to our own field notes and dates, requested additional backup information, and reviewed revised versions of the claim. We have come to the following conclusions.

Each of the encountered delays are determined as valid. On O'Connor and Tasch Drives, several utilities were not relocated as originally anticipated and caused the loss of Super Western being able to work for 2 days. Their request to be reimbursed for the crew time and equipment for those 2 days is seen as valid.

On Commerce Court, TDS's pedestals were not relocated in a timely manner, and additional delays were encountered due to utility lines that were relocated too shallow. The 10 days lost due to these delays is seen as valid as well, as is the cost requested as reimbursement for renting the excavator.

Super Western claims they had planned to utilize a free dumpsite in Delavan to haul material from the project to, but due to the 10 days of delay on Commerce Court, had to switch to a different dump site where they were charged. This would mean the free site filled up sometime between October 17th and October 29th, when the delays took place. Kapur requested additional documentation on the free site, for proof that it was free and that it filled up during that time period. Without such documentation there is no way of knowing whether Super Western was not able to utilize it because of the delays, or if they would not have been able to use it regardless. Furthermore, it is my opinion that the ability or inability to use certain sites to complete the project according the contract is entirely the contractor's responsibility, and any change to a site's suitability for the project does not become the City's responsibility, but rather the contractor's duty as means and methods of completing the project.

Regardless, additional documentation could not be provided to prove what was requested. As a result, I do not see the \$8800.00 dumpsite reimbursement charge as valid.

I am recommending reimbursement for the first three items, a total of **\$14,578.72**, be made to Super Western due to the utility delays encountered as part of the TID #4 Improvements Project. Please let me know if there are any questions.

CONTRACT CHANGE ORDER

Change Order: #2 Date: November 4, 2019

Name of Project: Elkhorn TID #4 Improvements Project

OWNER: City of Elkhorn

CONTRACTOR: Payne & Dolan, Inc.

ENGINEER: Kapur & Associates, Inc.

The following changes are hereby made to the Contract Documents: **See attached documentation.**

Justification: (See attached)

Change to CONTRACT PRICE- \$ 14,578.72

Original CONTRACT PRICE - \$ 1,600,373.87

Current CONTRACT PRICE adjusted by previous CHANGE ORDER - \$ 1,691,959.70

The CONTRACT PRICE due to this CHANGE ORDER will be
increased (decreased) by - \$ 14,578.72

The new CONTRACT PRICE including this CHANGE ORDER will be - \$ 1,706,538.42

Change to CONTRACT TIME:


The CONTRACT TIME will be (increased) (decreased) by 0 calendar days.

The date for completion of work will be June 1, 2019 Substantial (Date).

July 1, 2019 Final (Date)

The CONTRACTOR and OWNER hereby agree that the compensation to the CONTRACTOR effected hereby constitutes full settlement of the claims of the CONTRACTOR under this contract arising out of or incident to the changes effected hereby.

This document will become a supplement to the contract and all provisions will apply hereto.

Recommended by the ENGINEER:  Date 10-30-19
Name: Greg Calhoun

Title: Project Manager

Accepted by the CONTRACTOR: _____ Date _____

Name: Matt Gregg

Title: Project Manager

Approved by the OWNER: _____ Date _____

Name: Mayor Howie Reynolds

Title: Mayor, City of Elkhorn

**CITY OF ELKHORN
ORDINANCE NO. 19-07**

**AN ORDINANCE TO AMEND THE ELKHORN MUNICIPAL CODE
AT RELATED TO FIREARMS AND WEAPONS**

WHEREAS, the City of Elkhorn has previously adopted a code of ordinances, and;

WHEREAS, City has determined it is necessary that said code be amended in order to more accurately city policy and current state statutes, and;

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Elkhorn that the Elkhorn Municipal Code is amended as specified:

1. *Chapter 9.02 – Weapons* shall remove section (1) *Definitions* and subsequent sections renumbered and changed as follows:

- (1) Discharge of Weapons.

- (a) No person shall discharge any dangerous weapon or airgun within the City of Elkhorn.

- (b) This section does not apply to any of the following:

1. Any law enforcement officer and/or any other person duly authorized by an appropriate governmental body to discharge or fire a firearm or airgun in the performance of his/her official duties;
2. Pursuant to the provisions of Section 66.0409(3)(b), Wis. Stats., under circumstances where "...the actor's conduct is justified or, had it been subject to a defense described in sec. 939.45 [Wis. Stats.]";
3. Any person that discharges a weapon in the confines of an authorized sport shooting range or indoor gun range; and
4. Any person(s) authorized in writing by the Chief of Police to discharge or fire a dangerous weapon or airgun for a specified purpose and period of time.

- (2) Throwing or Shooting of Arrows, Missiles and Projectiles.

- (a) No person shall throw or shoot any object, arrow, stone, or other missile or projectile, by hand or by any other means in the City of Elkhorn.

- (b) This section shall not apply to the following:

1. Archery activities sponsored, supervised, and sanctioned by a school and conducted on property owned by the school;
2. Any person(s) specified above in Section 9.02(3)(b) of this section. (Ord. No. 13-04, § 1, 2013; Ord. No. 10-10, 7-19-2010; Ord. No. 04-05 (part), 2004.)
3. Any person(s) authorized in writing by the Chief of Police for a specified purpose and period of time.

2. *Chapter 9.045 – Possession of a firearm* shall be removed in its entirety.

3. *Chapter 19.01.11 – Firearms – Weapons* shall be removed in its entirety.

THIS ORDINANCE shall be in force from and after its introduction and publication as provided by statutes.

APPROVED AND ADOPTED this _____ day of _____, 2019

Howie Reynolds, Mayor

ATTEST:

Cairie L. Virrueta, City Clerk

1st Reading:
2nd Reading:
Adopted:
Published:

**CITY OF ELKHORN
RESOLUTION NO. 19-12**

**RESOLUTION AMENDING THE ELKHORN POLICE DEPARTMENT
MINIMUM STANDARDS FOR TOWING AND RECOVERY CALL-OUT LISTS**

WHEREAS, the Common Council of the City of Elkhorn has previously adopted standards and procedures pertaining to the Elkhorn Police Department, and;

WHEREAS, it is considered appropriate and advisable to review such matters, from time to time, and to revise as necessary to ensure that the actions of the Department are in accordance with recognized best practices.

BE IT RESOLVED by the Common Council of the City of Elkhorn, Walworth County, Wisconsin that the Elkhorn Police Department Minimum Standards for Towing and Recovery Call-Out Lists are amended and attached to this resolution.

DATED this _____ day of _____, 2019.

Howie Reynolds, Mayor

ATTEST:

Cairie Virrueta, City Clerk

Adopted: _____

Approved: _____

Elkhorn Police Department's Minimum Standards for Towing and Recovery Call-Out Lists

1. Purpose

- (a) To improve safety and efficiency of daily towing operations on public roadways.
- (b) To minimize delays in requests for towing and recovery services.
- (c) To establish minimum business, equipment and operator qualification standards for response to traffic incidents.

2. Definitions

The following words and terms, when used in this document, shall have the following meaning, unless the context clearly indicates otherwise:

Abandoned Vehicle – Any unattended motor vehicle, trailer, semitrailer or mobile home on any public highway, or private or public property, for such time and under such circumstances as to cause the vehicle to reasonably appear to have been abandoned and as further defined in Wis. Stat. §342.40(1m).

Call – A request for Tow Company services resulting in that Tow Company receiving compensation for those services.

Call-Out List – A listing of qualified Tow Companies maintained and administered by the Department for the purpose of obtaining towing and recovery related services.

Consent Tow – Any tow of a motor vehicle initiated by the vehicle owner or operator or by a person who has possession, custody or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a law enforcement officer investigating a traffic crash or a traffic incident that involves the vehicle.

Flatbed Car Carrier – A type of Tow Truck that conveys a vehicle in its entirety on the rear bed of the Tow Truck.

Heavy Duty Service – The recovery and/or transport of vehicles with 6 or more wheels and/or a gross weight of more than 4 tons.

Heavy Duty Operator – Any Operator who meets all of the standards herein for Heavy Duty Service.

Law Enforcement Tow – The towing of a vehicle at the direction of the Department or another law enforcement agency or Officer.

Light Duty Service – The recovery and/or transport of vehicles registered as automobiles, light trucks, motorcycles and those with a gross weight of 4 tons or less.

Light Duty Operator – Any Operator who meets all of the standards herein for Light Duty Service.

Non-Consent Tow – Any tow of a motor vehicle that is not a consent tow. Non-consensual tows include police-initiated tows from public or private property.

Officer – Any Wisconsin law enforcement officer.

Operator – Any person operating a Tow Truck for the Tow Company under the direction of the Department in reference to the Call-Out List.

Place of Business – A Tow Company's physical address of operations.

Tow/Towing – The use of a Tow Truck to lift, pull, move, haul or otherwise transport any other vehicle by means of:

- (a) Attaching the vehicle to and pulling the vehicle with the Tow Truck, or
- (b) Loading the vehicle onto and transporting the vehicle upon the Tow Truck.

Tow Company – Any person or legal entity owning or operating a towing and recovery service.

Tow Truck – A motor vehicle that is equipped with mechanical or hydraulic lifting devices or winches capable of, and used for, the recovery or transport or both of wrecked, disabled, abandoned, used or replacement vehicles, as defined in WI Statute 340.01(67n).

Under-Lift – A Tow Truck deployed, hydraulically operated device for lifting the front or rear of a disabled vehicle by its axles or frame in preparation for towing/removal.

Vehicle – Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except railroad trains, as defined in WI Statute 340.01(74).

Vehicle Owner Preference – The right of the vehicle owner, his or her agent, or any competent occupant of any disabled or inoperative vehicle to request towing service of his or her choosing to take charge and care of the vehicle.

Wheel-Lift – A Tow Truck deployed, hydraulically operated device for lifting the front or back wheels of a disabled vehicle in preparation for towing/removal.

WisDOT – The Wisconsin Department of Transportation.

3. General Policies

- (a) All Tow Companies shall conduct operations in accordance with all applicable laws and rules of the State of Wisconsin and all applicable rules of the Elkhorn Police Department.
- (b) All Tow Companies must have a satisfactory business reputation, which may be verified with the Better Business Bureau for unresolved complaints or an analysis of service complaints documented by the Elkhorn Police Department.
- (c) Every Tow Company shall cooperate with the Elkhorn Police Department should it become necessary to review, audit, examine or investigate any records relating to the towing operations it may provide, or has provided, at the request of the Elkhorn Police Department. Failure to cooperate with any review, audit or investigation may result in exclusion from the Call-Out List.
- (d) Any violation of applicable rules or laws or failure to meet the standards herein may result in suspension or exclusion from the Call-Out List.
- (e) Every Tow Company shall maintain a Place of Business within a 10-minute drive time of the City of Elkhorn's furthest geographical boundary from the Place of Business.
- (f) To ensure compliance with the provisions herein, all Tow Companies on the Call-Out List are subject to inspections of equipment, Operator qualifications, vehicle storage and Place of Business.
- (g) While involved in the Elkhorn Police Department Call-Out List, the Operator shall refrain from any act(s) of misconduct, to include, but not be limited to, any of the following:
 - (i) Rude or discourteous behavior.
 - (ii) Lack of service, selective service, or refusal to provide service, which the Operator is/should, be capable of performing, including failure to clean the traffic collision scene or tow scene properly.
 - (iii) Any act of sexual harassment or sexual impropriety.
 - (iv) Unsafe driving practices.
 - (v) Exhibiting any objective symptoms of alcohol and/or drug use.
 - (vi) Showing up to a scene without proper equipment such as brooms, absorbent and other equipment.
 - (vii) Appearing at a scene with improper or offensive clothing.

4. Place of Business

All Tow Companies' Place of Business for operations must meet the following requirements:

- (a) A permanent commercial building, occupied by the Tow Company, as shown in the records of the Elkhorn Police Department and within the corporate limits of the City of Elkhorn;
- (b) With phone service;
- (c) Where normal business is transacted and all towing service records are maintained;
- (d) Where equipment is domiciled and maintained; and
- (e) Complies with local zoning and conditional use requirements.

5. Level of Service

- (a) Tow Companies shall be available to respond to calls from the Elkhorn Police Department 24-hours a day and seven days a week for the removal of wrecked and disabled vehicles, abandoned vehicles, and other vehicles that may require removal due to vehicle operator violations.
- (b) Response times to the scene:
 - (i) Light Duty Calls – 20-minutes from time the Tow Company receives a request for service from the Department during normal business hours and within 30-minutes after hours.
 - (ii) Heavy Duty Calls –30-minutes from time the Tow Company receives a request for service from the Department during normal business hours and within 40-minutes after hours.

It is understood that traffic and weather conditions may impact the Tow Company's ability to respond within the response times outlined above. However, if the Tow Company will not be able to respond within the required response time they shall contact the Elkhorn Police Department and provide an estimated time of arrival.

6. Equipment

- (a) Equipment required for Light Duty Service:
 - (i) One Tow Truck with a gross vehicle weight rating (GVWR) of 12,000 lbs. or more equipped with a hydraulic boom and a winch or winches with a minimum factory rated capacity of 8,000 lbs. and a wheel-lift.
 - (ii) One Flatbed Car Carrier with a GVWR of 14,500 lbs. and a flatbed of at least 19 feet in length.
- (b) Equipment required for Heavy Duty Service:

- (i) One Tow Truck equipped and meeting the following specifications:
 - 1. Hydraulically operated boom with a 25 ton capacity;
 - 2. Tandem axle;
 - 3. Equipped with air brakes;
 - 4. Equipped with an Under-Lift; and
 - 5. Capable of safely towing a loaded (maximum 80,000 lbs.) tractor semitrailer.
- (c) The Tow Company shall provide the Elkhorn Police Department with a list of their Tow Trucks both owned and/or leased to include the make, model, vehicle identification number and license plate number, and other equipment such as service vehicles, tractors, trailers, semi-trailers, cranes and loaders which they may utilize in the recovery and transport of wrecked and disabled vehicles. The Tow Company is responsible for ensuring the list is both current and accurate.
- (d) All equipment must be compliant with the current laws, rules and regulations:
 - (i) WI Statute Chapter 347
 - (ii) WI Administrative Code Trans 302
 - (iii) WI Administrative Code Trans 305
 - (iv) 49 CFR 393 and 49 CFR 396 as adopted in WI Administrative rule Trans 327
- (e) All equipment is subject to random inspection by the Elkhorn Police Department.
- (f) The Elkhorn Police Department may grant a variance or exemption to a Tow Company for equipment requirements in paragraphs (a) and (b) of this section where strict compliance would likely result in reduced service.

7. Storage Facilities

All Tow Companies who may store, park or maintain possession of vehicles towed at the request of the Elkhorn Police Department, shall store such vehicles in a facility that is secure and within a 10-minute drive time of the City of Elkhorn's furthest geographical boundary from the Place of Business. The Tow Company shall be responsible for maintaining adequate security of vehicles and property at the place of storage. The Tow Company is responsible for the reasonable care, custody, and control of any property contained in towed or stored vehicles. The storage yard must conform to all local zoning use requirements then in effect and have any required permits to operate at that location.

- (a) Every outdoor storage facility shall be surrounded by a fence of wood, metal, wire or masonry construction of not less than 6 feet in height and the facility shall be maintained and kept clean.

- (b) Every Tow Company shall have a local business telephone number published in the local telephone directory that is accessible to the public twenty-four hours a day.

8. Insurance

As required of all motor carriers authorized by the Elkhorn Police Department to engage in contract carriage, each Tow Company shall maintain a valid insurance policy, issued by a surety or an insurance company currently authorized to issue policies of insurance covering risks in the State of Wisconsin in the following amounts:

- a. Public Liability minimum \$1,000,000;
- b. Garage Keepers not less than \$100,000, with deductible no greater than \$1,000;
- c. On-hook or In-tow not less than \$100,000, with deductible no greater than \$1,000; and
- d. For heavy duty service, it is recommended to increase these amounts; add Cargo Limit also

To ensure the Elkhorn Police Department receives prompt notification of any policy cancellations, the Tow Company shall add the Department to their insurance policy as an Interested Party.

9. Operator Qualifications

- (a) Operators shall possess a current and valid operator's license with any required endorsements for the class of vehicle to be operated.
- (b) Operator Certification:
 - (i) Light Duty Operators shall successfully complete the Level 1 National Driver Certification Program provided by the Towing and Recovery Association of America (TRAA) or another certification program approved by the Department.
 - (ii) At least one Operator of a Tow Company providing Heavy Duty Service shall successfully complete the Level 2 National Driver Certification Program provided by TRAA or another certification program approved by the Department.

10. Safety

- (a) All Operators within the highway right-of-way who are exposed to traffic (vehicles using the highway for purposes of travel) shall wear high-visibility safety apparel that meets the Type "R" Class 2 or 3 performance requirements of the ANSI/ISEA 107-2015 publication entitled American National Standard for High-Visibility Safety Apparel and Accessories as required by 23 CFR Part 634 and the Manual on Uniform Traffic Control Devices Section 6D.03.
- (b) All Operators shall be knowledgeable of and comply with WisDOT's Emergency Traffic Control and Scene Management Guidelines as they may be applicable to towing and recovery.

- (c) Where practical, all Operators shall utilize the operating controls of the tow truck furthest from the traveled portion of the highway.
- (d) All Tow Companies shall be compliant with the requirements for warning lamps on tow trucks required by WI Statute 347.26(6).

§347.26(6) WARNING LAMPS ON TOW TRUCKS AND SERVICE VEHICLES.

(a) Any vehicle which by reason of its use upon a highway creates a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing shall be equipped with a flashing or rotating amber lamp of the dome type at the highest practicable point, visible from a distance of 500 feet, or 2 flashing amber lamps, one showing to the front and one showing to the rear, visible from a distance of 500 feet and mounted approximately midway between the extremities of the width of the vehicle and at the highest practicable point. Such amber lamp or lamps shall be lighted when such vehicle is moving a disabled vehicle along or upon a public highway at a speed below the average speed of motor vehicle traffic on such street or highway and may not be lit at other times.

(b) Operators of tow trucks or towing vehicles shall equip each tow truck or towing vehicle with a flashing or rotating red lamp, in addition to flashing type amber lamps. Such lamp shall be placed on the dome of the vehicle at the highest practicable point visible from a distance of 500 feet. This flashing red lamp shall be used only when such vehicle is standing on or near the traveled portion of a highway preparatory to towing or servicing the disabled vehicle.

- (e) All Operators shall be responsible for the removal of any debris, except hazardous substances as defined in Wis. Stat. §292.01(5), on the roadway or in the roadway right-of-way that may be the result of a vehicle disablement or crash prior to leaving the incident scene.

§292.01(5) "Hazardous substance" means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department.

- (f) All Operators shall properly light any vehicle in tow with functioning stop lamps and directional signal lamps in conformance with Wis. Stat. §347.14 and §347.15 respectively.

APPLICATION FOR TOW SERVICE AGREEMENT

Please complete this application; attach clear, current copies of the business license, towing insurance, and tow truck registration(s); and return to the Elkhorn Police Department with your responses to the Tow Service Agreement Application.

COMPANY NAME:

COMPANY ADDRESS:

Street City State Zip

MAILING ADDRESS:

(IF DIFFERENT FROM COMPANY) Street/P.O. Box City State Zip

STORAGE FACILITY ADDRESS:

Street City State Zip

COMPANY PHONE:

OWNER INFORMATION

FULL NAME:

HOME ADDRESS:

HOME PHONE:

CELLULAR
PHONE:

DL:

DATE OF BIRTH:

VEHICLE INFORMATION

List the make, model, license plate number, type, and class of tow truck(s). Attach to the application.

DRIVER(S) INFORMATION

List the Name, Date of Birth, and Driver License number/state for all drivers. Attach to the application.

- | | Yes | No |
|---|-----|----|
| 1. Currently established on Elkhorn PD Tow Rotations?..... | Y | N |
| 2. Auto Club Affiliations? | Y | N |
| 3. Do you have 24-hour service? | Y | N |
| 4. Have you or anyone financially involved with your company ever been convicted of a felony involving stolen or embezzled vehicles, stolen | | |

Memo

To: Common Council
From: Karl Sorvick, Recreation Director
Date: 10/31/2019
Re: Rotary Playground

Over the last several months, I have reached out to numerous playground manufacturers and installers. Currently, the city has budgeted \$10,000 for a new playground at Rotary Park. Unfortunately, these funds will not be enough to cover the play structure, installation and new surfacing cost. Our current surfacing is gravel and does not meet ADA standards. Below is the price break down for Lee Recreation:

Play Structure	\$8,400
Installation & Freight	\$2,850
12" Wood Chips	\$2,650
Total:	\$13,900

Therefore, it is my recommendation that the city uses the \$10,000 budgeted in 2019 to purchase the playground for \$8,400 and pay for \$1,600 of the install cost to Lee Recreation. Lee Recreation will store our playground in a heated indoor facility until install can be conducted in the early spring of 2020. In 2020, the City would then pay the remaining balance of \$3,900 from the Park Fund to complete the surfacing/installation of the playground. The Park fund is funded by recreation fundraisers such as night under the lights which raised \$6,000 dollars this past summer.



Office (800) 775-8937
Fax (608) 423-7655

260 W. Main Street
Cambridge, WI 53523

info@leerecreation.com
www.leerecreation.com

PROVIDING FUN ACROSS WISCONSIN SINCE 1995

QUOTATION

DATE: Oct. 21, 2019

TO: Karl Sorvick
Elkhorn Parks Dept.
200 Devendorf St.
Elkhorn, WI 53121

FROM: Megan Lee Cunningham
RE: Playground Proposal #LB-2861

Assembly/Installation of LB-2861	\$ 2,300.00
Freight	\$ 550.00
TOTAL	\$ 2,850.00

Quote Accepted by: _____ Date: _____

-
- TERMS: Net 30
 - Site Preparation, Resilient Surfacing & Placement of Surfacing is the responsibility of the customer
 - Lead-Time: 4-6 Weeks Upon Receipt of Order
 - Quote effective: **Sale Ends 11-15-19**



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PROVIDING FUN ACROSS WISCONSIN SINCE 1995

QUOTATION

DATE: Oct. 21, 2019

TO: Karl Sorvick
Elkhorn Parks Dept.
200 Devendorf St.
Elkhorn, WI 53121

FROM: Megan Lee Cunningham
RE: Playground Proposal #LB-2861

BURKE "Play That Moves You":

1-#LB-2861 Little Buddies Playstructure \$12,400.00

*Play Area is designed for Children ages 2-5
Estimated # of Users: 31 with 8 Active Play Events
Area Needed: 25' x 30'*

Components Included:

- DECKS:** 2-Square, 1-Triangle
- SLIDES:** Rock 'n Roll Slide @ 40" Deck Ht., Rock 'n Roll Slide @ 32" Deck Ht.
- CLIMBERS:** Ascend Rock Climber, Loop Rung Climber, Transfer Station with Hand Rails
- ACTIVITY PANELS:** Bubble Mirror Activity Panel, ABC 2-Sided Play Panel, Bee Accessible Panel, 3-In-A-Row Panel

Subtotal Equipment	\$12,400.00
<i>Sale Savings</i>	<i>(\$4,000.00)</i>
TOTAL	\$8,400.00

Quote Accepted by: _____ Date: _____

-
- TERMS: Net 30
 - Site Preparation, Assembly – Installation of Equipment, Resilient Surfacing & Placement of Surfacing is the responsibility of the customer
 - Lead-Time: 4-6 Weeks Upon Receipt of Order
 - Quote effective: **Sale Ends 11-15-19**

COMMON COUNCIL MEMO

Meeting Date: November 4, 2019

Agenda Item: Letter of Engagement/Legal Services

Report Prepared By: City Administrator

This agenda item is in response to New Beginnings filing a petition in Walworth County Circuit Court against the City based on our denial of their conditional use permit.

Attorney Daniel O' Callaghan represented the City during the conditional use process for New Beginnings. This will be a new representation and will require a new Letter of Engagement agreement.

Attorney O'Callaghan would prepare the City response, as required, to the claim filed by New Beginnings and we will move forward from that point as directed by the Walworth County Circuit Court Judge assigned to this case.

Dan O'Callaghan
222 W. Washington Ave., Ste. 705
Madison, WI 53703-2745
direct: 608.888.1685
dan.ocallaghan@carlsonblack.com

October 28, 2019

VIA EMAIL (stapson@cityofelkhorn.org)

James Heilman
City Administrator
City of Elkhorn
9 S. Broad Street
Elkhorn, WI 53121

Dear Jim:

The purpose of this letter is to confirm your request that Carlson Black O'Callaghan & Battenberg LLP ("Carlson Black") represent the City of Elkhorn as special counsel with respect to a petition for certiorari review filed with the Walworth County Circuit Court by New Beginnings APFV, Inc. ("New Beginnings") concerning its application to the City of Elkhorn for a conditional use permit. On behalf of Carlson Black, thank you for placing your trust in us. The remainder of this letter summarizes the basic terms of our representation, including procedures for billing and payment. If you have any questions, please do not hesitate to contact me.

Identification of the Client. With respect to the engagement set forth in this letter (the "Engagement"), our client is the City of Elkhorn.

Scope of Representation. The scope of our representation is limited to the Engagement, as described in this letter. The scope of the Engagement does not include representing the City in any appeals, claims, counterclaims or other litigation involving New Beginnings. If you would like us to represent the City on any matters beyond the scope of the Engagement, such representation must be the subject of additional discussions.

Conflicts of Interest. Lawyers are bound by rules of professional responsibility that include, among other things, strict rules governing conflicts of interest. We have checked our conflict management database with respect to New Beginnings and the confirmed that we have no conflict of interest that would prevent us from accepting the Engagement based on the information provided to us. If additional adverse parties become involved in the Engagement, we will need to conduct additional conflicts of interest review.

Fees. We will bill you for legal services on an hourly basis for each attorney or legal assistant who performs services on your behalf. The standard 2019 billing rate for all partners at the firm is \$350 per hour. Other professionals at Carlson Black may be assigned to work on this matter by me. Paralegal support (billed at an hourly rate of \$200) and legal assistants (billed at \$100 per hour) may be utilized where appropriate to provide you with economical service. These rates are subject to adjustment on an annual basis. In the event we adjust our rates, we will provide you with advance notice.

Filing Fees, Costs and Expenses. We do not charge separately for minor out-of-pocket costs and expenses such as routine office printing, copying and postage. Charges for outside services, regulatory filing fees, overnight document delivery, courier services, and other similar expenses will be forwarded to you for direct payment or may be paid by the firm and included on monthly invoices for reimbursement. Alternatively, we may ask that funds be deposited in our trust account in advance to cover such fees and expenses. Travel costs and expenses will only be charged if you authorize them in advance.

Monthly Statements. We will provide you with a monthly statement of any fees, costs, and expenses due, which will be reviewed and approved by me before it is sent out. Payment is due upon receipt. After the monthly statement is sent, any funds on deposit with us will be applied against your account. In the event our invoices are not paid within thirty days, we reserve the right to charge interest on the unpaid balance at the rate of one percent per month. We also reserve the right to withdraw from representation if the full balance due is not received within thirty days of billing.

Coordination. I will have primary responsibility for our firm's handling of the Engagement and I will coordinate the use of other attorneys and legal assistants on this matter in the exercise of my reasonable professional judgment. Any questions or concerns about our bills or the services that we are providing to you should be directed to me.

Termination of Representation. You will at all times have the right to terminate our services upon prior written notice. We, too, will at all times have the right to terminate our professional relationship with you within the bounds of our ethical obligations as attorneys. Generally, we do not terminate client relationships except for cause, such as actual or philosophical conflicts of interest, failure on a client's part to be truthful, circumstances that make our continued effective representation untenable, or non-payment of our invoices.

Firm's LLP Status. Carlson Black is a Wisconsin limited liability partnership. Under this structure, the individual partners do not have unlimited personal liability arising from the malpractice of the other attorneys on matters in which they had no involvement or supervisory role. The LLP structure will not, however, protect the firm or those partners whose own negligence, wrongful acts or misconduct (or that of any person working under their direct supervision and control) is the basis for the malpractice claim at issue. Furthermore, by Wisconsin Supreme Court Rule, a firm of our size is required to carry professional liability insurance providing for at least \$500,000 in combined indemnity and defense cost coverage per claim, with at least \$1 million aggregate combined indemnity and defense cost coverage amount per policy period. Our coverage exceeds the minimum requirement.

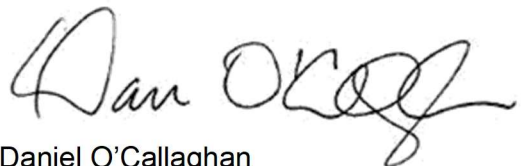
After carefully reviewing these terms, please acknowledge your acceptance and your consent to our representation of you by signing a copy of this letter and returning it to me at your earliest convenience. If you have any questions, please do not hesitate to contact me.

Mr. Heilman
October 28, 2019
Page 3

Once again, on behalf of Carlson Black, thank you for the opportunity to work with you.

Very truly yours,

CARLSON BLACK O'CALLAGHAN & BATTENBERG LLP

A handwritten signature in black ink, appearing to read "Dan O'Callaghan". The signature is fluid and cursive, with the first name "Dan" written in a larger, more prominent script than the last name "O'Callaghan".

Daniel O'Callaghan
Partner

CITY OF ELKHORN

By: _____
Name: _____
Title: _____