



VILLAGE OF WILLIAMS BAY

250 Williams Street | PO Box 580 | Williams Bay | WI | 53191 | williamsbay.org Phone:
262-245-2700 | Fax: 262-245-2705

NOTICE

COMMITTEE MEETINGS

WEDNESDAY, MAY 12, 2021 AT 6:30 PM

VIA ZOOM WEBINAR

INTERACT FROM A COMPUTER BY GOING TO: <https://zoom.us/j/99539311189>

LISTEN-IN FROM A PHONE BY DIALING: 888-475-4499 | MEETING ID: 9953 931 1189

AGENDA

The following agenda items may be considered for Discussion, Consideration, or Action

I. Protective Services Committee – Vlach, Umans, D'Alessandro

- a. Call to Order
- b. Roll Call
- c. Protective Services Committee Meeting Minutes of April 14, 2021
- d. Williams Bay Lioness Temporary Alcohol License Request for May 18, 2021
- e. Squad Mileage
- f. Monthly Activity Report
- g. Chief's Report
- h. Adjourn

II. Parks & Lakefront Committee – D'Alessandro, Stanek, Wright

- a. Call to Order
- b. Roll Call
- c. Joint Parks & Lakefront and Finance & Personnel Meeting Minutes of April 14, 2021
- d. Parks & Lakefront Committee Meeting Minutes of April 14, 2021
- e. Parks & Lakefront Committee Meeting Minutes of April 27, 2021
- f. Barrett Library report
- g. Lions Park Playground
- h. Hover Craft Proposal
- i. Lakefront Building
 - Sand for Kayak Launch
 - Move Kayak Rack
 - Tables in front of building
 - Ice, Beverage and Bait Machines
- j. Pier Usage for former Police Boat Parking Spaces

- k. Adjourn

III. Finance & Personnel Committee – Parker, D’Alessandro, Wright

- a. Call to Order
- b. Roll Call
- c. Joint Parks & Lakefront and Finance & Personnel Meeting Minutes of April 14, 2021
- d. Finance & Personnel Committee Meeting Minutes of April 14, 2021
- e. Administrator as an Authorized bank signer
- f. Bay Warehouse Storage Rental Agreement
- g. Memorandum of Understanding with the Town of Linn regarding beach tags
- h. Transfer of Village funds to Library for 2019 building expenses
- i. Adjourn

IV. Water & Sewer Committee – Umans, Parker, Stanek

- a. Call to Order
- b. Roll Call
- c. Water & Sewer Committee Meeting Minutes of April 14, 2021
- d. Proposal from ECS Midwest LLC for proposed sanitary and water lines (Highway 67)
- e. Adjourn

V. Building, Zoning & Ordinance Committee – Wright, Vlach, Parker

- a. Call to Order
- b. Roll Call
- c. Building, Zoning & Ordinance Committee Meeting Minutes of April 14, 2021
- d. Re-codification Update
- e. Tree Permits and Weed/Tall Grass Violations
- f. Adjourn

VI. Streets & Highways Committee – Stanek, Umans, Vlach

- a. Call to Order
- b. Roll Call
- c. Streets & Highways Committee Meeting Minutes of April 14, 2021
- d. Veteran's Parking at Edgewater Park
- e. Bailey Road Chip Sealing
- f. 2021 Road Project Update
- g. Adjourn

Requests from persons with disabilities, who need assistance to participate in this meeting or hearing, should be made to the Village Clerk's office in advance so the appropriate accommodations can be made.



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UNOFFICIAL MINUTES PROTECTIVE SERVICES COMMITTEE WEDNESDAY, APRIL 14, 2021 AT 6:30 PM VIA TELECONFERENCE

Call to Order

Meeting was called to order by Chairman Vlach at 6:46pm

Roll Call

Trustees Vlach, D'Alessandro and McMannamy

Also Present: President Duncan, Trustees Parker, Umans, Wright, Interim Administrator Bretl, Treasurer Peternell, Public Works Director Edwards, Police Chief Timm, Police Lieutenant Kostock and Recreation Director Rowland.

Meeting Minutes

D'Alessandro/Vlach motion to approve meeting minutes of March 10, 2021. Unanimously carried.

Monthly Police Report

Chief Timm presented the monthly report and answered any questions.

Police Chief's Report

Chief Timm provided an update on current activities including what trainings are being done and the Department of Justice is doing an audit on how evidence is held and where. He will provide an update when audit is complete.

Adjourn

D'Alessandro/McMannamy motion to adjourn at 6:54pm. Unanimously carried.

/s/ Lori Peternell, Village Treasurer

Application for Temporary Class "B" / "Class B" Retailer's License

See Additional Information on reverse side. Contact the municipal clerk if you have questions.

FEE \$ _____

☐ Town ☒ Village ☐ City of Williams Bay

Application Date: May 1, 2021
County of Walworth

The named organization applies for: (check appropriate box(es).)

☒ A Temporary Class "B" license to sell fermented malt beverages at picnics or similar gatherings under s. 125.26(6), Wis. Stats.

☒ A Temporary "Class B" license to sell wine at picnics or similar gatherings under s. 125.51(10), Wis. Stats.

at the premises described below during a special event beginning May 18, 6:00 pm and ending May 18, 9:00 pm and agrees to comply with all laws, resolutions, ordinances and regulations (state, federal or local) affecting the sale of fermented malt beverages and/or wine if the license is granted.

1. Organization (check appropriate box) →

☒ Bona fide Club ☐ Church ☐ Lodge/Society

☐ Chamber of Commerce or similar Civic or Trade Organization

☐ Veteran's Organization ☐ Fair Association

(a) Name Lions Lovers of Williams Bay

(b) Address 372 Fair Oaks Dr WB 53191
(Street) ☐ Town ☒ Village ☐ City

(c) Date organized April 2021

(d) If corporation, give date of incorporation _____

(e) If the named organization is not required to hold a Wisconsin seller's permit pursuant to s. 77.54 (7m), Wis. Stats., check this box: ☒

(f) Names and addresses of all officers:

President Gen Sternberg

Vice President _____

Secretary Kendr Janski

Treasurer Rene Monroe

(g) Name and address of manager or person in charge of affair: Gen Sternberg 125 Vernon

2. Location of Premises Where Beer and/or Wine Will Be Sold, Served, Consumed, or Stored, and Areas Where Alcohol Beverage Records Will be Stored:

(a) Street number Lions Field House 240 Ekhorn Rd

(b) Lot _____ Block _____

(c) Do premises occupy all or part of building? all

(d) If part of building, describe fully all premises covered under this application, which floor or floors, or room or rooms, license is to cover: _____

3. Name of Event

(a) List name of the event Lions Lovers Bingo

(b) Dates of event May 18th, June July Aug.

DECLARATION

The Officer(s) of the organization, individually and together, declare under penalties of law that the information provided in this application is true and correct to the best of their knowledge and belief.

Officer _____
(Signature/date)

Officer _____
(Signature/date)

Date Filed with Clerk 5/4/2021

Date Granted by Council _____

Lions Lovers of Williams Bay
(Name of Organization)

Officer Rene Monroe 5-3-21
(Signature/date)

Officer Gen Sternberg 5/03/21
(Signature/date)

Date Reported to Council or Board Protective Svcs 5/12/21 Village Board 5/17/21

License No. _____

Squad Car	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Nov	Dec	Total
291(unmarked)	441	924	25		2547							3937
292	5	756	2154	1586	1851							6352
293	680	769	1672	1789	1328							6238
294	3612	2075	675	763	1273							8398
Total	4738	4524	4526	4138	6999	0	0	0	0	0	0	24925

	mileage end											
291	123372	124296	124321		126868							
292	47418	48174	50328	51914	53765							
293	87931	88700	90372	92161	93489							
294	15027	17102	17777	18540	19813							



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UNOFFICIAL MINUTES

JOINT PARKS AND LAKEFRONT COMMITTEE & FINANCE & PERSONNEL COMMITTEE

WEDNESDAY, APRIL 14, 2020 AT 6:00 PM

VIA ZOOM WEBINAR

Call to Order

Meeting was called to order by Chairman D'Alessandro at 6:01pm

Roll Call

Present: Trustees D'Alessandro, Parker, McMannamy and Wright

Also Present: President Duncan, Trustees Vlach and Umans, Incoming Trustee Stanek, Interim Administrator Bretl and Treasurer Peternell.

Meeting Minutes

Wright/McMannamy motion to approve meeting minutes of March 10, 2021. Unanimously carried.

Wright/McMannamy motion to approve meeting minutes of April 12, 2021. Unanimously carried.

Parker/D'Alessandro motion to convene in closed session at 6:01pm pursuant to the exemption contained in section 19.85(1)(e) of the Wisconsin Statutes for the purpose of conducting other specified public business whenever competitive or bargaining reasons require a closed session.

- Gage Marine Charter Landing Lease

- Building Inspection Contract

Roll Call Vote: Parker-Aye, D'Alessandro-Aye, McMannamy, Wright-Aye. Unanimously carried.

Parker/McMannamy motion to reconvene into open session at 6:31pm. Unanimously carried.

D'Alessandro motion to recommend Village Board approval of the Gage Charter Landing lease for 2021 at annual cost of \$3,165. Unanimously carried.

Adjourn

D'Alessandro/Wright motion to adjourn at 6:33pm. Unanimously carried.

/s/ Lori Peternell, Village Treasurer

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UNOFFICIAL MINUTES PARKS AND LAKEFRONT COMMITTEE WEDNESDAY, APRIL 14, 2020 AT 6:30 PM VIA ZOOM WEBINAR

Call to Order

Meeting was called to order by Chairman D'Alessandro at 7:38pm

Roll Call

Present: Trustees D'Alessandro, McMannamy and Wright

Also Present: President Duncan, Trustees Parker, Vlach and Umans, Interim Administrator Bretl, Treasurer Peternell, Public Works Director Edwards, Police Chief Timm, Police Lieutenant Kostock and Recreation Director Rowland.

Meeting Minutes

Wright/McMannamy motion to approve meeting minutes of March 10, 2021. Unanimously carried.

Wright/McMannamy motion to approve meeting minutes of April 12, 2021. Unanimously carried.

2021 Beach rules discussion

Bretl stated that staff is looking for direction on whether the beach will be open to non-residents and if Town of Linn residents will be eligible for beach tags this year. It was the consensus of the Committee to have the beach open to non-residents and draft a memorandum of understanding with the Town of Linn to offer beach tags to their residents and be billed at the non-resident rate to the Town of Linn.

Wright/McMannamy motion to recommend Village Board approval opening the beach to non-residents and drafting a MOU with the Town of Linn. Unanimously carried.

Pier Slip Request-John & Sharon Widell

John Widell was present to discuss their error in stating they did not want to renew their lease. He stated they waited many years for the slip and recently purchased a lift for their boat. Peternell stated that there is one slip available that could accommodate the Widell's boat and lift. It was the consensus of the Committee that the Widell's made an honest mistake and should not lose their slip.

Wright/McMannamy motion to recommend Village Board approval of the available slip be leased to the Widell's. Unanimously carried.

Fireworks display

Bretl stated that in the past there has been a theme selected for the fireworks display during the Corn & Brat Fest. Bretl was seeking direction from the Committee on what this year's theme should be. It was the consensus of the Committee to let staff determine the theme for 2021. No action taken.

Dog Park Install

Rowland stated that the fence for the dog park is scheduled to begin installation on April 12th and should be completed by April 15th. Discussion was held that the amenities will be added after the fence is up and the park can open as soon as it's done.

Skateboard Park Request

Paul Yin was present to discuss the possibility of creating a skateboard park in the Village. He provided a list of signatures of people who support the idea. D'Alessandro stated that the Village is in the process of updating the Comprehensive Plan and this request could be discussed further during the process. No action taken.

Adjourn

Wright/McMannamy motion to adjourn at 8:26pm. Unanimously carried.

/s/ Lori Peternell, Village Treasurer

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UNOFFICIAL MINUTES PARKS & LAKEFRONT (P&L) COMMITTEE MEETING TUESDAY, APRIL 27, 2021 AT 10:00 AM Via Zoom Webinar

I. Call to Order

Trustee D'Alessandro called the meeting to order at 10:00am.

II. Roll Call

Present: Trustees D'Alessandro, Wright, Stanek

Also Present: Trustee Umans, Administrator Tobin, Clerk Pankau, DPW Director Edwards and Recreation Dept. Director Rowland

Excused:

III. Edgewater Park Rental Request for June 23, 2021

Trustee D'Alessandro gave an overview of the process of Edgewater Park Rental requests to the Committee. Trustee Stanek stated that he knows the applicant personally and knows that they are responsible people.

The motion to Approve the Edgewater Park Rental Request for June 23, 2021 was initiated by Lowell Wright and seconded by Matt Stanek. Unanimously carried.

IV. Window Decals for Village Hall and Police Department

Clerk Pankau stated that we need window decals for the front windows to differentiate between Village Hall and the Police Department so the public knows which window to visit.

The motion to Approve the purchase of Window Decals in the amount of \$280.00 for Village Hall and Police Department was initiated by Lowell Wright and seconded by Matt Stanek. Unanimously carried.

V. Sponsorships at Dog Park

Recreation Department Director Rowland explained that he wants to send a letter out to the community asking for sponsorships for the Dog Park and the funds would go back into the Dog Park for maintenance and supplies. Trustee D'Alessandro stated that he could see people putting small memorial plaques on the dog play stations and businesses putting signs on the fence. Trustee Wright stated that he thinks it's a good idea, but he thinks there should be standards on the style of the signs so that everything looks uniform. Trustee Stanek agreed with Wright and wants to be sure they all look alike. Trustee Wright stated that he does not believe the memorial signs on the play stations would be ideal, but maybe there could be another option for those like a board where they can attach the plaques to. Trustee Stanek stated that he likes the idea of a board, but it would need to be enclosed or somehow weather proof.

Recreation Dept. Rowland to gather costs to bring back for the next Committee meeting.

VI. Charity Group Requests

Recreation Dept. Director Rowland stated that he has gotten requests from charity groups to rent out the kayaks and paddleboards to their group at no cost. Trustee D'Alessandro stated he would be comfortable waiving fees for Williams Bay based groups as we have a tradition doing that with the parks, but that he would not want to waive fees for groups outside of Williams Bay. Administrator Tobin stated that the first year of the program would not be the best time to try

something like this and that we should revisit this next year. Trustee Stanek agreed with Administrator Tobin and suggested a discounted rate rather than waiving the fees completely.

The consensus of the Committee was to revisit this next year after trying the program out for a year.

VII. Opening Outside Water Fountains

Recreation Dept. Director Rowland explained that the water fountains were turned off due to the pandemic and wants to know if we should turn them on this year or keep them off. Trustee D'Alessandro stated that we are going ahead with all of the events again this year so we should open the water fountains too. Trustee Stanek agreed that we should make them available and people can decide if they are comfortable with using them or not.

The motion to Approve the Opening Outside Water Fountains was initiated by Matt Stanek and seconded by Lowell Wright. Unanimously carried.

VIII. Adjourn

The motion to Adjourn was initiated by Jim D'Alessandro and seconded by Matt Stanek at 10:37am. Unanimously carried.

These are not official Minutes until approved by the Governing Body.



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

DATE: April 15, 2021
TO: Williams Bay Lions Park
270 Elkhorn Rd.
Williams Bay, WI 53191
FROM: Jeff Thompson
RE: Playground Proposal #142-139307-1

BURKE "Play That Moves You"

Proposal #142-139307-1

29 Play Events for an Estimated 137 users – ages 2-5 & 5-12 years
Minimum area needed: 49' x 100'

NU-2962 Nucleus Modular Playstructure \$66,392.00
Designed for ages 5-12 years
Welcome Spring Sale Savings (\$26,557.00)

Components Included:

DECKS: 3-Triangle, 2-Square, 1-Half Hex

BRIDGE: Evolution Arched Catwalk Bridge

CLIMBERS: Evolution Stairs with Barriers between 2 Decks,
Evolution Deck to Roof Climber, Petal Step Climber,
Beta Climber, Via Climber,

SLIDES: Cobra Spiral Fusion Slide @ 144" Deck Ht., Contour
Double Slide @ 72" Deck Ht., Viper "S" Slide @ 56" Deck
Ht.

ROOFS: 3-Solis Post Toppers, Evolution Square Roof

PLAY ACTIVITY PANELS: Biba Interactive Play Games, 3-In-A-Row
Activity Panel, Serenity Spot, Bubble Mirror Activity
Panel, Rain Crescent Panel

NUIN-2995 Nucleus Modular Playstructure \$18,400.00
Designed for ages 2-5 Years
Welcome Spring Sale Savings (\$7,360.00)

Components Included:

DECKS: 2-Triangle, 1-Square

CLIMBERS: Power Pipes Climber, 24" Stairs with Barriers
Between 2 Decks, Shasta Climber, Petal Step Climber,
Beta Climber, Lil Novo Bean Step

SLIDES: Rock 'n Roll Slide @ 48" Deck Ht.

OVERHEAD EVENTS: Athletic Arch Overhead

PLAY ACTIVITY PANELS: ABC 2-sided Play Panel

1-#SWING	2 Bay Swing Assembly with Arm	\$ 4,303.00
	Includes: 3-Belt Swing Seats, 1-Infant/Tot Seat & 1-Freedom Inclusive Swing Seat	
1-#560-2589	Comet II Independent Spinner	\$ 1,871.00
1-#570-2709	Orb Rocker	\$ 7,193.00
4-#580-0172	6' Bench with back \$551 ea.	\$ 2,204.00
	Subtotal Equipment	\$66,446.00
	Additional Product Discount	(\$1,700.00)
	Assembly/Installation of Equipment	\$22,600.00
	Border Timbers with Access Ramp	\$ 3,340.00
	210 yds ³ Engineered Wood Fiber – Delivered/Installed	\$ 8,400.00
	Freight	\$ 900.00
	TOTAL	\$99,986.00

Quote accepted by: _____ Date: _____

-
- TERMS: Net 20
 - Site Preparation & Site Restoration is the responsibility of the Customer
 - Lead-Time: 6 weeks upon receipt of order
 - Quote effective: *Sale Ends 6-30-2021*

**Financing Option
Available!
DETAILS TO FOLLOW*



WWW.LEERECREATION.COM • (800) 775-8937



LEE RECREATION, LLC

Providing Fun Across Wisconsin Since 1995

info@leerecreation.com • 260 W. Main Street • Cambridge, WI 53523



Williams Bay Lions Club

P.O. Box 5506 • Williams Bay, Wisconsin 53191

WILLIAMS BAY LIONS PARK

PROPOSAL #142-139307-1

Burke

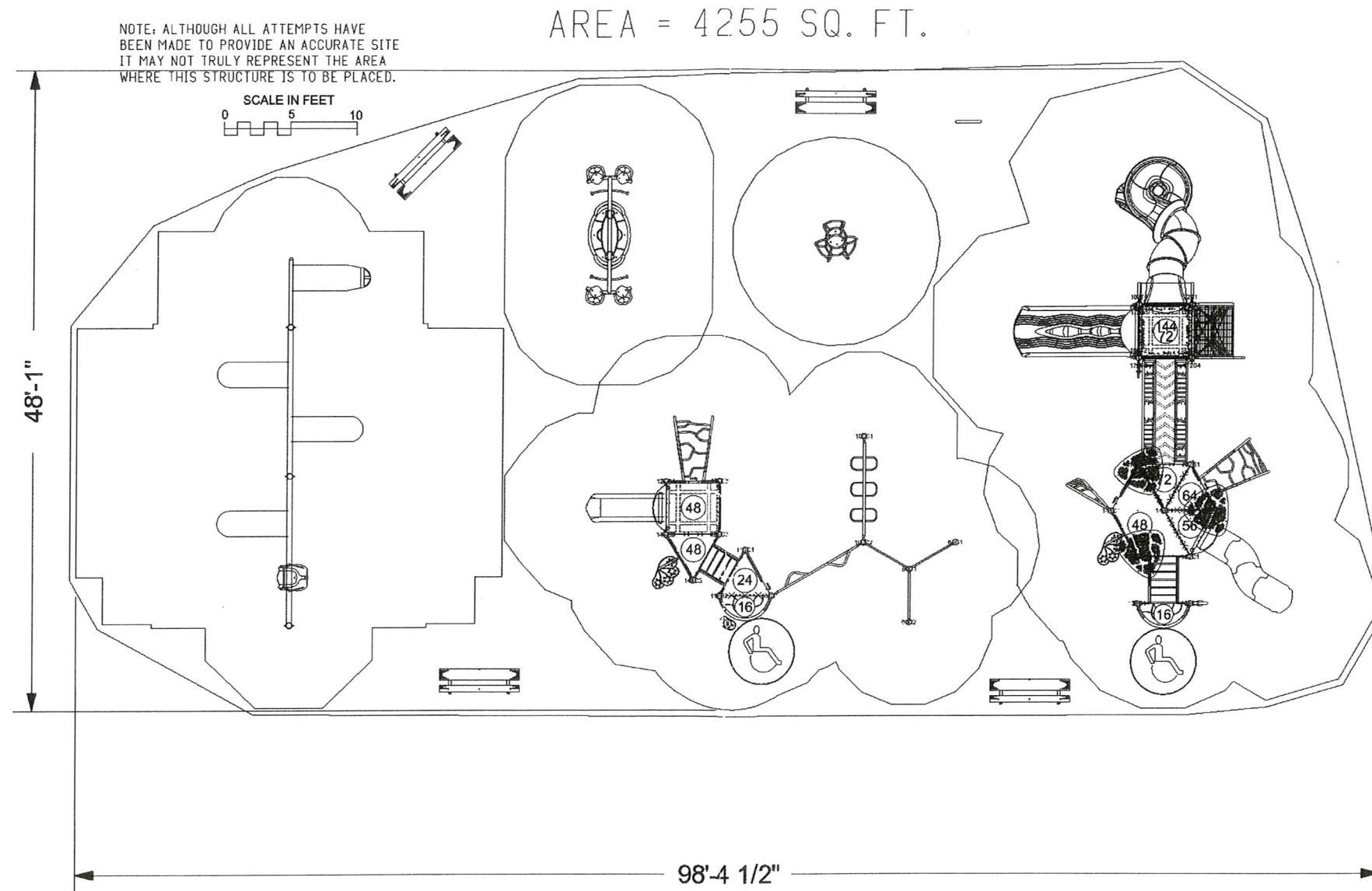
SERIES: Basics, Specialty Items, Intensity, Nucleus
SITE PLAN
DRAWN BY: Joel Schleis

BCI Burke Company, LLC PO Box 549 Fond du Lac, Wisconsin 54936-0549 Telephone 920-921-9220

Williams Bay, WI 53191

Lee Recreation, LLC
142-139307-1

April 15, 2021



ADA ACCESSIBILITY GUIDELINE (ADAAG CONFORMANCE)

NUMBER OF PLAY EVENTS:	29	
NUMBER OF ELEVATED PLAY EVENTS:	13	
NUMBER OF ELEVATED PLAY EVENTS ACCESSIBLE BY RAMP:	PROVIDED: 0	REQ'D: 0
NUMBER OF ELEVATED PLAY EVENTS ACCESSIBLE BY TRANSFER SYSTEM:	PROVIDED: 12	
NUMBER OF ELEVATED PLAY EVENTS ACCESSIBLE BY RAMP OR TRANSFER SYSTEM:		REQ'D: 7
NUMBER OF GROUND LEVEL PLAY EVENTS:	PROVIDED: 16	REQ'D: 4
NUMBER OF TYPES OF GROUND LEVEL PLAY EVENTS:	PROVIDED: 10	REQ'D: 3

WARNING!

ACCESSIBLE SAFETY SURFACING MATERIAL IS REQUIRED BENEATH AND AROUND THIS EQUIPMENT.

FOR SLIDE FALL ZONE SURFACING AREA SEE CPSC's Handbook for Public Playground Safety.

PLATFORM HEIGHTS ARE IN INCHES ABOVE RESILIENT MATERIAL.

INFORMATION
MINIMUM FALL ZONE
SURFACED WITH
RESILIENT MATERIAL
AREA

3387 SQ.FT.

PERIMETER

507 FT.

STRUCTURE SIZE

48' 1" x 98' 4"

STRUCTURE IS DESIGNED
FOR CHILDREN AGES:

- ☐ 6-23 MONTH OLDS
☒ 2-5 YEAR OLDS
☒ 5-12 YEAR OLDS
☐ 13 + YEAR OLDS



The play components identified
in this plan are IPEMA
certified. The use and layout of
these components conform to the
requirements of ASTM F1487.
To verify product certification,
visit www.ipema.org

The space requirements shown
here are to ASTM standards.
Requirements for other standards
may be different.

The use and layout of play
components identified in this plan
conform to the CPSC guidelines.
U.S. CPSC recommends the
separation of age groups in
playground layouts.



Parking
Area
For ATV
And Ice Hut
Loading and
Unloading

Hovercraft
Ride
Ticket Trailer

ENTER

EXIT

Walking Path Remains open

Diagram illustrating a Landing Area. The area is divided into two sections: a blue section labeled "Loading Area" and a yellow section labeled "Hovercraft".

Clarification Page

Parking area Remains open for hovercraft riders and general public.

Ticket Trailer will have window at the end for ticket sales and on the south side for merchandise sales.

Entrance and exit area stops at the walking path and will have a roped off area. We will have a person coordinating loading and unloading of the passengers.

The Riders will be held in this area until they board the hovercraft, they will proceed to the concrete loading area when directed.

When they disembark the hovercraft they will be directed to the exit land which leads to the merchandise sales, or they can simply exit.

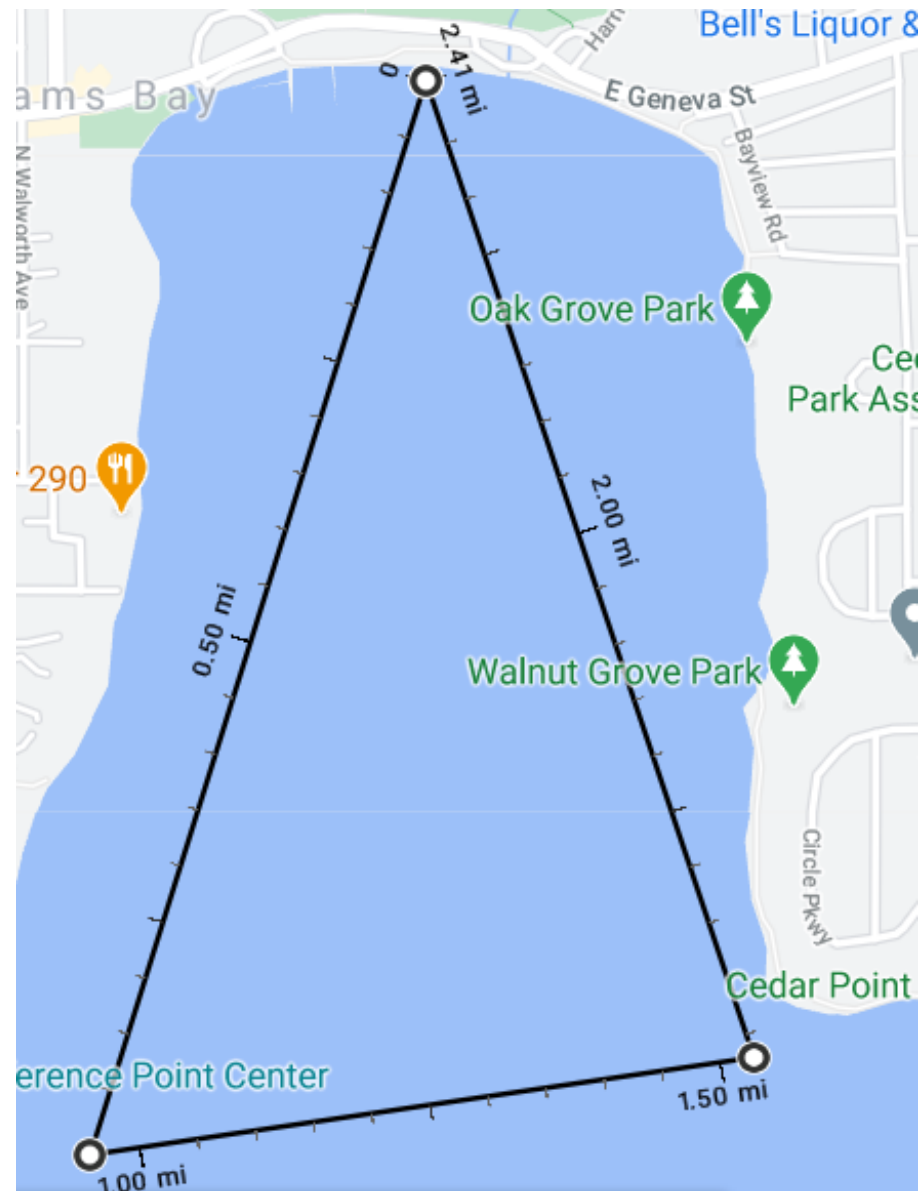
Loading Area Concrete

Provides a 6' solid surface loading area. The hovercraft flies up parallel to the pad allowing riders to enter and exit on dry ground.

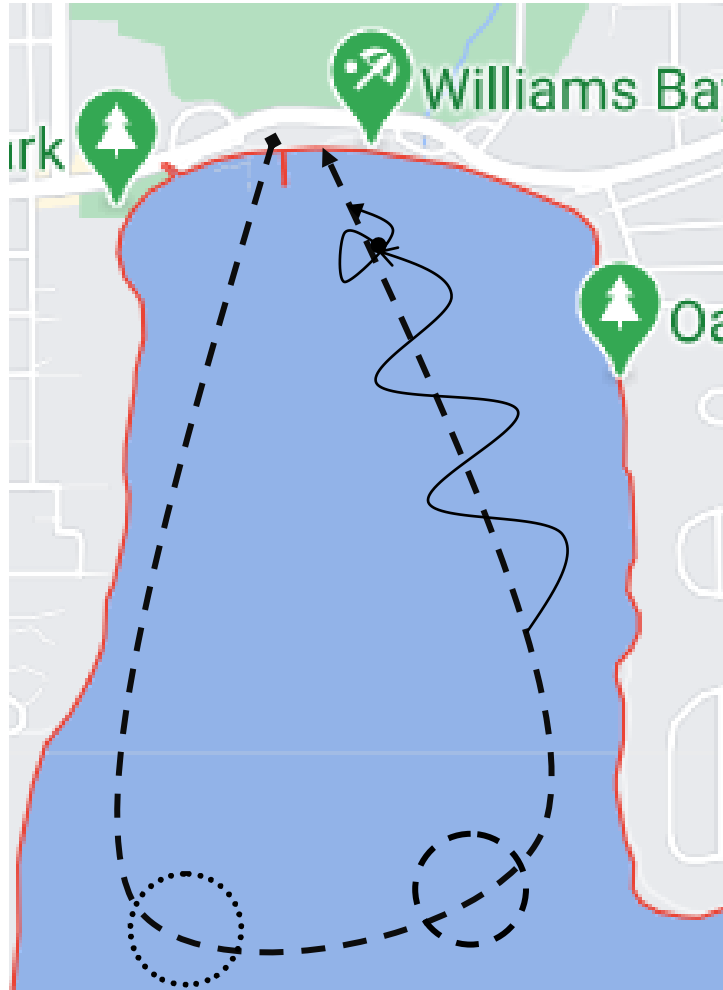
Hovercraft: Because hovercraft travel over various surfaces we can be flexible on how and where passengers embark and disembark the hovercraft. If the current diagram is not acceptable we can fly up on land and load in the parking lot.

After examining the activity around the boat ramp we felt the current set up would provide the lowest impact on normal activity, keeping the east side of the ramp open for ice fishing and ATV access. We also noted that most people with ice fishing equipment park and load and unload on the east parking area. While we will reduce some of the parking with the overflow parking area hovercraft riders should not severely impact others using the parking lot and boat ramp.

This is the proposed initial course of operation. Previous experience has shown that a two mile route is a good initial route to offer. Once the lake is frozen we could offer a tour of the lake with other options.



Proposed course layout.



Circles show 360 turns
craft will start a 90° turn
then complete a 360
travel across the bay do a
slow 360 and return

Craft performs five side
slides then does a 180° to
slow then turns and gently
enters the exit area

Unit enters on right exits on
left loads on left then starts
next ride on the right. Unit
will always be closest to the
loading zone



TLS WindSled Inc. 507 W 10th Street Belvidere IL. 61008 www.hovercraftusa.org 815-262-5791

To: Williams Bay Village Board

Subject: Proposed Hovercraft Ice Rides Winter 2022

Village Board

Hovercrafts have been operating out of Williams Bay boat launch for several years during our annual hovercraft cruise of Geneva Lake. On each occasion interest in the hovercraft by patrons of the area has been high. In 2018 while attending the annual event I noted the overwhelming requests by tourist in Lake Geneva to take a ride in the hovercraft. This led to launching the Hovercraft Ice Ride initiative by TLS WindSled in 2019 during Lake Geneva Winterfest. Our second year 2020 proved the popularity of hovercraft rides; we could not keep up with demand. 2021 was a tough year due to horrible weather, however from that we added Wauconda IL Winterfest to our growing list of locations to provide hovercraft rides and exceeded rider participation projections. During Wauconda's Winterfest I reached out to a list of people who were unable to secure a hovercraft ride at Lake Geneva 2021. Of that list over 80 people followed us to Wauconda to engage in a hovercraft ride.

The result of 3 years providing Hovercraft Ice Rides at Lake Geneva and the Wauconda Winterfest response to hovercraft rides, has led us to believe a permanent location could sustain and actually draw people to that location to embark on a hovercraft ride experience. We also discovered that when people come to take a ride in the hovercraft they engage in more than the ride by adding a lunch, dinner, and or drinks at the local establishments. Planning and making reservations before and after their hovercraft ride. At Lake Geneva area they are more likely to stay at the hotels, eat at the local eateries, the hovercraft ride results in a day or weekend getaway.

After flying out of Lake Geneva, Fontana, and Williams Bay I felt the Williams Bay boat ramp was the nicest location to launch from. I also felt it was the most conducive to a permanent location, providing ample parking, easy access, and the only location to allow smooth entering and exiting the hovercraft on land. (See attached document for proposed layout). We had planned on using the ramp for hovercraft rides during Lake Geneva Winterfest 2021, however COVID-19 reduced our rider capacity to the point we were concerned it would not be good to make the move. Our concerns were confirmed as the weather also impacted operation and rider participation was 1/3 of what we could have handled.

Based on our previous experience and knowing Visit Lake Geneva will help promote this activity we believe TLS WindSled's **WindRider Hovercraft Ice Rides** could provide rides to 300-400 people per weekend.

Proposed initial hours of operation: Saturday and Sunday 11:00 AM to 5:00 PM

Initial Hovercraft to be used: Two six to eight person hovercraft with enclosed heated cockpit and passenger area and one three to four passenger open air hovercraft (some people prefer the open air experience) we do have the ability to add additional hovercraft should demand require it.

Ticket Sales: Ticket and merchandise sales will be conducted from our vendor trailer the trailer will be operated by a ticket agent and a merchandise sales person. (Preferably two local part time people, could be a fund raiser for local non-profits)

Boarding Coordinator: This person will be trained in assisting and directing riders on entering and exiting the hovercraft. (Could be a fund raiser for a local non-profit)

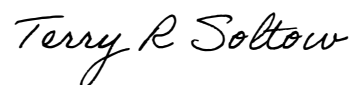
Hovercraft Pilots: We have an ample number of experienced hovercraft pilots 10 years or more piloting experience. Initially Bill Zang and Terry Soltow will operate the two largest hovercrafts; my sons Paul and Seth have been flying hovercraft in excess of 15 years will operate the smaller open air hovercraft. However I also have a local person who has expressed an interest in learning to fly the hovers, he is an ex-Marine helicopter pilot and would make an excellent addition to our staff once trained in piloting a hovercraft. I'm sure there will be other qualified people who will be interested in piloting.

Markings and signage: Hovercraft ride areas will be marked by ribbon and posts to ensure safe operation. Hovercraft course indicators will be set up along the hovercraft route on the ice (DNR requirement) to inform ice fishermen and ice travelers of the hovercraft operation. While we cannot close off the area we can divert around any obstacles that might wander into the areas. Hovers will operate at slow speeds within 100 feet of people or ice huts to prevent interference with others on the ice.

Equipment: All equipment including markings and signage can be moved when we are not operating; however it would be nice to be able to at least leave the setup Saturday into Sunday operation.

Operating Conditions: While the hovers can operate under poor weather conditions, for the safety of our personnel and riders we would make determinations based on conditions as to whether we operate on any given day. We typically could operate during a ten weekend period, however considering weather conditions we have based our operating cost on a six weekend time frame.

Please let me know if you need further information or clarification.



Terry R Soltow

President TLS WindSled Inc.



VILLAGE OF WILLIAMS BAY

250 Williams Street | PO Box 580 | Williams Bay | WI | 53191 | williamsbay.org
Phone: 262-245-2700 | Fax: 262-245-2705

UNOFFICIAL MINUTES

JOINT PARKS AND LAKEFRONT COMMITTEE & FINANCE & PERSONNEL COMMITTEE WEDNESDAY, APRIL 14, 2020 AT 6:00 PM VIA ZOOM WEBINAR

Call to Order

Meeting was called to order by Chairman D'Alessandro at 6:01pm

Roll Call

Present: Trustees D'Alessandro, Parker, McMannamy and Wright

Also Present: President Duncan, Trustees Vlach and Umans, Incoming Trustee Stanek, Interim Administrator Bretl and Treasurer Peternell.

Meeting Minutes

Wright/McMannamy motion to approve meeting minutes of March 10, 2021. Unanimously carried.

Wright/McMannamy motion to approve meeting minutes of April 12, 2021. Unanimously carried.

Parker/D'Alessandro motion to convene in closed session at 6:01pm pursuant to the exemption contained in section 19.85(1)(e) of the Wisconsin Statutes for the purpose of conducting other specified public business whenever competitive or bargaining reasons require a closed session.

- Gage Marine Charter Landing Lease

- Building Inspection Contract

Roll Call Vote: Parker-Aye, D'Alessandro-Aye, McMannamy, Wright-Aye. Unanimously carried.

Parker/McMannamy motion to reconvene into open session at 6:31pm. Unanimously carried.

D'Alessandro motion to recommend Village Board approval of the Gage Charter Landing lease for 2021 at annual cost of \$3,165. Unanimously carried.

Adjourn

D'Alessandro/Wright motion to adjourn at 6:33pm. Unanimously carried.

/s/ Lori Peternell, Village Treasurer

These are not official minutes until approved by the Parks and Lakefront Committee



VILLAGE OF WILLIAMS BAY

250 Williams Street | PO Box 580 | Williams Bay | WI | 53191 | williamsbay.org
Phone: 262-245-2700 | Fax: 262-245-2705

UNOFFICIAL MINUTES FINANCE AND PERSONNEL COMMITTEE WEDNESDAY, APRIL 14, 2021 AT 6:30 PM VIA TELECONFERENCE

Call to Order

Meeting was called to order by Chairman Parker at 8:27pm

Roll Call

Trustees Parker, D'Alessandro, and Wright.

Also Present: President Duncan, Trustees McMannamy, Umans and Vlach, Interim Administrator Bretl, Treasurer Peternell, Public Works Director Edwards, Police Chief Timm, Police Lieutenant Kostock, Recreation Director Rowland and Harbormaster Blincoe.

Meeting Minutes

D'Alessandro/Wright motion to approve meeting minutes of March 10, 2021. Unanimously carried.

D'Alessandro/Wright motion to approve meeting minutes of March 31, 2021. Unanimously carried.

Approve Beach & Launch Attendant Wages

Bretl discussed the Harbormaster's wage request for the 2021 season. He is requesting the Harbormaster hourly wage to be increased to \$20 and the starting wage for launch attendants to be \$13 and starting wage for beach attendants to be \$9, increase the starting wage for Georgia Warren to \$16. D'Alessandro/Wright motion to recommend Village Board approval of proposed 2021 wages as presented. Unanimously carried.

Hiring of Beach/Launch Attendants

The Committee reviewed the applications for Ethan West, Michael Early, and Martin Browder.

D'Alessandro/Wright motion to recommend Village Board approval to hire all applicants at the 2021 proposed wages. Unanimously carried.

Code Enforcement Contract

The Committee reviewed the proposed contract renewal with Municipal Code Enforcement and stated that they are happy with the services being provided and should renew the contract.

Wright/D'Alessandro motion to recommend Village Board approval of the contract with Municipal Code Enforcement contingent upon the recommended contract changes by the Building, Zoning and Ordinance Committee. Unanimously carried.

Commercial & Residential Cross Connection Inspection Contracts

Discussion was held regarding HydroCorp's proposed contract renewals for cross connection inspections. Edwards stated that the Village is required to do these inspections and is satisfied with HydroCorp. The contracts are for a 2-year period with an annual cost of \$8,352 for commercial inspections and an annual cost of \$29,808 for residential inspections. Wright/D'Alessandro motion to recommend Village Board approval of HydroCorp's contract renewal for Commercial and Residential cross connection inspections. Unanimously carried.

Adjourn

Wright/D'Alessandro motion to adjourn at 8:37pm. Unanimously carried.

/s/ Lori Peternell, Village Treasurer

These are not official minutes until approved by the Finance & Personnel Committee

BAY WAREHOUSE

PO Box 968
Williams Bay, WI 53191
Phone: 262-903-5006
Email: Maiersgrouprentals@gmail.com
Manager: Sarah Howarth

Bay Warehouse Rental Agreement for Unit # 4

Contact Information

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Cell Phone: _____ Alternate #: _____
Email: _____

Alternate Contact Person

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Cell Phone: _____ Alternate #: _____
Email: _____
Relationship: _____

Processing fee: There is a \$2/check processing fee which is waived for Tenants paying biannually or annually.

Rent Due Date: First of Month **Rent:** \$ 90 /mo beginning 9-1-19

Total amount due monthly: \$ 90 * The Village has been paying yearly and is paid up through

There is a Late Fee of \$ _____ if payment is received 7 days beyond the due date with leniency applied for the first occurrence or once yearly. 9-30-21

Bad Check Charge: \$35.00

My signature indicates that I agree to the following terms of the Lease Agreement.

Tenant Signature: _____ Date: _____

Thanks -
Sarah
(262) 903-5006

RELEASE OF OPERATOR'S LIABILITY FOR BODILY INJURY: Operator, Operator's agents and employees shall not be liable to Tenant for injury or death as a result of Tenant's use of the storage space or the self-storage facility, even if such injury is caused by the active or passive acts or omissions or negligence of the Operator, Operator's agents or employees.

INDEMNITY: Tenant agrees to indemnify, hold harmless and defend Operator from all claims, demands, actions or causes of action (including attorneys' fees and all costs) that are hereinafter brought by others arising out of Tenant's use of the storage space and common areas, including claims for Operator's active negligence.

RULES AND REGULATIONS: Operator shall have the right to promulgate rules and regulations for the safety, care and cleanliness of the storage space or the preservation of good order on the facility. Tenant agrees to follow all rules and regulations now in effect, or that may be put into effect from time to time.

PROPERTY LEFT IN THE STORAGE SPACE: Operator may dispose of any property left in the storage space or on the storage facility by Tenant after Tenant has terminated his or her tenancy. Tenant shall remove all contents from storage unit when vacating. Operator does not provide rubbish disposal for tenants. Tenant shall be responsible for paying all costs incurred by Operator in disposing of such property.

TENANT ACCESS: Usual access is 24 hours a day every day. However Tenant access to the storage facility may be conditioned in any manner deemed reasonably necessary by Operator to maintain order. Such measures may include but are not limited to, limiting hours of operation and requiring verification of Tenant's identity.

OPERATOR'S RIGHT TO ENTER: Tenant grants Operator, Operator's agents or representatives of any governmental authority, including police and fire officials, access to the storage space upon twelve (12) hours advanced notice to Tenant. In the event of an emergency, Operator, Operator's agents or representatives of governmental authority shall have the right to enter the storage space without notice to Tenant, and take such action as may be necessary or appropriate to protect the storage facility, to comply with applicable law or enforce Operator's rights.

NO SUBLETTING: Tenant shall not assign or sublease the storage space without the written permission of the Operator. Operator may withhold permission to sublet or assign for any reason or for no reason in Operator's sole discretion.

WAIVER OF JURY TRIAL: Operator and Tenant waive their respective right to trial by jury of any cause of action, claim, counterclaim, or cross complaint, in any action brought by either Operator against Tenant, or Tenant against Operator, or Operator's agents or employees, on any matter arising out of, or in any way connected with this rental agreement, Tenant's use of the storage space or this storage facility, or any claim of bodily injury or property loss or damage, or the enforcement of any remedy under any law, statute or regulation. This jury trial waiver is also made by Tenant on behalf of any of Tenant's agents guests or invitees.

NOTICES: All notices required by this Rental Agreement shall be sent by either email or first class mail to Tenant's last known address. Notices shall be deemed to have been given when receiving either an email response from the Tenant or when sending a written notice via first class mail in the United States mail. Tenant agrees that any such notice is conclusively presumed to have been received by Tenant five (5) days after mailing, unless returned to Operator by the U.S. Postal Service. All statutory notices shall be sent as required by law.

NO WARRANTIES: NO EXPRESSED OR IMPLIED WARRANTIES ARE GIVEN BY OPERATOR, OPERATOR'S AGENT'S OR EMPLOYEES AS TO THE SUITABILITY OF THE STORAGE SPACE FOR TENANT'S INTENDED USE. OPERATOR DISCLAIMS AND TENANT WAIVES ANY IMPLIED WARRANTIES OF SUITABILITY OR FITNESS FOR A PARTICULAR USE.

NO ORAL AGREEMENTS: This rental agreement contains the entire agreement between Operator and Tenant, and no oral agreements shall be of any effect whatsoever. Tenant acknowledges that no representations or warranties have been made with respect to the safety, security or suitability of the storage space for the storage of Tenant's property, and that Tenant has made his own determination of such matters solely from inspection of the storage space and the facility. Tenant agrees that he is not relying, and will not rely, upon any oral representation made by Operator or by Operator's agents or employees purporting to modify or add to this rental agreement. Tenant understands and agrees that this agreement may be modified only in writing, signed by both parties.

SUCCESSION: All provisions of this rental agreement shall apply to and be binding upon all successors in interest, assigns or representatives of the parties hereto.

ENFORCEMENT: If any part of this rental agreement is held to be unenforceable for any reason, in any circumstance, the parties agree that such part shall be enforceable in other circumstances, and that all the remaining parts of this agreement will be valid and enforceable.

Operator rents to Lessee (Tenant) the storage space indicated above pursuant to the following terms and conditions:

TERM: The lease agreement is a month-to-month agreement until terminated. Tenants paying biannually or annually will be sent a renewal notification.

TERMINATION: Advanced written notice of at least 31 calendar days is required, given by either Operator or Tenant to the other party to terminate this tenancy. Tenant must leave the space broom clean and in good condition. Tenant is responsible for all damages.

RENT: The rent shall be the amount stated above and paid to Operator at the address stated above. Rent is due on the first day of each month and without demand. If preferred, the rent may be prepaid up to 1 year in advance. Operator reserves the right to require that rent and other charges be paid in cash, certified check or money order.

RENT CHANGES: Operator may change the monthly rent or other charges by giving Tenant twenty eight (28) days advanced written notice by either email or first-class mail at the address stated in this agreement. If Tenant has made advanced rental payments, the new rent will be charged against such payments, effective upon giving notice of the new rate.

LATE CHARGES AND OTHER FEES: Tenant agrees to pay Operator the late fees as indicated on the first page of the lease. Tenant shall pay Operator any indicated fees for each letter sent to Tenant notifying Tenant of the default. Tenant agrees to pay Operator the indicated "Not Sufficient Funds" charge plus all bank charges for any dishonored check. These fees are considered additional rent and are to compensate Operator for labor and other costs of collection. In the event of default, Tenant agrees to pay all collections and lien costs incurred by Operator.

NOTICE OF LIEN: Pursuant to Wisconsin law the Operator has a lien on Lessee's stored property for rent and other charges. Operator may sell Lessee's property in accordance with section 704.90 of the Wisconsin Statutes if Lessee fails to pay rent and other charges when due.

CHANGE OF ADDRESS: Tenant must provide address changes to Operator in writing. Such change will become effective when received by Operator. It is Tenant's responsibility to verify that Operator has received and recorded the requested change of address.

LOCKS: Tenant shall provide, at Tenant's own expense, a lock that Tenant deems sufficient to secure the space. If the space is found unlocked Operator may, but is not obligated to, take whatever measures Operator deems reasonable to re-secure the space, with or without notice to Tenant. The absence of a lock shall entitle the Operator to presume conclusively that the unit has been vacated. Operator does not warrant or maintain padlocks, whether purchased from, or provided by Operator.

DENIAL OF ACCESS: When rent or other charges remain unpaid for seven (7) consecutive days Operator may deny Tenant access to the storage space.

USE OF STORAGE SPACE: Tenant shall not occupy space as a residence or sleep in unit. Operator is not engaged in the business of storing goods for hire and no bailment is created under this agreement. Operator exercises neither care, custody nor control over Tenant's stored property. Tenant agrees to use the storage space only for the storage of property wholly owned by Tenant and NOT to use the space as a work area. Tenant shall not store antiques, heirlooms, collectibles or any property having special or sentimental value to Tenant. Tenant waives any claim for emotional or sentimental attachment to the stored property. Tenant agrees not to store property with a total value in excess of \$5,000 without the written permission of the Operator. If such written permission is not obtained, the value of Tenant's property shall be deemed not to exceed \$5,000. Nothing herein shall constitute any agreement or admission by Operator that Tenant's stored property has any value, nor shall anything alter the release of Operator's liability set forth below. Tenant is responsible for removing snow in front of their unit. No work is allowed in the unit unless written approval is received from the Operator.

HAZARDOUS OR TOXIC MATERIALS PROHIBITED: Tenant is strictly prohibited from storing or using materials in the storage space or on the facility classified as hazardous, toxic, or illegal under any local, state or federal law or regulation, and from engaging in any activity which produces such materials. Tenant's obligation of indemnity as set forth below specifically includes any costs, expenses, fines or penalties imposed against the Operator, arising out of the storage or use of any hazardous, toxic, or illegal material by Tenant, Tenant's agents, employees, invitees or guests. Operator may enter the storage space at any time to remove and dispose of prohibited items.

INSURANCE: Tenant, at Tenant's expense, shall maintain a policy of fire, flood and water damage, extended coverage endorsement, burglary, vandalism and malicious mischief insurance for the actual cash value of stored property. Insurance on Tenant's property is a material condition of this agreement and is for the benefit of both Tenant and Operator. Failure to carry the required insurance is a breach of this agreement and Tenant assumes all risk of loss to stored property that would be covered by such insurance. Tenant expressly agrees that the insurance company providing such insurance shall not be subrogated to any claim of Tenant against Operator, Operator's agents or employees for loss of or damage to stored property.

RELEASE OF OPERATOR'S LIABILITY FOR PROPERTY DAMAGE: All personal property stored within or upon the storage space by Tenant shall be at Tenant's sole risk. Operator and Operator's agents and employees shall not be liable for any loss of or damage to any personal property in the storage space or at the self-storage facility arising from any cause whatsoever including, but not limited to, burglary, mysterious disappearance, fire, water damage, rodents, Acts of God, the active or passive acts or omissions or negligence of the Operator, Operator's agents or employees.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into between the Village of Williams Bay (the Village) and the Town of Linn (the Town), effective as of the date of the last signature of the parties to this Agreement.

RECITALS

- A. The Village operates a municipal beach within the corporate boundaries of the Village which provides access to Geneva Lake (the Beach).
- B. Access to the Beach is controlled by the Village as determined by various factors including public health safety concerns.
- C. The Village has determined that it is appropriate in 2021 to allow access to the Beach by individuals who are not residents of the Village, subject to the purchase of beach tags for that purpose.
- D. The Town has proposed to allow its residents to acquire up to four (4) beach tags per household with the Village to bill the Town directly for the purchase of such beach tags.
- E. The Village has determined that it is appropriate to accept the proposal of the Town to allow the Town's residents to acquire up to four (4) beach tags per Town household, with the Village billing the Town for same, subject to the provisions of this MOU.

AGREEMENT

In consideration of the Recitals and provisions which follow, the Village and the Town agree to the following.

- 1. The Village agrees to allow the Town to acquire up to four (4) beach tags per household of Town residents to permit access to the Beach.
- 2. The Town will require all Town residents requesting beach tags to complete and sign the attached "Town of Linn Form 2021 Season Beach Tag Request Form". (the Form). Such Form will be forwarded to the Village by the applicant along with a copy of the most recent tax bill as proof of residency. If additional beach tags beyond the four (4) to be billed to the Town are requested by the applicant, payment for such

additional tags as addressed in the Form, must also be provided to the Village before such additional beach bags are issued.

3. Upon receipt of the Form and required documents, and, if applicable, payment for additional beach tags, the Village will issue the requested beach tags to the applicants. On or before September 10, 2021, the Village will forward to the Town a copy of each Form processed by the Village along with the bill of the Village to the Town for the up to four (4) beach tags per Town resident issued by the Village. The charge for each such beach tag will be in the amounts set forth on the Form.

4. The Town agrees to pay the billing from the Village for the beach tags issued to up to four (4) residents per Town household, on or before October 10, 2021.

5. This MOU may be executed in multiple counterparts. Signatures transmitted by facsimile or e-mail in PDF shall be treated as originals.

APPROVED by the Village Board of the Village of Williams Bay this _____ day of _____, 2021.

VILLAGE OF WILIAMS BAY

By: _____
William Duncan, President

ATTESTED:

By: _____
Jackelyn Pankau, Village Clerk

APPROVED by the Town Board of the Town of Linn this _____ day of _____, 2021.

TOWN OF LINN

By: _____
James Weiss, Town Chairperson

ATTEST:

Alyson Morris, Town Clerk



TOWN OF LINN FORM

2021 Season Beach Tag Request Form

ENTER NAMES AND AGES OF FAMILY MEMBERS			
NAME	AGE	NAME	AGE

TOWN OF LINN BEACH TAGS			
Beach Tags	Quantity	Price - Ages 5 and under are Free	Total
Primary Property Owners Only		Billed to the Town of Linn (max 4 tags)	\$ -
Additional Non-Resident Tags purchased by Linn Resident:			
Child (age 6-11)		\$50.00 each	\$
Adult (age 12 & up)		\$70.00 each	\$
Family Pass		\$180.00 each	\$
GRAND TOTAL ENCLOSED FOR ALL ITEMS			\$

FOR OFFICE USE ONLY	
Beach Tag # issued:	

Linn Township residents must provide a copy of their most recent property tax bill attached to this form.

TAX ID # _____

Tags must be sewn on an article of beach clothing (Ex: swimsuit, shorts, T-shirt, beach cover up)
Tags **CAN NOT** be sewn on towels, hats or handbags.

Phone Number: _____ (MANDATORY)

Printed Name: _____

Address: _____

My signature below indicates I understand by making false statements on this form and failure to abide by posted beach rules will result in revocation of beach privileges.

Signature: _____ DATE: _____

METHOD OF PAYMENT: _____ CHECK ENCLOSED _____ CREDIT CARD (fill in information below)

Charge my: _____ Visa _____ MasterCard _____ Discover _____ American Express

Name on Card: _____

Card # _____

Expires: _____ / _____ Security Code: _____

RETURN SIGNED FORM WITH PAYMENT TO: VILLAGE OF WILLIAMS BAY, PO BOX 580, WILLIAMS BAY, WI 53191

2019 Library Budget to Actual - After Final Audit

Acct	Title	Budget	Actual
100-41100	Library Fund Levy	\$148,803	\$148,803
	Administrtion Levy for Treasurer	\$9,330	\$9,330
	Bldg Expense Levy	<u>\$27,200</u>	<u>\$27,200</u>
	Total Levy	\$185,333	\$185,333

				NOTE: Total line item budget was \$12,580; \$3280 was for Library expenses; \$9330 was for Treasurer Administration
400-58100-135	Library Administration Cost	\$9,330.00	\$9,082.28	
400-58100-150	Library Bldg Repair & Maintenance	\$3,400.00	\$7,827.88	
400-58100-155	Libray Bldg Supplies	\$4,000.00	\$479.24	
400-58100-170	Library Gas	\$4,000.00	\$8,568.15	
400-58100-171	Library Electric	\$7,200.00	\$6,280.21	
400-58100-173	Library Water & Sewer	\$600.00	\$587.74	
400-58100-175	Library Janitorial Services	<u>\$8,000.00</u>	<u>\$7,800.00</u>	
		\$27,200.00	\$31,543.22	-\$4,343.22
	Total Expenditures	\$36,530.00	\$40,625.50	
(A)	Excess(defeciency) of revenue over expenditures for Village expenses		(\$4,095.50)	(transfer to be authorized in May 2021)

Excess(defeciency) of revenue over expenditures
for all Library expenses per Audit (pg 49) (\$18,121.00)

Total amount due from Library (\$14,025.50)

Total 2019 Library Expenses	386,362.00
Less Village Taxes	<u>(185,333.00)</u>
	201,029.00
Less Building and Operating Expenses in excess of Budget	<u>(4,095.50)</u>
2019 Due to Village	<u><u>196,933.50</u></u>
Non Village Library Income	182,908.00
2019 Library share of Expenses over Budget	<u>14,025.50</u>
	<u><u>196,933.50</u></u>

(A) Accounting for the fund balance needs to be adjusted by \$4,095.50.

Library Fund Balance 12/31/2019	pg49	193,179.00
Building and Operating Expense True Up		<u>4,095.50</u>
		<u><u>197,274.50</u></u>



VILLAGE OF WILLIAMS BAY

250 Williams Street | PO Box 580 | Williams Bay | WI | 53191 | williamsbay.org
Phone: 262-245-2700 | Fax: 262-245-2705

UNOFFICIAL MINUTES WATER AND SEWER COMMITTEE WEDNESDAY, APRIL 14, 2021 AT 6:30 PM VIA TELECONFERENCE

Call to Order

Meeting was called to order by Chairman Umans at 7:33pm

Roll Call

Trustees Umans, Parker and Vlach

Also Present: President Duncan, Trustee D'Alessandro, McMannamy and Wright, Interim Administrator Bretl, Treasurer Peternell, Public Works Director Edwards, Police Chief Timm, Police Lieutenant Kostock, and Recreation Director Rowland.

Meeting Minutes

Parker/Vlach motion to approve the March 10, 2021 meeting minutes. Unanimously carried.

Parker/Vlach motion to approve the March 31, 2021 meeting minutes. Unanimously carried.

Commercial & Residential Cross Connection Inspection Contract

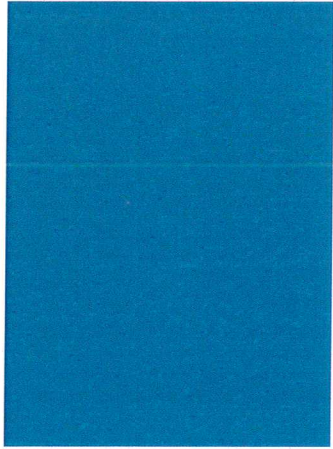
The Committee reviewed the contract renewals for cross connection inspections with HydroCorp. The contracts are for a 2-year period with an annual cost of \$8,352 for commercial inspections and an annual cost of \$29,808 for residential inspections. Parker/Vlach motion to recommend Village Board approval of the HydroCorp Commercial & Residential Cross Inspection contracts. Unanimously carried.

Adjourn

Umans/Parker motion to adjourn at 7:38pm. Unanimously carried.

/s/ Lori Peternell, Village Treasurer

These are not official minutes until approved by the Water and Sewer Committee



ECS Midwest, LLC

Proposal for Subsurface Exploration and
Geotechnical Engineering

Proposed Sanitary and Water Lines

Elkhorn Road (Highway 67)
Williams Bay, Wisconsin

ECS Proposal Number 42:2545-GP(Rev1)

December 21, 2020





December 21, 2020

Mr. Brett Biwer, P.E.
Project Manager
Baxter & Woodman Consulting Engineers
256 S. Pine Street
Burlington, WI 53105
Email: BBiwer@baxterwoodman.com

ECS Proposal No. 42:2545-GP(Rev1)

Reference: Proposal for Subsurface Exploration and Geotechnical Engineering
Proposed Sanitary and Water Lines
Elkhorn Road (Highway 67)
Williams Bay, Wisconsin

Dear Mr. Biwer:

As requested, ECS Midwest, LLC (ECS) is pleased to present the following proposal for providing geotechnical subsurface exploration and geotechnical engineering services for the above referenced project. This proposal outlines our understanding of the project, the proposed scope of services, activity schedule, fees, and authorization requirement.

In preparing this proposal, we have had the opportunity to review the Request for Proposal, available aerial photographs and available geologic and geotechnical information for the general site vicinity and discuss the overall project with you.

PROJECT DESCRIPTION

The project site is located along Elkhorn Road (Highway 67), between Stark Street and W. Geneva Street, in Williams Bay, Walworth County, Wisconsin. Project information has been provided by you, which included an aerial of the site location and a brief project description. It is understood you are relaying the sanitary sewer from Geneva Street to Olive Street and installing new water main along the entire length. This work is planned to be bid as part of a DOT roadway project. We understand the proposed project will include the construction of 12-inch diameter sewer approximately 12 feet deep running down the center of the road from Olive Street to Geneva Street. There is an existing 8-inch diameter sewer that will be replaced with the 12-inch diameter in the same location. There are 3 manholes that will be removed and replaced in the same location. There's one at each intersection and one in the middle. The new water main will be on the west side of the road from Geneva Street to Olive Street and on the east side of the road from Olive Street to Stark Street. The elevation rises north of Olive Street but there is a creek running on the east side of the road.

Assumptions were made in the formation of our scope of services. If different information becomes available and/or the design criteria are changed, we would be pleased to revise our scope of services.

SCOPE OF SERVICES

Our integrated services will include drilling of test borings, laboratory testing of representative soil samples for pertinent engineering properties, various engineering analyses, and preparation of a geotechnical engineering report. Our proposed scope of services includes:

Field Exploration

- The proposed boring locations will be marked in the field utilizing simple measuring techniques relative to existing site features. Elevations may be interpolated from provided civil drawings, published or online topographic maps, or determined using a laser level relative to a temporary provided or assumed benchmark. If more precise locating of the borings or ground elevations at the boring locations is desired, it is recommended a surveyor be retained.
- Digger's Hotline will be contacted to mark utilities.
- Mobilize a truck-mounted drilling rig to the site.
- ECS understands that borings may be drilled in the parking lanes, and traffic control will not be required. Additional fees will apply if traffic control is required.
- Perform 6 test borings, each to a depth of 15 feet, for a total of 90 lineal feet of drilling. The proposed boring locations are shown on the enclosed Proposed Boring Location sketch. The borings will be advanced to the proposed depths below the existing ground surface unless auger refusal causes them to be terminated at a shallower depth. Review of available subsurface information indicates organic soils may be present, particularly between Stark Street and Olive Street. Depending upon the uniformity or non-uniformity of the subsoil, it may be desirable or necessary to drill additional test borings or extend some of the test borings deeper to assist in providing more design and construction estimate information. The need for additional or deeper test borings will be made during the performance of the field exploration program. Additional drilling footage would be done concurrent with the planned exploration for \$20/foot.
- Perform Standard Penetration Tests (SPTs) at regular intervals to the boring termination depth.
- Measure depth of free groundwater observed within each borehole at the time of drilling and prior to backfilling.
- Upon completion of subsurface exploration drilling, each of the boreholes will be backfilled. Excess spoil will be removed from site. We will patch the pavement surface with cold mix asphalt or quick-set concrete. No other restoration will be provided. ECS will not be responsible for restoration of, but not limited to grass or ruts caused by drilling operations. The client must communicate areas that must not be disturbed in advance of field operations.

- Some borehole backfill settlement or expansion can and will occur over time. We have not included a cost for monitoring the boreholes after the completion of drilling activities. Settlement or expansion of the borehole backfill can create a trip hazard and should be carefully monitored by the client and/or property owner.
- Upon completion of drilling operations, the collected representative samples will be returned to our laboratory for further identification and testing.
- This proposal does not include the use of special OSHA or hazardous drilling techniques or drill crew protection. The client must inform ECS of any known environmental site conditions which could affect the health and safety of the drill crew.
- Complete rights-of-entry and access to the site are expected to be provided for us as a function of this proposal.
- ECS assumes our field services will not require permits. Any permits required should be brought to our attention before drilling begins, so that an appropriate fee can be determined.

Laboratory Testing

- Visual classification of the soil samples by a geotechnical engineer based on ASTM D2488 (visual-manual) procedure.
- Perform basic index laboratory testing, which may include natural moisture content tests (ASTM D2216) and calibrated hand penetrometer resistance tests, on select cohesive soil samples.

Additional laboratory testing recommended by ECS would be in accordance with our typical rates and after your authorization.

Report

A written geotechnical engineering report that presents our findings and recommendations will be prepared after completion of testing and geotechnical engineering analysis. The geotechnical engineering report will be provided electronically and will include the following items:

- Observations from our site reconnaissance including current site conditions, surface drainage features, and surface topographic conditions.
- A review of readily available published geologic conditions and their relevance to your planned development.
- A subsurface characterization, and a description of the field exploration and laboratory tests performed.
- Records of the field exploration (test boring logs) prepared in accordance with the local standard practice for geotechnical engineering. A boring location plan will be included, and the

results of the laboratory tests will be plotted on the boring logs or included on a separate test report sheet.

- General recommendations for manholes including, allowable soil bearing pressure(s), estimates of predicted foundation settlement, lateral earth pressures, below-grade drainage recommendations, below-grade wall backfill recommendations, and considerations for buoyant uplift.
- Geotechnical-related design information for support of the proposed utilities, such as depth of water, anticipated excavation difficulties, anticipated excavation instability, and anticipated depth of suitable bearing material.
- Evaluation of the on-site soil characteristics encountered in the soil borings. More specifically, we will discuss the suitability of the on-site materials for reuse as engineered fill. We will also include compaction recommendations and general suitable material guidelines. Ground water concerns relative to the planned construction, if any, will be summarized.
- Recommendations for additional testing and/or consultation that might be required to complete the geotechnical assessment and related geotechnical engineering for this project.

FEE

ECS will provide the described Scope of Services for the **lump sum fee of \$3,710**. This proposal assumes the soil borings can be performed during normal work hours (Monday - Friday, 7am to 5pm). Prices presented in this proposal are valid for 120 days from the date of this proposal.

If additional services are requested or required based on differing site conditions, we will contact your office (or assigned representative) for verbal and written authorization for additional services. Our fees assume a one-time short routine post-report consultation.

SCHEDULE

In preparing this proposal, we have assumed the client will assist in the coordination of our access to the site with the current site owners/occupants. After authorization to proceed and notification that the appropriate on-site personnel and property owner(s) have been informed, our approximate schedule would be as follows:

- | | |
|------------------------|--|
| • Mobilize to the Site | Typically 2 weeks after written notice to proceed |
| • Drilling Operations | Approximately 1 working day |
| • Laboratory Testing | Approximately 3 days after drilling |
| • Final Report | Approximately 4 weeks from written notice to proceed |

The actual time from initial authorization through final report submission will depend on weather conditions, site access and utility clearance. Verbal comments on findings can typically be provided 3 to 5 days after drilling completion, if requested.

CLOSING

If other items are required because of unexpected field conditions or because of a request for additional services, you would be informed of our intentions for both your review and authorization before modifying or expanding the extent of our services.

Our "Terms and Conditions of Service," which are included as an attachment to this letter, is an integral part of our proposal. These conditions represent the current recommendations of the GeoProfessional Business Association (GBA), the Consulting Engineers' Council, and the Geo-Institute of the American Society of Civil Engineers.

Our insurance carrier requires that we receive written authorization prior to initiation of our services, and a signed contract prior to the release of any work product. This letter is the agreement for our services. Your acceptance of this proposal may be indicated by signing and returning a copy of the Proposal Acceptance Form to us. If you prefer to issue a separate purchase order or other written authorization, please reference this proposal as part of the contract documents. We are pleased to have this opportunity to offer our services and look forward to working with you on the project.

Respectfully submitted,

ECS Midwest, LLC



Darin Maciolek, P.E.
Principal, Geotechnical Dept. Manager
DMaciolek@ecslimited.com



Charlie Gresser, P.E.
Office Manager
cgresser@ecslimited.com

Enclosures: Proposal Acceptance Form
 Terms and Conditions of Service
 Important Information about This Geotechnical Engineering Proposal
 Proposed Boring Locations

PROPOSAL ACCEPTANCE FORM

Proposal No.: 42:2545-GP(Rev1)
Scope of Services: Subsurface Exploration and Geotechnical Engineering Services
Project: Sanitary and Water Lines
Location: Elkhorn Road (Hwy 67), Williams Bay, Wisconsin

Geotechnical Subsurface Exploration & Report (\$3,710 lump sum)

Accepted by: _____
(Signature) (Printed Name)
Title: _____ Date: _____

Please complete this page and return one copy to ECS to indicate acceptance of this proposal and to initiate services on the above-referenced project. By signing, the signatory indicates that he/she has read the accompanying Terms and Conditions of Service and agrees to be bound by such Terms and Conditions of Service. The individual or individuals that sign this agreement on behalf of the client warrant that they are duly authorized agents of the client. If you prefer to issue a separate purchase order or other written authorization, please reference this proposal as part of the contract documents.

BILLING INFORMATION

(Please Print or Type)

Invoice Delivery Preference: ☐ Electronic (email) ☐ Hardcopy (USPS)

Name of Client Company: _____

Name of Client Contact Person: _____

Title: _____

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Person to Receive Invoice: _____

Title: _____

Email Address: _____

Billing Address: _____

Telephone Number: _____

Client Project/Account Number: _____

Special Conditions for Invoice: _____

ECS MIDWEST, LLC TERMS AND CONDITIONS OF SERVICE

The professional services (the "Services") to be provided by ECS MIDWEST, LLC ("ECS") pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing shall form the Agreement between ECS and Client.

- 1.0 **INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants
- 2.0 **SCOPE OF SERVICES** - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.
- 3.0 **STANDARD OF CARE**
- 3.1 In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.
- 3.2 CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.
- 3.3 If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.
- 3.4 If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.
- 4.0 **CLIENT DISCLOSURES**
- 4.1 Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.
- 4.2 "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.
- 4.3 If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.
- 5.0 **INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S agents, contractors, or consultants, including such information that becomes incorporated into ECS documents.
- 6.0 **CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. Client agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' Additional Services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.
- 7.0 **RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**
- 7.1 CLIENT warrants that it possesses the authority to grant ECS right of entry to the Site for the performance of Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS

harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

- 7.2 CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.
- 7.3 ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause minor, but common, damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.
- 7.4 CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.
- 8.0 **UNDERGROUND UTILITIES**
- 8.1 ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.
- 8.2 CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.
- 8.3 CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' subcontractor's request for utility marking services made in accordance with local industry standards.
- 9.0 **SAMPLES**
- 9.1 Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.
- 9.2 Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing process by-products in accordance with applicable laws and regulations.
- 10.0 **ENVIRONMENTAL RISKS**
- 10.1 When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.
- 10.2 When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.
- 10.3 Unless explicitly stated in the Scope of Services, ECS will neither subcontract nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.
- 10.4 In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.
- 10.5 Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.
- 10.6 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near

the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

- 11.1 ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it [the "Documents of Service"] and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with the Project for which the Documents of Service are provided until the completion of the Project.
- 11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT, its licensed consultants and its contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.
- 11.3 CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.
- 11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

12.0 SAFETY

- 12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.
- 12.2 In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

- 13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.
- 13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.
- 13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any contractor or consultant or any of their subcontractors or subconsultants.
- 13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing. Unless the CLIENT can show that the error or omission is contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part time basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from Work that was monitored or tested by ECS on a part time basis.
- 14.0 CERTIFICATIONS - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the Professional Fees section of the Proposal. Any Estimate of Professional Fees stated in these Terms shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.
- 15.2 CLIENT agrees that all Professional Fees and other unit rates shall be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.
- 15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the Scope of Services, Professional Fees, and time schedule.
- 15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices are due and payable upon receipt.
- 15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice. CLIENT agrees to pay the undisputed amount of such invoice promptly.
- 15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.
- 15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
- 15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

- 16.1 CLIENT, its personnel, its consultants, and its contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to CLIENT-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT's personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.
- 16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.
- 17.0 INSURANCE - ECS represents that it and its subcontractors and subconsultants maintain Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

- 18.1 CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT ARISING FROM ECS' PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.
- 18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.
- 18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$50,000, or two (2) times the total fee for the services rendered, whichever is greater.
- 18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.

- 18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this agreement or the services provided as a result of the Proposal be limited to \$500,000.
- 19.0 INDEMNIFICATION**
- 19.1 Subject Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.) ECS does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, or any other statute.
- 19.2 To the fullest extent permitted by Law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT or CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.
- 19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability. If CLIENT is a HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.
- 19.4 If CLIENT is a RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.
- 19.5 IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.
- 20.0 CONSEQUENTIAL DAMAGES**
- 20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.
- 20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.
- 21.0 SOURCES OF RECOVERY**
- 21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS Entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.
- 21.2 In the event of any dispute or claim between CLIENT and ECS arising out of or in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.
- 22.0 THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the AGREEMENT. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.
- 23.0 DISPUTE RESOLUTION**
- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.
- 23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.
- 23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the State of Wisconsin, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.
- 24.0 CURING A BREACH**
- 24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.
- 24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.
- 25.0 TERMINATION**
- 25.1 CLIENT or ECS may terminate this agreement for breach or these terms, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.
- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.
- 26.0 TIME BAR TO LEGAL ACTION** - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.
- 27.0 ASSIGNMENT** - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.
- 28.0 SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.
- 29.0 SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the agreement.
- 30.0 TITLES: ENTIRE AGREEMENT**
- 30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.
- 30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.
- 30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.
- 30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.
- 30.5 CLIENT's execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT's acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.

Important Information about This Geotechnical Engineering Proposal

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

Participate in Development of the Subsurface Exploration Plan

Geotechnical engineering begins with the creation of an effective subsurface exploration plan. This proposal starts the process by presenting an initial plan. While that plan may consider the unique physical attributes of the site and the improvements you have in mind, it probably does not consider your unique goals, objectives, and risk management preferences. Subsurface exploration plans that are finalized without considering such factors presuppose that clients' needs are unimportant, or that all clients have the same needs. *Avoid the problems that can stem from such assumptions* by finalizing the plan and other scope elements directly with the geotechnical engineer you feel is best qualified for the project, along with the other project professionals whose plans are affected by the geotechnical engineer's findings and recommendations. If you have been told that this step is unnecessary; that client preferences do not influence the scope of geotechnical engineering service or that someone else can articulate your needs as well as you, you have been told wrong. No one else can discuss your geotechnical options better than an experienced geotechnical engineer, and no one else can provide the input you can. Thus, while you certainly are at liberty to accept a proposed scope "as is," recognize that it could be a unilateral scope developed without direct client/engineer discussion; that authorizing a unilateral scope will force the geotechnical engineer to accept all assumptions it contains; that assumptions create risk. *Manage your risk. Get involved.*

Expect the Unexpected

The nature of geotechnical engineering is such that planning needs to *anticipate the unexpected*. During the design phase of a project, more or deeper borings may be required, additional tests may become necessary, or someone associated with your organization may request a service that was not included in the final scope. During the construction phase, additional services may be needed to respond quickly to unanticipated conditions. In the past, geotechnical engineers commonly did whatever was required to oblige their clients' representatives and safeguard their clients' interests, taking it on faith that their clients wanted them to do so. But some, evidently, did not, and refused to pay for legitimate extras on the ground that the engineer proceeded without proper authorization, or failed to submit notice in a timely manner, or failed to provide proper documentation. *What are your preferences? Who is permitted to authorize additional geotechnical services on your project? What type of documentation do you require? To whom should it be sent? When? How?* By addressing these and similar issues sooner rather than later, you and your geotechnical engineer will be prepared for the unexpected, to help prevent molehills from growing into mountains.

Have Realistic Expectations; Apply Appropriate Preventives

The recommendations included in a geotechnical engineering report are *not final*, because they are based on opinions that can be verified only during construction. For that reason, most geotechnical engineering proposals offer the construction observation services that permit the geotechnical engineer of record to confirm that subsurface conditions are what they were expected to be, or to modify recommendations when actual conditions were not anticipated. *An offer to provide construction observation*

is an offer to better manage your risk. Clients who do not take advantage of such an offer; clients who retain a second firm to observe construction, can create a high-risk “Catch-22” situation for themselves. *The geotechnical engineer of record cannot assume responsibility or liability for a report’s recommendations when another firm performs the services needed to evaluate the recommendations’ adequacy.* The second firm is also likely to disavow liability for the recommendations, because of the substantial and possibly uninsurable risk of assuming responsibility for services it did not perform. Recognize, too, that no firm other than the geotechnical engineer of record can possibly have as intimate an understanding of your project’s geotechnical issues. As such, reliance on a second firm to perform construction observation can elevate risk still more, because its personnel may not have the wherewithal to recognize subtle, but sometimes critically important unanticipated conditions, or to respond to them in a manner consistent with your goals, objectives, and risk management preferences.

Realize That Geoenvironmental Issues Have Not Been Covered

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. *Geoenvironmental services are not being offered in this proposal. The report that results will not relate any geoenvironmental findings, conclusions, or recommendations.* Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the express purpose of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may be addressed as part of the geotechnical engineering study described in this proposal, the geotechnical engineer who would lead this project **is not** a mold prevention consultant; **none of the services being offered have been designed or proposed for the purpose of mold prevention.**

Have the Geotechnical Engineer Work with Other Design Professionals and Constructors

Other design team members’ misinterpretation of a geotechnical engineering report has resulted in costly problems. Manage that risk by having your geotechnical engineer confer with appropriate members of the design team before finalizing the scope of geotechnical service (as suggested above), and, again, after submitting the report. *Also retain your geotechnical engineer to review pertinent elements of the design team members’ plans and specifications.*

Reduce the risk of unanticipated conditions claims that can occur when constructors misinterpret or misunderstand the purposes of a geotechnical engineering report. Use appropriate language in your contract documents. Retain your geotechnical engineer to participate in prebid and preconstruction conferences, and to perform construction observation.

Read Responsibility Provisions Closely

Clients, design professionals, and constructors who do not recognize that geotechnical engineering is far less exact than other engineering disciplines can develop unrealistic expectations. Unrealistic expectations can lead to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their proposals. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks, thus to encourage more effective scopes of service. *Read this proposal's provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

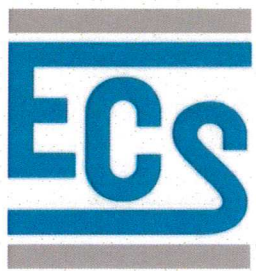
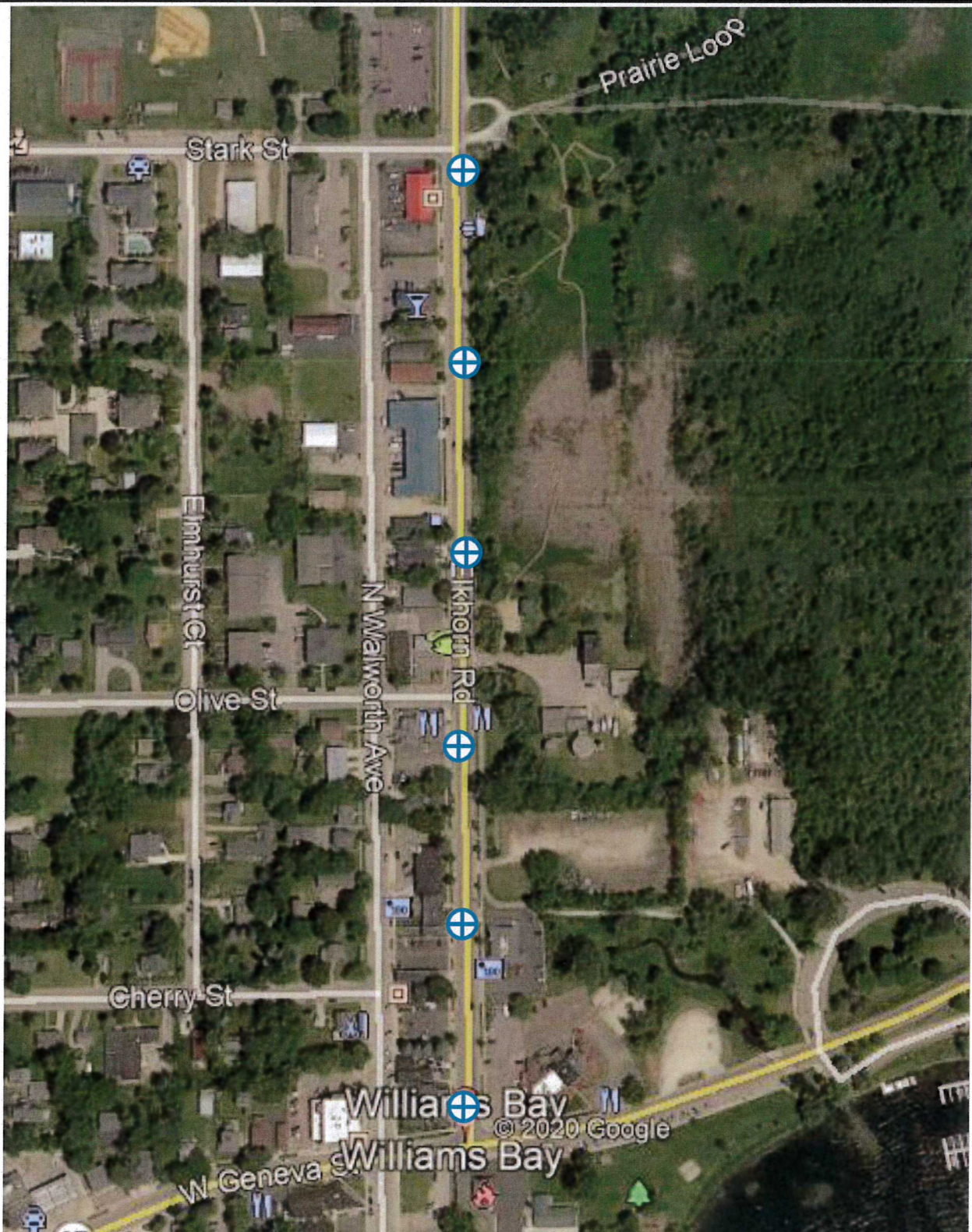
Rely on Your Geotechnical Engineer for Additional Assistance

Membership in the Geoprofessional Business Association (GBA) exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit to everyone involved with a construction project. Confer with a GBA-member geotechnical engineer for more information. Confirm a firm's membership in GBA by contacting GBA directly or at its website.



8811 Colesville Road/Suite G106, Silver Spring, MD 20910
Telephone: 301/565-2733 Facsimile: 301/589-2017
e-mail: info@geoprofessional.org www.geoprofessional.org

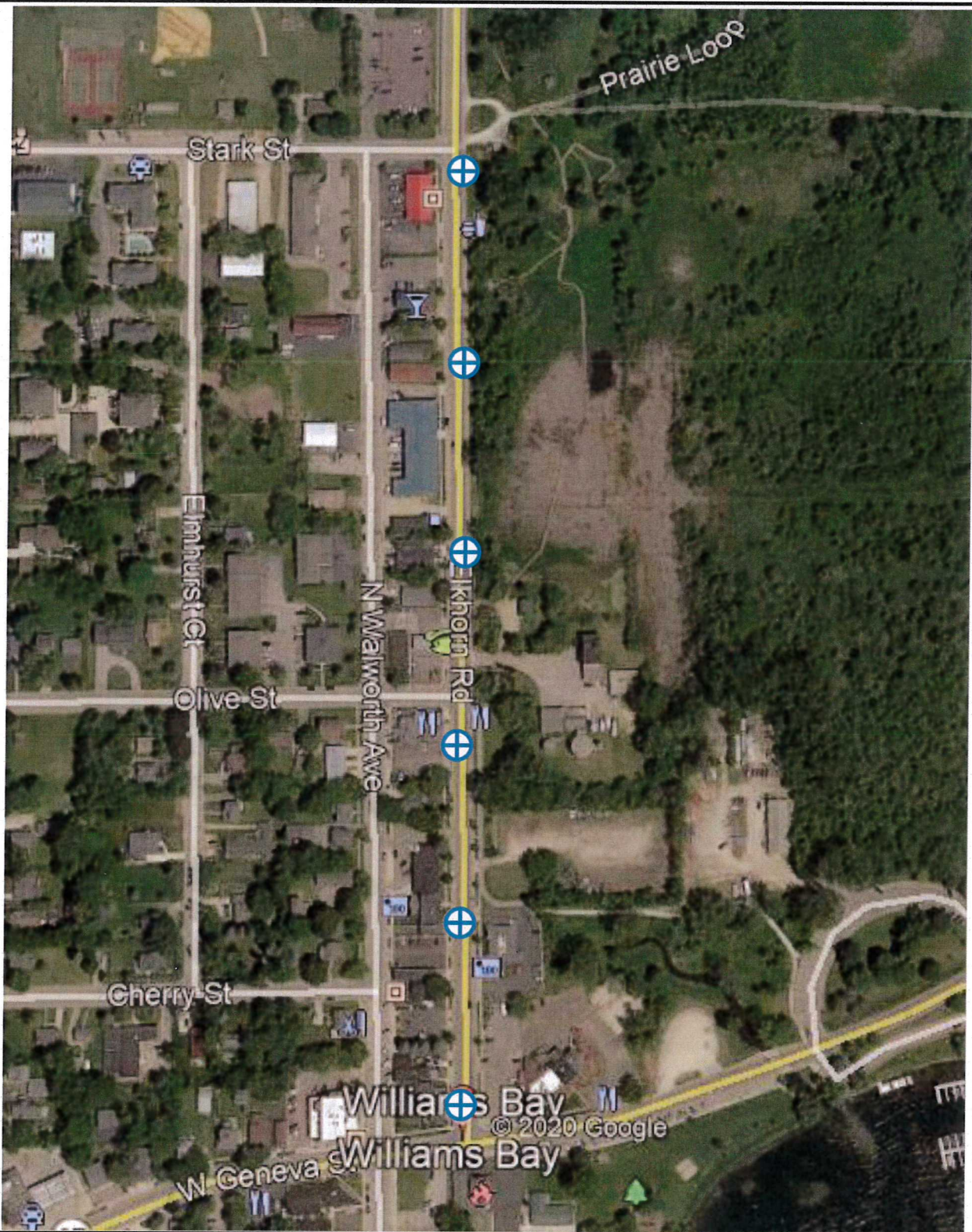
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Proposed Boring Locations SANITARY & WATER LINES

ELKHORN ROAD (HWY 67), WILLIAMS BAY, WI
BAXTER & WOODMAN

ENGINEER DM
SCALE NTS
PROPOSAL NO. 42:2545-GP(Rev1)
SHEET 1 OF 1
DATE 12/18/2020



Proposed Boring Locations SANITARY & WATER LINES

ELKHORN ROAD (HWY 67), WILLIAMS BAY, WI
BAXTER & WOODMAN

ENGINEER DM
SCALE NTS
PROPOSAL NO. 42:2545-GP(Rev1)
SHEET 1 OF 1
DATE 12/18/2020



VILLAGE OF WILLIAMS BAY

250 Williams Street | PO Box 580 | Williams Bay | WI | 53191 | williamsbay.org
Phone: 262-245-2700 | Fax: 262-245-2705

UNOFFICIAL MINUTES BUILDING, ZONING AND ORDINANCE COMMITTEE WEDNESDAY, APRIL 14, 2021 AT 6:30 PM VIA TELECONFERENCE

Call to Order

Meeting was called to order by Chairman Wright at 6:54pm

Roll Call

Trustees Wright, Parker and Umans.

Also Present: President Duncan, Trustee D'Alessandro, McMannamy and Vlach, Interim Administrator Bretl, Treasurer Peternell, Public Works Director Edwards, Police Chief Timm, Police Lieutenant Kostock, and Recreation Director Rowland.

Meeting Minutes

Umans/Parker motion to approve the meeting minutes from March 10, 2021. Unanimously carried.

Resolution R-5-21 Amending Fee Schedule to add kayak and paddleboard rental fees and Tourist Rooming House Permit

Peternell stated these fees were included in the 2021 budget and the resolution is needed to add them to the fee schedule. Umans/Parker motion to recommend Village Board approval of Resolution R-5-21. Unanimously carried.

Resolution R-6-21 Amending Fee Schedule for permit fees

Bretl discussed the resolution and stated that Trustee Wright spent considerable time comparing the existing fees to the proposed fees as part of the Building Inspection contract renewal. Umans/Parker motion to recommend Village Board approval of Resolution R-6-21. D'Alessandro questioned the fee for 1 & 2 family alterations. The previous fee \$65 and the proposed fee is \$55. Parker/Umans motion to recommend Village Board approval of Resolution R-6-21 with changing the fee for 1 & 2 family alterations to \$65. Unanimously carried.

Code Enforcement Contract

The Committee reviewed the proposed code enforcement contract with Municipal Code Enforcement. It was the consensus of the Committee that the contract should be renewed and ask if the term of the contract can be changed from August 1, 2021 to July 31, 2022 to August 1, 2021 to December 31, 2021 and changing the termination timeline be changed from 120 days to 60 days. Parker/Umans motion to recommend Village Board approval of the Municipal Code Enforcement contract contingent upon requested changes and Finance & Personnel Committee's final review of contract. Unanimously carried.

Appointment of Village Administrator

Discussion was held regarding how the Village Administrator is appointed and the term. No action taken, will review again at the May Committee meeting.

Adjourn

Umans/Parker motion to adjourn at 7:33pm. Unanimously carried.

/s/ Lori Peternell, Village Treasurer

These are not official minutes until approved by the BZO Committee



VILLAGE OF WILLIAMS BAY

Date: May 10, 2021

To: Building, Zoning, and Ordinance Committee

C: Jackie Pankau
Lori Peternell

From: Becky Tobin, Village Administrator

A handwritten signature in black ink, appearing to be "BT", with a long horizontal line extending to the right.

Re: Tree Permits and Weed/ Tall Grass Violations

As you are aware the Public Works Director has been responsible for tree permits for the last month since the Building Inspector is no longer performing this service. Public works is also responsible for code violations related to weeds and tall grass. Both of these services are taking away from time that he could be performing duties more pertinent to his role as Public Works Director. In many communities weeds/ tall grass violations fall under property maintenance and are enforced by the Code Enforcement officer. I was also made aware of the fact that Municipal Code Enforcement LLC has experience with tree permits and does have the ability and expertise to handle the tree permit process for the Village of Williams Bay. I reached out to Allison Shwark and Kyle Lefel with Municipal Code Enforcement LLC and they expressed that they are capable and willing to take on these additional items for the Village. In their professional opinion they think the agreement would need to be amended to allow 9 hours per week rather than 7, especially during the busy summer months. The additional cost could potentially be \$90.00 per week (2 hours @ \$45.00 per hour). If you wish to pursue this further I can have Municipal Code Enforcement LLC amend the agreement and we can bring it to the next Village Board meeting for consideration.



VILLAGE OF WILLIAMS BAY

250 Williams Street | PO Box 580 | Williams Bay | WI | 53191 | williamsbay.org
Phone: 262-245-2700 | Fax: 262-245-2705

UNOFFICIAL MINUTES STREETS AND HIGHWAYS COMMITTEE WEDNESDAY, APRIL 14, 2021 AT 6:30 PM VIA TELECONFERENCE

Call to Order

Meeting was called to order by Chair McMannamy at 6:36pm.

Roll Call

Trustees McMannamy, Vlach and Umans

Also Present: President Duncan, Trustees D'Alessandro, Parker, Wright, Interim Administrator Bretl, Treasurer Peternell, Public Works Director Edwards, Police Chief Timm, Police Lieutenant Kostock and Recreation Director Rowland.

Meeting Minutes

Vlach/Umans motion to approve meeting minutes of March 10, 2021. Unanimously carried.

Noman B. Barr Camp Road Replacement

Tim Hanafée & Tom Sergenian, representatives of Norman B. Barr Camp discussed the proposal from Merit Asphalt for road improvements on Outing Street. Tim Hanafée stated that the camp will pay for the improvements. It was the consensus of the committee to have the camp provide a letter that they will maintain the road and keep it a public road. A Developer Agreement will be drafted for approval by the Village Board. Umans/Vlach motion to recommend Village Board approval of the repaving of Outing Road and have a Developer Agreement in place prior to work beginning. Unanimously carried.

Adjourn

Umans/Vlach motion to adjourn at 6:46pm. Unanimously carried.

/s/ Lori Peternell, Village Treasurer

These are not official minutes until approved by the Streets & Highways Committee

From: **Williams Bay Recreation Department** <rec@williamsbay.org>
Date: Thu, May 6, 2021 at 11:50 AM
Subject: Veteran Parking Spaces Proposal
To: Village Administrator <admin@williamsbay.org>
Cc: Matt Stanek <mattstanek@williamsbay.org>

Hi Becky,

I approached Trustee Stanek to talk about a dedication on Memorial Day for veterans parking at Edgewater Park. I was told this would be under the Streets & Highways committee. He told me to send you an email about my proposal to see if I could get this on Wednesday's committee of the whole meeting.

On a normal busy summer day the parking spots at Edgewater Park are usually filled for most of the day. Not leaving much space for veterans and their families to park to visit the veterans memorial in Edgewater Park. I am proposing the village board dedicate one or two parking spaces to veteran parking right next to the veterans memorial at Edgewater Park. I have attached a picture where the spaces could possibly be located.

The veteran's parking proposal isn't about providing a parking space, or education, or veteran's benefits. Respectfully, it is about saying "Thank You for Your Service" on a daily basis and in a visible manner. It would be an active show of appreciation for those who served our communities. Veteran's parking spaces will be for any veteran with or without a DMV issued vehicle license plate from any state. DMV issue veteran's plates are requested to support veteran's programs. *A disabled veteran does NOT automatically qualify for a disabled parking space but would be a perfect candidate for a veteran's parking space.*

The signs are \$60 each and are metal 12x18" UV-treated signs. I have included a picture of what they would look like. One of my brothers in law is an active duty service member and the other is a former active duty service member. I would like to donate my personal money to buy all supplies for the signs.

If approved I would like to request them be dedicated at the Memorial Day Ceremony on May 31st.

Please let me know if you have any questions or concerns.

Have a great day!



--
Dave Rowland
Recreation Director
Village of Williams Bay

Williams Bay Recreation Department
(262) 245-2720
rec@williamsbay.org

**2020 ROADWAY IMPROVEMENT UPDATE
ENGINEER'S REPORT
VILLAGE OF WILLIAMS BAY
May 12, 2021**

2020 Street Improvement Projects-- Project No. 190696

- Paving work is underway on Hickory Street, Highland Street, Wood Street, and Hickory Street Alley. Drainage improvements are also underway near the parking lot repair at Geneva Lake Law Enforcement and the drainage improvements at the NE corner of Geneva Street and N. Potawatomi Road.
- The Contractor is Payne & Dolan, Inc. The low bid amount is \$181,953.00; below is the breakdown of the bid showing costs for each pay item.
- The contract completion date is Memorial Day. Current expectations are to have the parking lot complete on May 13, 2021 and have the remaining improvements done by May 21, 2021.

SCHEDULE OF UNIT PRICES					
No.	Pay Item	Approximate Quantity		Unit Price	Amount
Part A – Hickory, Highland, and Wood Streets and Hickory Alley					
1	MOBILIZATION	1	LS	Lump Sum	\$ 6,000.00
2	CONSTRUCTION LAYOUT AND STAKING	1	LS	Lump Sum	\$ 355.00
3	ASPHALT PAVEMENT REMOVAL AND	4370	SY	\$ 3.90	\$17,043.00
4	BASE REPAIR – DENSE GRADE AGGREGATE	500	TON	\$ 29.00	\$14,500.00
5	HOT MIX ASPHALT	4370	SY	\$ 19.00	\$83,030.00
6	AGGREGATE DRIVEWAY – 10 INCH	29	SY	\$ 45.00	\$ 1,305.00
7	MANHOLE ADJUSTMENT	3	EA	\$ 300.00	\$ 900.00
8	VALVE BOX ADJUSTMENT	1	EA	\$ 40.00	\$ 40.00
9	RESTORATION OF LAWNS AND PARKWAYS	1	LS	Lump Sum	\$ 4,650.00
10	TRAFFIC CONTROL AND PROTECTION	1	LS	Lump Sum	\$ 670.00
11	PAVEMENT EXTENSION AT HICKORY STREET	1	LS	Lump Sum	\$ 1,950.00
12	ASPHALT CURB AT WOOD STREET	1	LS	Lump Sum	\$ 1,450.00
PART A - TOTAL				\$ 131,893.00	

**2020 ROADWAY IMPROVEMENT UPDATE
ENGINEER'S REPORT
VILLAGE OF WILLIAMS BAY
May 12, 2021**

SCHEDULE OF UNIT PRICES						
No.	Pay Item	Approximate Quantity		Unit Price	Amount	
Part B – Geneva Street at N. Potawatomi Road						
1	MOBILIZATION	1	LS	Lump Sum	\$ 3,550.00	
2	CONSTRUCTION LAYOUT AND STAKING	1	LS	Lump Sum	\$ 515.00	
3	GRADING IMPROVEMENT AND LAWN RESTORATION	1	LS	Lump Sum	\$ 9,500.00	
4	HOT MIX CURB	339	LF	\$ 20.00	\$6,780.00	
5	HOT MIX FLUME	2	EA	\$ 420.00	\$ 840.00	
6	TRAFFIC CONTROL AND PROTECTION	1	LS	Lump Sum	\$ 220.00	
	PART B TOTAL			\$ 21,405.00		
Part C – Geneva Lakes Law Enforcement Parking Lot						
1	MOBILIZATION	1	LS	Lump Sum	\$ 3,425.00	
2	CONSTRUCTION LAYOUT AND STAKING	1	LS	Lump Sum	\$ 530.00	
3	IMPROVEMENTS AS SHOWN	1	LS	Lump Sum	\$24,500.00	
4	TRAFFIC CONTROL AND PROTECTION	1	LS	Lump Sum	\$ 200.00	
	PART C TOTAL			\$ 28,655.00		
	TOTAL PARTS A, B, AND C			\$ 181,953.00		

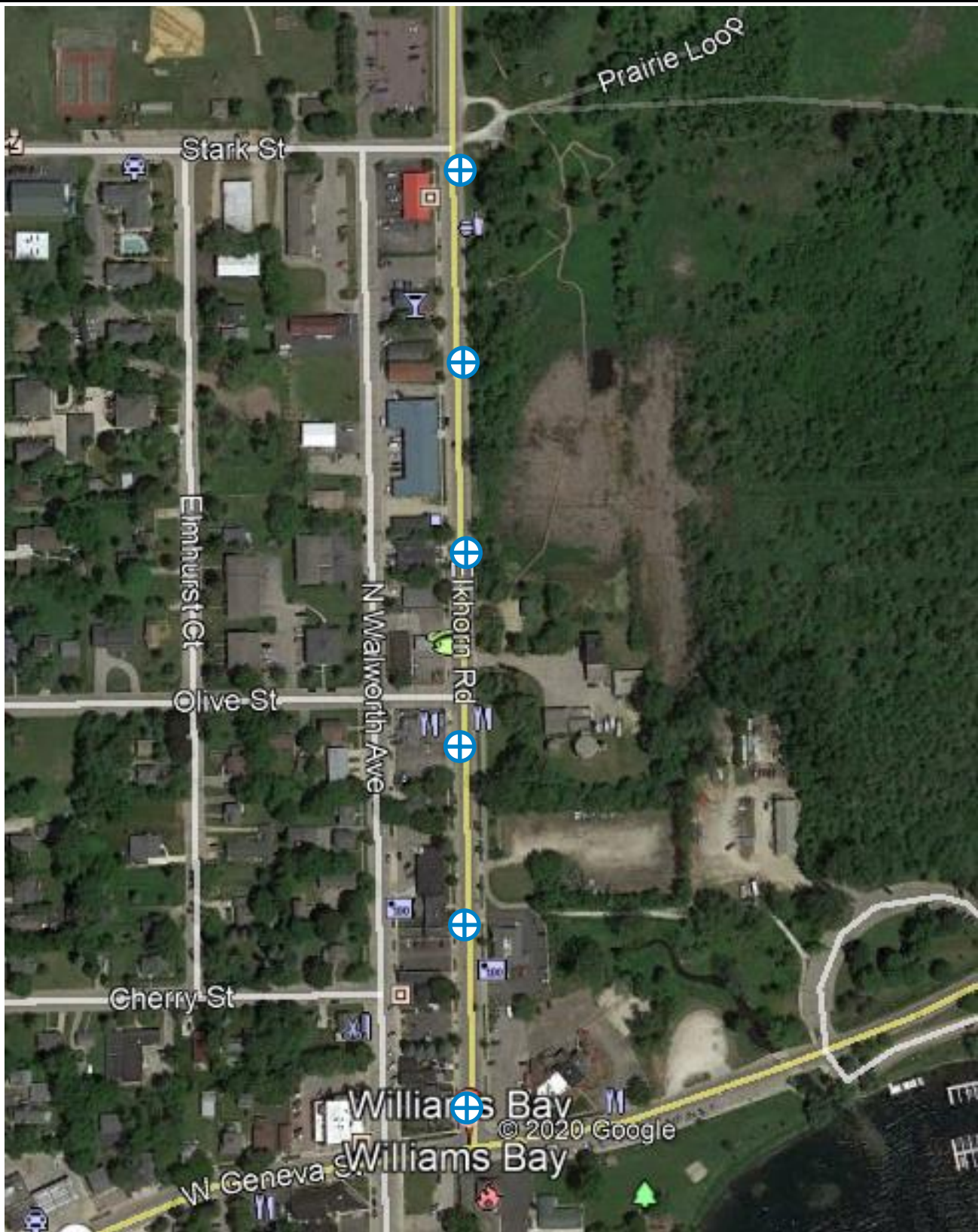
5. BIDDER agrees the Work will be Substantially Completed within 60 calendar days after the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 1.11 of the Supplementary Conditions within 90 calendar days after the Contract Time commences to run. Work will be complete prior to Memorial Day of 2021.

- Part A: The roadway base on Hickory Street is in poor condition; the total asphalt pavement removal and replacement is closer to 4400 square yards rather than 3340 square yards and the base repair is closer to 1800 tons, rather than 500 tons. The final cost should be about \$40,000 higher than expected.

**STH 67 UTILITY REPLACEMENT
VILLAGE OF WILLIAMS BAY
May 12, 2021**

State Road 67 Reconstruction – Project No. 181194

- The WDOT plans to resurface the pavement between Mercy Hospital and the intersection of Geneva Street / Elkhorn Road.
- The Village has utilities (water main, sanitary sewer, and force main) that need revision in this area. The 60 percent plans are available.
- We had a zoom meeting with the Village and WDOT staff last week. The WDOT will approach the Village in the near future with a revised State-Municipal Agreement and a schedule for the project.
- Enclosed is a proposal from ECS for geotechnical explorations and analysis; the Village needs this work so the contractor can prepare a dewatering plan; the WDOT needs the same information for their pavement design. The WDOT will reimburse the Village for this expense; the work will be no cost to the Village. We ask that the Village authorize the work.



Proposed Boring Locations SANITARY & WATER LINES

ELKHORN ROAD (HWY 67), WILLIAMS BAY, WI

BAXTER & WOODMAN

ENGINEER
DM
SCALE
NTS
PROPOSAL NO.
42:2545-GP(Rev1)
SHEET
1 OF 1
DATE
12/18/2020



ECS Midwest, LLC

Proposal for Subsurface Exploration and Geotechnical Engineering

Proposed Sanitary and Water Lines

Elkhorn Road (Highway 67)
Williams Bay, Wisconsin

ECS Proposal Number 42:2545-GP(Rev1)

December 21, 2020





December 21, 2020

Mr. Brett Biwer, P.E.
Project Manager
Baxter & Woodman Consulting Engineers
256 S. Pine Street
Burlington, WI 53105
Email: BBiwer@baxterwoodman.com

ECS Proposal No. 42:2545-GP(Rev1)

Reference: Proposal for Subsurface Exploration and Geotechnical Engineering
Proposed Sanitary and Water Lines
Elkhorn Road (Highway 67)
Williams Bay, Wisconsin

Dear Mr. Biwer:

As requested, ECS Midwest, LLC (ECS) is pleased to present the following proposal for providing geotechnical subsurface exploration and geotechnical engineering services for the above referenced project. This proposal outlines our understanding of the project, the proposed scope of services, activity schedule, fees, and authorization requirement.

In preparing this proposal, we have had the opportunity to review the Request for Proposal, available aerial photographs and available geologic and geotechnical information for the general site vicinity and discuss the overall project with you.

PROJECT DESCRIPTION

The project site is located along Elkhorn Road (Highway 67), between Stark Street and W. Geneva Street, in Williams Bay, Walworth County, Wisconsin. Project information has been provided by you, which included an aerial of the site location and a brief project description. It is understood you are relaying the sanitary sewer from Geneva Street to Olive Street and installing new water main along the entire length. This work is planned to be bid as part of a DOT roadway project. We understand the proposed project will include the construction of 12-inch diameter sewer approximately 12 feet deep running down the center of the road from Olive Street to Geneva Street. There is an existing 8-inch diameter sewer that will be replaced with the 12-inch diameter in the same location. There are 3 manholes that will be removed and replaced in the same location. There's one at each intersection and one in the middle. The new water main will be on the west side of the road from Geneva Street to Olive Street and on the east side of the road from Olive Street to Stark Street. The elevation rises north of Olive Street but there is a creek running on the east side of the road.

Assumptions were made in the formation of our scope of services. If different information becomes available and/or the design criteria are changed, we would be pleased to revise our scope of services.

SCOPE OF SERVICES

Our integrated services will include drilling of test borings, laboratory testing of representative soil samples for pertinent engineering properties, various engineering analyses, and preparation of a geotechnical engineering report. Our proposed scope of services includes:

Field Exploration

- The proposed boring locations will be marked in the field utilizing simple measuring techniques relative to existing site features. Elevations may be interpolated from provided civil drawings, published or online topographic maps, or determined using a laser level relative to a temporary provided or assumed benchmark. If more precise locating of the borings or ground elevations at the boring locations is desired, it is recommended a surveyor be retained.
- Digger's Hotline will be contacted to mark utilities.
- Mobilize a truck-mounted drilling rig to the site.
- ECS understands that borings may be drilled in the parking lanes, and traffic control will not be required. Additional fees will apply if traffic control is required.
- Perform 6 test borings, each to a depth of 15 feet, for a total of 90 lineal feet of drilling. The proposed boring locations are shown on the enclosed Proposed Boring Location sketch. The borings will be advanced to the proposed depths below the existing ground surface unless auger refusal causes them to be terminated at a shallower depth. Review of available subsurface information indicates organic soils may be present, particularly between Stark Street and Olive Street. Depending upon the uniformity or non-uniformity of the subsoil, it may be desirable or necessary to drill additional test borings or extend some of the test borings deeper to assist in providing more design and construction estimate information. The need for additional or deeper test borings will be made during the performance of the field exploration program. Additional drilling footage would be done concurrent with the planned exploration for \$20/foot.
- Perform Standard Penetration Tests (SPTs) at regular intervals to the boring termination depth.
- Measure depth of free groundwater observed within each borehole at the time of drilling and prior to backfilling.
- Upon completion of subsurface exploration drilling, each of the boreholes will be backfilled. Excess spoil will be removed from site. We will patch the pavement surface with cold mix asphalt or quick-set concrete. No other restoration will be provided. ECS will not be responsible for restoration of, but not limited to grass or ruts caused by drilling operations. The client must communicate areas that must not be disturbed in advance of field operations.

- Some borehole backfill settlement or expansion can and will occur over time. We have not included a cost for monitoring the boreholes after the completion of drilling activities. Settlement or expansion of the borehole backfill can create a trip hazard and should be carefully monitored by the client and/or property owner.
- Upon completion of drilling operations, the collected representative samples will be returned to our laboratory for further identification and testing.
- This proposal does not include the use of special OSHA or hazardous drilling techniques or drill crew protection. The client must inform ECS of any known environmental site conditions which could affect the health and safety of the drill crew.
- Complete rights-of-entry and access to the site are expected to be provided for us as a function of this proposal.
- ECS assumes our field services will not require permits. Any permits required should be brought to our attention before drilling begins, so that an appropriate fee can be determined.

Laboratory Testing

- Visual classification of the soil samples by a geotechnical engineer based on ASTM D2488 (visual-manual) procedure.
- Perform basic index laboratory testing, which may include natural moisture content tests (ASTM D2216) and calibrated hand penetrometer resistance tests, on select cohesive soil samples.

Additional laboratory testing recommended by ECS would be in accordance with our typical rates and after your authorization.

Report

A written geotechnical engineering report that presents our findings and recommendations will be prepared after completion of testing and geotechnical engineering analysis. The geotechnical engineering report will be provided electronically and will include the following items:

- Observations from our site reconnaissance including current site conditions, surface drainage features, and surface topographic conditions.
- A review of readily available published geologic conditions and their relevance to your planned development.
- A subsurface characterization, and a description of the field exploration and laboratory tests performed.
- Records of the field exploration (test boring logs) prepared in accordance with the local standard practice for geotechnical engineering. A boring location plan will be included, and the

results of the laboratory tests will be plotted on the boring logs or included on a separate test report sheet.

- General recommendations for manholes including, allowable soil bearing pressure(s), estimates of predicted foundation settlement, lateral earth pressures, below-grade drainage recommendations, below-grade wall backfill recommendations, and considerations for buoyant uplift.
- Geotechnical-related design information for support of the proposed utilities, such as depth of water, anticipated excavation difficulties, anticipated excavation instability, and anticipated depth of suitable bearing material.
- Evaluation of the on-site soil characteristics encountered in the soil borings. More specifically, we will discuss the suitability of the on-site materials for reuse as engineered fill. We will also include compaction recommendations and general suitable material guidelines. Ground water concerns relative to the planned construction, if any, will be summarized.
- Recommendations for additional testing and/or consultation that might be required to complete the geotechnical assessment and related geotechnical engineering for this project.

FEE

ECS will provide the described Scope of Services for the **lump sum fee of \$3,710**. This proposal assumes the soil borings can be performed during normal work hours (Monday - Friday, 7am to 5pm). Prices presented in this proposal are valid for 120 days from the date of this proposal.

If additional services are requested or required based on differing site conditions, we will contact your office (or assigned representative) for verbal and written authorization for additional services. Our fees assume a one-time short routine post-report consultation.

SCHEDULE

In preparing this proposal, we have assumed the client will assist in the coordination of our access to the site with the current site owners/occupants. After authorization to proceed and notification that the appropriate on-site personnel and property owner(s) have been informed, our approximate schedule would be as follows:

- | | |
|------------------------|--|
| • Mobilize to the Site | Typically 2 weeks after written notice to proceed |
| • Drilling Operations | Approximately 1 working day |
| • Laboratory Testing | Approximately 3 days after drilling |
| • Final Report | Approximately 4 weeks from written notice to proceed |

The actual time from initial authorization through final report submission will depend on weather conditions, site access and utility clearance. Verbal comments on findings can typically be provided 3 to 5 days after drilling completion, if requested.

CLOSING

If other items are required because of unexpected field conditions or because of a request for additional services, you would be informed of our intentions for both your review and authorization before modifying or expanding the extent of our services.

Our "Terms and Conditions of Service," which are included as an attachment to this letter, is an integral part of our proposal. These conditions represent the current recommendations of the GeoProfessional Business Association (GBA), the Consulting Engineers' Council, and the Geo-Institute of the American Society of Civil Engineers.

Our insurance carrier requires that we receive written authorization prior to initiation of our services, and a signed contract prior to the release of any work product. This letter is the agreement for our services. Your acceptance of this proposal may be indicated by signing and returning a copy of the Proposal Acceptance Form to us. If you prefer to issue a separate purchase order or other written authorization, please reference this proposal as part of the contract documents. We are pleased to have this opportunity to offer our services and look forward to working with you on the project.

Respectfully submitted,

ECS Midwest, LLC



Darin Maciolek, P.E.
Principal, Geotechnical Dept. Manager
DMaciolek@ecslimited.com



Charlie Gresser, P.E.
Office Manager
cgresser@ecslimited.com

Enclosures: Proposal Acceptance Form
 Terms and Conditions of Service
 Important Information about This Geotechnical Engineering Proposal
 Proposed Boring Locations

PROPOSAL ACCEPTANCE FORM

Proposal No.: 42:2545-GP(Rev1)
Scope of Services: Subsurface Exploration and Geotechnical Engineering Services
Project: Sanitary and Water Lines
Location: Elkhorn Road (Hwy 67), Williams Bay, Wisconsin

Geotechnical Subsurface Exploration & Report (\$3,710 lump sum)**Accepted by:**

(Signature)

(Printed Name)

Title:**Date:**

Please complete this page and return one copy to ECS to indicate acceptance of this proposal and to initiate services on the above-referenced project. By signing, the signatory indicates that he/she has read the accompanying Terms and Conditions of Service and agrees to be bound by such Terms and Conditions of Service. The individual or individuals that sign this agreement on behalf of the client warrant that they are duly authorized agents of the client. If you prefer to issue a separate purchase order or other written authorization, please reference this proposal as part of the contract documents.

BILLING INFORMATION

(Please Print or Type)

Invoice Delivery Preference:☐ Electronic (email) ☐ Hardcopy (USPS)**Name of Client Company:****Name of Client Contact Person:**

Title:

Email Address:

Mailing Address:

Telephone Number:

Person to Receive Invoice:

Title:

Email Address:

Billing Address:

Telephone Number:

Client Project/Account Number:**Special Conditions for Invoice:**

ECS MIDWEST, LLC

TERMS AND CONDITIONS OF SERVICE

The professional services (the "Services") to be provided by ECS MIDWEST, LLC ("ECS") pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing shall form the Agreement between ECS and Client.

- 1.0 INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants
- 2.0 SCOPE OF SERVICES** - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.
- 3.0 STANDARD OF CARE**
- 3.1** In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.
- 3.2** CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.
- 3.3** If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.
- 3.4** If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.
- 4.0 CLIENT DISCLOSURES**
- 4.1** Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.
- 4.2** "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.
- 4.3** If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.
- 5.0 INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT's agents, contractors, or consultants, including such information that becomes incorporated into ECS documents.
- 6.0 CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. Client agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' Additional Services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.
- 7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**
- 7.1** CLIENT warrants that it possesses the authority to grant ECS right of entry to the Site for the performance of Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS

harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

- 7.2** CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.
- 7.3** ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause minor, but common, damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.
- 7.4** CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.
- 8.0 UNDERGROUND UTILITIES**
- 8.1** ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.
- 8.2** CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.
- 8.3** CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' subcontractor's request for utility marking services made in accordance with local industry standards.
- 9.0 SAMPLES**
- 9.1** Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.
- 9.2** Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing process by-products in accordance with applicable laws and regulations.
- 10.0 ENVIRONMENTAL RISKS**
- 10.1** When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.
- 10.2** When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.
- 10.3** Unless explicitly stated in the Scope of Services, ECS will neither subcontract for nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.
- 10.4** In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.
- 10.5** Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.
- 10.6** CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near

the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

- 11.1 ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it [the "Documents of Service"] and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with the Project for which the Documents of Service are provided until the completion of the Project.
- 11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT, its licensed consultants and its contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.
- 11.3 CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.
- 11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

12.0 SAFETY

- 12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.
- 12.2 In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

- 13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.
- 13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.
- 13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any contractor or consultant or any of their subcontractors or subconsultants.
- 13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing. Unless the CLIENT can show that the error or omission is contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part time basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from Work that was monitored or tested by ECS on a part time basis.

- 14.0 **CERTIFICATIONS** - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the Professional Fees section of the Proposal. Any Estimate of Professional Fees stated in these Terms shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.
- 15.2 CLIENT agrees that all Professional Fees and other unit rates shall be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.
- 15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the Scope of Services, Professional Fees, and time schedule.
- 15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices are due and payable upon receipt.
- 15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice. CLIENT agrees to pay the undisputed amount of such invoice promptly.
- 15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.
- 15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
- 15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

- 16.1 CLIENT, its personnel, its consultants, and its contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to CLIENT-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT's personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.
- 16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.

- 17.0 **INSURANCE** - ECS represents that it and its subcontractors and subconsultants maintain Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

- 18.1 **CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT ARISING FROM ECS' PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.**
 - 18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.
 - 18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$50,000, or two (2) times the total fee for the services rendered, whichever is greater.
- 18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.

- 18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this agreement or the services provided as a result of the Proposal be limited to \$500,000.
- 19.0 INDEMNIFICATION**
- 19.1 Subject Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.) ECS does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, or any other statute.
- 19.2 To the fullest extent permitted by Law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT or CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.
- 19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportionate to ECS' culpability. **IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.**
- 19.4 **IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.**
- 19.5 **IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.**
- 20.0 CONSEQUENTIAL DAMAGES**
- 20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.
- 20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.
- 21.0 SOURCES OF RECOVERY**
- 21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS Entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.
- 21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.
- 22.0 THIRD PARTY CLAIMS EXCLUSION -** CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the AGREEMENT. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.
- 23.0 DISPUTE RESOLUTION**
- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.
- 23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.
- 23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the State of Wisconsin, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.
- 24.0 CURING A BREACH**
- 24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.
- 24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.
- 25.0 TERMINATION**
- 25.1 CLIENT or ECS may terminate this agreement for breach or these terms, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.
- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.
- 26.0 TIME BAR TO LEGAL ACTION -** Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.
- 27.0 ASSIGNMENT -** CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.
- 28.0 SEVERABILITY -** Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.
- 29.0 SURVIVAL -** All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the agreement.
- 30.0 TITLES; ENTIRE AGREEMENT**
- 30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.
- 30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.
- 30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.
- 30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.
- 30.5 CLIENT's execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.

Important Information about This Geotechnical Engineering Proposal

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

Participate in Development of the Subsurface Exploration Plan

Geotechnical engineering begins with the creation of an effective subsurface exploration plan. This proposal starts the process by presenting an initial plan. While that plan may consider the unique physical attributes of the site and the improvements you have in mind, it probably does not consider your unique goals, objectives, and risk management preferences. Subsurface exploration plans that are finalized without considering such factors presuppose that clients' needs are unimportant, or that all clients have the same needs. *Avoid the problems that can stem from such assumptions* by finalizing the plan and other scope elements directly with the geotechnical engineer you feel is best qualified for the project, along with the other project professionals whose plans are affected by the geotechnical engineer's findings and recommendations. If you have been told that this step is unnecessary; that client preferences do not influence the scope of geotechnical engineering service or that someone else can articulate your needs as well as you, you have been told wrong. No one else can discuss your geotechnical options better than an experienced geotechnical engineer, and no one else can provide the input you can. Thus, while you certainly are at liberty to accept a proposed scope "as is," recognize that it could be a unilateral scope developed without direct client/engineer discussion; that authorizing a unilateral scope will force the geotechnical engineer to accept all assumptions it contains; that assumptions create risk. *Manage your risk. Get involved.*

Expect the Unexpected

The nature of geotechnical engineering is such that planning needs to *anticipate the unexpected*. During the design phase of a project, more or deeper borings may be required, additional tests may become necessary, or someone associated with your organization may request a service that was not included in the final scope. During the construction phase, additional services may be needed to respond quickly to unanticipated conditions. In the past, geotechnical engineers commonly did whatever was required to oblige their clients' representatives and safeguard their clients' interests, taking it on faith that their clients wanted them to do so. But some, evidently, did not, and refused to pay for legitimate extras on the ground that the engineer proceeded without proper authorization, or failed to submit notice in a timely manner, or failed to provide proper documentation. *What are your preferences? Who is permitted to authorize additional geotechnical services on your project? What type of documentation do you require? To whom should it be sent? When? How?* By addressing these and similar issues sooner rather than later, you and your geotechnical engineer will be prepared for the unexpected, to help prevent molehills from growing into mountains.

Have Realistic Expectations; Apply Appropriate Preventives

The recommendations included in a geotechnical engineering report are *not final*, because they are based on opinions that can be verified only during construction. For that reason, most geotechnical engineering proposals offer the construction observation services that permit the geotechnical engineer of record to confirm that subsurface conditions are what they were expected to be, or to modify recommendations when actual conditions were not anticipated. *An offer to provide construction observation*

is an offer to better manage your risk. Clients who do not take advantage of such an offer; clients who retain a second firm to observe construction, can create a high-risk “Catch-22” situation for themselves. *The geotechnical engineer of record cannot assume responsibility or liability for a report’s recommendations when another firm performs the services needed to evaluate the recommendations’ adequacy.* The second firm is also likely to disavow liability for the recommendations, because of the substantial and possibly uninsurable risk of assuming responsibility for services it did not perform. Recognize, too, that no firm other than the geotechnical engineer of record can possibly have as intimate an understanding of your project’s geotechnical issues. As such, reliance on a second firm to perform construction observation can elevate risk still more, because its personnel may not have the wherewithal to recognize subtle, but sometimes critically important unanticipated conditions, or to respond to them in a manner consistent with your goals, objectives, and risk management preferences.

Realize That Geoenvironmental Issues Have Not Been Covered

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. *Geoenvironmental services are not being offered in this proposal. The report that results will not relate any geoenvironmental findings, conclusions, or recommendations.* Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the express purpose of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may be addressed as part of the geotechnical engineering study described in this proposal, the geotechnical engineer who would lead this project ***is not*** a mold prevention consultant; ***none of the services being offered have been designed or proposed for the purpose of mold prevention.***

Have the Geotechnical Engineer Work with Other Design Professionals and Constructors

Other design team members’ misinterpretation of a geotechnical engineering report has resulted in costly problems. Manage that risk by having your geotechnical engineer confer with appropriate members of the design team before finalizing the scope of geotechnical service (as suggested above), and, again, after submitting the report. *Also retain your geotechnical engineer to review pertinent elements of the design team members’ plans and specifications.*

Reduce the risk of unanticipated conditions claims that can occur when constructors misinterpret or misunderstand the purposes of a geotechnical engineering report. Use appropriate language in your contract documents. Retain your geotechnical engineer to participate in prebid and preconstruction conferences, and to perform construction observation.

Read Responsibility Provisions Closely

Clients, design professionals, and constructors who do not recognize that geotechnical engineering is far less exact than other engineering disciplines can develop unrealistic expectations. Unrealistic expectations can lead to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their proposals. Sometimes labeled “limitations,” many of these provisions indicate where geotechnical engineers’ responsibilities begin and end, to help others recognize their own responsibilities and risks, thus to encourage more effective scopes of service. *Read this proposal’s provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Rely on Your Geotechnical Engineer for Additional Assistance

Membership in the Geoprofessional Business Association (GBA) exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit to everyone involved with a construction project. Confer with a GBA-member geotechnical engineer for more information. Confirm a firm’s membership in GBA by contacting GBA directly or at its website.



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