

It is expected that a Quorum of the Personnel Committee, Administration Committee and Common Council will be attending this meeting: (although it is not expected that any official action of any of those bodies will be taken)

**CITY OF MENASHA**  
**Board of Public Works**  
**Third Floor Council Chambers, 140 Main Street, Menasha**  
November 19, 2007

6:30 PM

**AGENDA**

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**1. CALL TO ORDER**

A. -

**2. ROLL CALL/EXCUSED ABSENCES**

A. -

**3. MINUTES TO APPROVE-MINUTES & COMMUNICATIONS TO RECEIVE**

A. November 5, 2007



[Attachments](#)

**4. DISCUSSION**

A. 14th Annual Fox Cities New Year's Eve Celebration; Monday, December 31, 2007  
10:30 PM to 12:30 AM; Community Forward, Inc.



[Attachments](#)

B. Concerns Regarding Drainageway at 2140 Grassy Plains Drive (Ald. Chase -  
Motion to Remove from Table)



[Attachments](#)

**5. ADJOURNMENT**

A. -

Menasha is committed to its diverse population. Our Non-English speaking population or those with disabilities are invited to contact the Clerk's Office a 967-3600 at least 24-hours in advance of the meeting so special accommodations can be made.

**CITY OF MENASHA**  
**Board of Public Works**  
**Third Floor Council Chambers, 140 Main Street, Menasha**  
**November 5, 2007**  
**MINUTES**

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**1. CALL TO ORDER**

A. Meeting Called to Order by Chairman Pack at 7:30 p.m.

**2. ROLL CALL/EXCUSED ABSENCES**

A. PRESENT: Ald. Eckstein, Michalkiewicz, Chase, Merkes, Taylor, Wisneski, Pack, Hendricks  
ALSO PRESENT: Mayor Laux, CA/HRD Brandt, Lt. Brunn, FC VanderWyst, DPW Radtke,  
CDD Keil, C/T Stoffel, PRD Tungate, Clerk Galeazzi, the Press

**3. MINUTES TO APPROVE-MINUTES & COMMUNICATIONS TO RECEIVE**

A. October 15, 2007

Moved by Ald. Wisneski, seconded by Ald. Michalkiewicz to approve minutes.  
Motion carried on voice vote.

**4. DISCUSSION**

A. Change Order - Badger Highways Company, Inc.; Kaukauna Street/High Street, Street Rehabilitation - Pulverize/Resurface Asphalt Pavement; Contract Unit No. 2007-01; ADD: \$7,037.75 (Change Order No. 1 and Final)

No Questions or Discussion.

B. Payment - Badger Highways, Inc.; Kaukauna Street/High Street Rehabilitation - Pulverize/Resurface Asphalt Pavement; Contract Unit No. 2007-01; \$9,733.85 (Payment No. 3 and Final)

No Questions or Discussion.

C. Payment - Vinton Construction Co.; River Street Relocation Roadway Construction; Contract Unit No. 2006-06; \$1,000.00 (Payment No. 8 and Final)

This amount was withheld from the final payment for completion of miscellaneous items.

D. Recommendation to Award - City of Menasha Wastewater Collection System Rehabilitation Improvements - Phase 3 Project; Contract E145-07-01A; Insituform Technologies USA of Lemont, IL; \$1,582, 723.00 (Ald. Michalkiewicz - Motion to Remove from Table)

Moved by Ald. Michalkiewicz, seconded by Ald. Wisneski to remove from the table.  
Motion carried on roll call 8-0.

No Questions or Discussion.

- E. Recommendation to Award - City of Menasha Wastewater Collection System Rehabilitation Improvements - Phase 3 Project; Contract E145-07-01B; National Power Rodding Corporation of Chicago, IL; \$150,459.73 (Ald. Michalkiewicz - Motion to Remove from Table)

Moved by Ald. Michalkiewicz, seconded by Ald. Chase to remove from the table.  
Motion carried on roll call 8-0.

No Questions or Discussion.

- F. Recommendation to Award - City of Menasha Wastewater Collection System Rehabilitation Improvements - Phase 3 Project; Contract E145-07-01C; DeGroot, Inc. of Green Bay, WI; \$212,233.57 (Ald. Michalkiewicz - Motion to Remove from Table)

Moved by Ald. Michalkiewicz, seconded by Ald. Eckstein to remove from the table.  
Motion carried on roll call 8-0.

No Questions or Discussion.

- G. Recommendation to Award - City of Menasha Wastewater Collection System Rehabilitation Improvements - Phase 3 Project; Contract E145-07-01D; Infrastructure Technologies, Inc.; \$312,491.00 (Ald. Michalkiewicz - Motion to Remove from Table)

Moved by Ald. Michalkiewicz, seconded by Ald. Eckstein to remove from the table.  
Motion carried on roll call 8-0.

No Questions or Discussion.

## 5. ADJOURNMENT

- A. Moved by Ald. Michalkiewicz, seconded by Ald. Eckstein to adjourn at 7:35 p.m.  
Motion carried on voice vote.

*Deborah A. Galeazzi*

Respectfully submitted by Deborah A. Galeazzi, City Clerk



### STREET USE APPLICATION

ANNUAL FOX CITIES

Sponsored by: 14 TH NEW YEAR'S EVE CELEBRATION

Responsible Person: COMMUNITY FORWARD INC.

Address: P O BOX 185

MENASHA, WI

Phone: 725 - 4857

Street Use Date: 12-31-07

Start Time: 10:30 PM

End Time: 12:30 AM

Number of Units: \_\_\_\_\_

Street Route: (Attach Map)  
Description of Use

MAIN + MILWAUKEE STS.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LIABILITY INSURANCE HAS BEEN SECURED IN THE AMOUNT OF \$ 1,000,000 WITH THE CITY OF MENASHA NAMED AS ADDITIONAL INSURED.

Insurance Company CAPITOL INDEMNITY CORP. Policy No. \_\_\_\_\_  
(Attached is a copy of the insurance certificate).

**NOTE TO EVENTS PLANNING TO USE CITY PARKS AND/OR GREENSPACE:** Any multi-day event or event which plans to sell beer and/or wine to the public must appear before the Parks and Recreation Board.

DATE: 11-13-07 APPLICANT'S SIGNATURE: James Taylor

TO BE COMPLETED BY CITY STAFF

SCHEDULED PARK & RECREATION BOARD REVIEW DATE: \_\_\_\_\_

\* NOT REQUIRED:  APPROVED: \_\_\_\_\_ DENIED: \_\_\_\_\_

\* Park reservation form and fees required by DEC. 28 - PRD TUNGATE

SCHEDULED COMMON COUNCIL REVIEW DATE: 11/19/07

APPROVED: \_\_\_\_\_ DENIED: \_\_\_\_\_

APPROVAL:

Police Dept. MB

Fire Dept. FR

F520

Public Works Dept. MR

City Attorney JSB

STREET

PUBLIC PARKING

NOT NEW NOW!  
Dont's Family  
Bakery & Restaurant  
Franky!  
CHIROPODIST

MAIN STREET

BANTA  
CORPORATION

MILL

WATERLOO  
MOTOR DRUG

1000 W. 11th

STREET

FIREWORKS  
DISPLAY  
AREA

MILWAUKEE

FIRST STAR

Milwaukee  
Charcoal Grill

Germania Hall

PUBLIC  
PARKING

CHUTE

MAUI'S LANDING  
RESTAURANT  
FACILITY  
CITY OF MILWAUKEE

GRAND STANDS

MARINA

WISCONSIN  
STISQUE  
Main Stage \*

CENTER

Anderson  
UNIFORM & LINEN RENTAL

PUBLIC  
PARKING

WATER

BRIN  
BUILDING

BROAD

STREET

STREET

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID JA  
BRINT-1

DATE (MM/DD/YYYY)  
11/14/07

<b>PRODUCER</b>  ISC-Rippl/Manier Group PO Box 207 - 333-D 1st Street Menasha WI 54952 Phone: 920-722-2799 Fax: 920-722-1590	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
<b>INSURED</b>  Community Forward, Inc. PO Box 185 Menasha WI 54952	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:80%;">INSURERS AFFORDING COVERAGE</th> <th style="width:20%;">NAIC #</th> </tr> <tr> <td>INSURER A: Capitol Indemnity Corporation</td> <td></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Capitol Indemnity Corporation		INSURER B:		INSURER C:		INSURER D:		INSURER E:	
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INSURER A: Capitol Indemnity Corporation													
INSURER B:													
INSURER C:													
INSURER D:													
INSURER E:													

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CP00325121	06/15/07	06/15/08	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Certificate holder is listed as additional insured as their interest may appear.

<b>CERTIFICATE HOLDER</b>  CITYM-1  City of Menasha 140 Main Street Menasha WI 54952	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Pauline M. Huven
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## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

**From:** Michael Larsen [mailto:michalarsen@gmail.com]

**Sent:** Monday, November 12, 2007 7:39 AM

**To:** Debbie Galeazzi

**Cc:** Joe Laux; tmichalkiewicz@ci.menasha.wi.us.; Jan Chase Home E-mail; tmichalki@ci.menasha.wi.us; Terry Eckstein; Eric Hendricks; Steve Pack; Sue Wisneski; James Taylor; Don Merkes

**Subject:** 2008 Budget Request: Install drainage pipe between Manitowoc Road and Grassy Plains Drive

Dear Council members,

Please accept this correspondence as a formal request to include the following in the 2008 budget:

Install drainage pipe between Manitowoc Road and Grassy Plains Drive.

As taxpayers living in the City of Menasha, we find the drainage sewer which runs through our property to be a serious safety hazard and that the close construction of 2140 Grassy Plains Drive violates at least two of the City of Menasha's ordinances. Furthermore, such requests have been approved by the city in the past.

The drainage sewer in question is roughly 200 feet long, 30 feet wide, and six feet deep. From my research and conversations with professionals, the ditch is required to be this big in order to handle the high volume of rainwater it receives. With only a medium rain we are confronted with flash flood conditions. In an instant, the empty ditch easily swells to five feet wide and two feet deep. This is enough to easily sweep a child away.

There is a mere 18 feet from the center of the ditch to the side of our house. The grade / slope begins immediately from the side of our home, which does not leave room for error in footing. If an adult were to sustain a fall, it may only create embarrassment or a non-serious injury such as a dislocated shoulder. However, we fear a child would not fare so well. In the condition of rain, a child could easily be swept away and possibly trapped inside the culvert which runs under Grassy Plains Drive or even knocked unconscious by rip rap (large stones) on the other side.

The drainage sewer is located in a young neighborhood with several children ranging in age from newborn to fourteen years old. We all know that even the best parents cannot stop a curious child from exploring. How many times have you heard, "I just turned to answer the phone," or "I only looked away for a second?" In recent news a Wisconsin Senator accidentally ran over his own grandchild! Sadly these things happen to responsible people. Our daughter is one year old and she lives four feet from disaster.

In accordance with the City of Menasha's Code of Ordinance Sec. 14-1-14, pgs. 14-23, "Storm drainage facilities shall be so designed as to present **no hazard to life** or property, and the size, type and installation of all storm water drains and sewers proposed to be constructed shall be in accordance with the plans and specifications approved by the City Engineer." We believe the construction of our home to be in direct violation of this ordinance. With this stated, I must ask how in 2005 the city allowed Creative Custom Homes to construct a house four feet from a high

flow open storm sewer without the intention of piping it? Director Radtke or Director Keil, I would like to request a copy of said contracts, permits, and/or plans at this time.

The City of Menasha's City Ordinance O-16-07 Sec. 13-1-27 specifies a side yard minimum of eight feet, however there is only four feet from our house to the easement. Clearly the eight feet side yard minimum is currently in violation and was also at the time of construction.

The same type of 36 inch culvert system that we are requesting was installed by the City of Menasha to the north of our property between Plank Rd and Manitowoc Rd. Jeremy Lawrence, the homeowner at 2159 Plank Rd, had requested to have the pipe installed and the city did so at no cost to him in 2004. At this time, the 36 inch black pipe had two open ends. In 2005, Jeremy Lawrence requested to have the end at 2159 Plank Road enclosed and once again the city approved and did the work at no cost to him. In 2007, the homeowner at 2160 Manitowoc Road (the south end of the pipe) had requested to have a grate installed over their side of the pipe. The proposal was approved and it was later determined that the public works department could enclose the end of the pipe at no cost to the property owner. For more details on the work performed at these locations, please see Director Radtke as he should have the details on record.

I am sending this email to everyone because I'm unsure who to turn to next. My last conversation with the Mayor, Director Radtke, and Aldermen Chase was at my home. We discussed a few options such as a retainer wall running the length of our house or to plant some foliage native to WI. They resolved to contact a landscaper for some additional ideas, however Aldermen Chase recently indicated that Public Works has only looked into plants. I am sorry but this is unacceptable. Plants will not take the slope of the easement away nor will it take away the fact that water will still be rushing through every time it rains. Thus, we are still presented with the danger of losing a child. I am requesting that a drainage pipe be installed which would include our 151 feet and our neighbors 50 feet. Director Radtke estimated the work would cost approximately \$17,500 to \$25,000 to enclose the entire 200 feet.

I have attached a couple of photos of the drainage sewer for your reference. Thank you for your help in resolving this issue.

Sincerely,

Michael Larsen







## **Memorandum**

DATE: November 14, 2007  
TO: Board of Public Works  
FROM: Mark Radtke, Director of Public Works  
RE: Drainageway at 2140 Grassy Plains Drive

Attached to this memo is a report from the September 4, 2007 Board of Public Works meeting, a copy of the Municipal Code section regarding special assessment policy, and a proposal from a consultant for preparing a landscape plan for the involved drainageway.

My recommendation from the previous report remains intact; however, there is one other option available to the City which involves the placing of stone rip rap along the bottom of the drainageway and planting native species plantings within the sloped areas of the drainageway as a means to control erosion and improve the appearance of the drainage easement. At this time, I do not have an estimate of cost for this alternative, but it would be significantly less than enclosing the drainageway with a storm sewer and it would allow the City to take credit for total suspended solids removal per the new DNR stormwater regulations.

Attachments  
C: Mayor Laux



## **Memorandum**

DATE: August 30, 2007

TO: Board of Public Works

FROM: Mark Radtke, Director of Public Works

RE: Concern regarding Drainageway at 2140 Grassy Plains Drive

At a previous Board meeting, the resident at 2140 Grassy Plains Drive, Mr. Michael Larsen, has requested the City to consider enclosing the open drainageway located along the west side of his property. His reason for this request is to eliminate the steep slopes which exist along this stretch, especially in the vicinity of his house.

The City has a 30 foot drainage easement along this corridor. It is open drainage from the end of a storm pipe on the north to the storm pipe crossing beneath Grassy Plains Drive, a distance of approximately 200 feet. Except for the northerly 35 feet, the entire drainageway is located on Mr. Larsen's property. The open drainageway continues flowing southerly through this subdivision and Southfield subdivision before discharging into a wetlands area south of Southfield Subdivision.

To enclose the 200 foot section of drainageway north of Grassy Plains Drive would cost approximately \$17,500 to \$25,000 depending on the type of pipe installed, with the lower estimate for corrugated metal pipe and the higher estimate for concrete pipe. Concrete pipe has approximately double the life of the metal pipe.

If the Council decides to enclose this section of drainageway, I believe there would be future requests from homeowners abutting the downstream segments of this drainageway to enclose those sections as well. The total estimated cost for the sections south of Grassy Plains Drive is \$150,000 to \$225,000, depending on pipe material. It is also important to realize that new stormwater standards require municipalities to reduce the amount of suspended solids entering waters of the state. Credit is given for stormwater conveyed in open drainageways because of the sediment filtering characteristics of an open drainageway.

Based on the above factors, I recommend the City not enclose this drainageway. We could consider lining these sections of drainageway with rip rap, which would stabilize the side slopes and reduce erosion, at a much more reasonable cost (approximately \$25,000 for the entire length). Eventually vegetation would establish itself through the rip rap material, presenting a more aesthetically pleasing corridor.

C: Mayor Laux

M:\word\BPW memo re drainage 2140 Grassy Plain 8-30-07.doc

## CHAPTER 2

### Special Assessments

#### SEC. 3-2-1 COMMON COUNCIL MAY LEVY SPECIAL ASSESSMENTS.

- (a) The City of Menasha by resolution of its Common Council may levy and collect special assessments upon property in a limited and determinable area under its police powers for any municipal work or improvement and may provide for the payment of all or any part of the cost of the work or improvement. In addition to other methods approved by law, special assessments for any public work or improvement or any special charge for current services may be levied in accordance with the provisions of this Chapter.
- (b) The favored procedure in the City for proceeding with making specially assessable public improvements as generally set forth in this Chapter is not intended in any way to disregard or to bar proceeding under other methods provided by law for making of public improvements and for the levying of assessments therefor. Nor is this Chapter intended to be an exhaustive, detailed recodification of the state law under said statutory section. Detailed requirements still require reference to said statutory section and the subsections there under. The purpose hereof is to generally define and establish local procedures.

State Law Reference: Section 66.62, Wis. Stats.

#### SEC. 3-2-2 RESOLUTION AND REPORT REQUIRED.

- (a) Prior to making any such special assessments, the Common Council shall declare by preliminary resolution its intention to exercise its police powers for a stated municipal purpose. Such resolution shall describe generally the contemplated purpose, the limits of the proposed assessment district, the number of installments in which the special assessments may be paid or that the number of installments will be determined at the hearing required under Section 3-2-5 of this Chapter and direct the proper municipal officer or employee to make a report thereon. Such resolution may limit the proportion of the cost to be assessed.
- (b) The report required by Subsection (a) shall consist of:
  - (1) Preliminary or final plans and specifications.
  - (2) An estimate of the entire cost of the proposed work or improvement.
  - (3) An estimate, as to each parcel of property affected, of:
    - a. The assessment of benefits to be levied.
    - b. The damages to be awarded for property taken or damages.
    - c. The net amount of such benefits over damages or the net amount of such damages over benefits.
  - (4) A statement that the property against which the assessments are proposed is benefited, where the work or improvements constitute an exercise of the police power. In such case, the estimates required under Subsection (3) shall be replaced by a schedule of the proposed assessments.
  - (5) A copy of the report when completed shall be filed with the City Clerk for public inspection.
- (c) When the Common Council determines by resolution that the hearing on the assessments be held subsequent to the completion of the work or improvement or rendering of the service,

the report required by Sec. 66.60(3), Wis. Stats., and Subsections (a) and (b) above shall contain a statement of the final cost of the work, service or improvement in lieu of an estimate of the cost.

### **SEC. 3-2-3 COSTS THAT MAY BE PAID BY SPECIAL ASSESSMENT.**

The cost of any work or improvement to be paid in whole or in part by special assessment on property may include the direct and indirect cost thereof, the damages occasioned thereby, the interest on bonds or notes issued in anticipation of the collection of the assessments, a reasonable charge for the services of the administrative staff of the City and the cost of any architectural, engineering and legal services, and any other item of direct or indirect cost which may reasonably be attributed to the proposed work or improvement. The amount to be assessed against all property for any such proposed work or improvement shall be apportioned among the individual parcels in the manner designated by the Common Council.

### **SEC. 3-2-4 EXEMPTIONS; DEDUCTIONS.**

- (a) If any property deemed benefited shall by reason of any provision of law be exempt from assessment therefor, such assessment shall be computed and shall be paid by the City.
- (b) A parcel of land against which has been levied a special assessment for the sanitary sewer or water main laid in one of the streets upon which it abuts shall be entitled to such deduction or exemption as the Common Council determines to be reasonable and just under the circumstances of each case when special assessment is levied for the sanitary sewer or water main laid in the other street upon which such corner lot abuts. Under any circumstances the assessment will not be less than the long way of such lot. The Common Council may allow a similar deduction or exemption from special assessments levied for any other public improvement.

### **SEC. 3-2-5 NOTICE OF PROPOSED OR APPROVED PROJECT.**

- (a) **NOTICE REQUIREMENTS.** On the completion and filing of the report and final resolution with the City Clerk required in Section 3-2-5(b)(5) of this Chapter, the City Clerk shall prepare a Notice of Hearing, which notice shall comply with Sec. 66.60(7), Wis. Stats., and state the nature of the proposed or approved work or improvement, the general boundary lines of the proposed assessment district, the place and time at which the report may be inspected and the place and time at which all interested persons, their agents or attorneys may appear before the Common Council or Committee thereof and be heard concerning the matters contained in the preliminary resolution and report. Such notice shall be signed by the City Clerk who shall cause the same to be published at least once in the official newspaper and shall mail a copy of such notice at least ten (10) days before the hearing to every interested person whose post office address is known or can be ascertained with reasonable diligence. The hearing shall commence not less than ten (10) days and not more than forty (40) days after the publication or mailing of said notice.
- (b) **WAIVER OF NOTICE, ASSESSMENTS UNDER.** The Council may, without any notice of hearing, levy and assess the whole or any part of the cost of any municipal work or whole or any part of the cost of any municipal work or improvement as a special assessment

upon the property specifically benefited thereby whenever notice and hearing thereon is in writing waived by all the owners of property affected by such special assessment. In such cases, the procedure shall be the same as hereinbefore provided excepting for the noticing and holding of public hearing thereon.

**SEC. 3-2-6 COUNCIL ACTIONS AFTER HEARING.**

- (a) After the hearing, the Common Council may:
  - (1) Approve, disapprove, modify or re-refer the report to the Director of Public Works or other designated City official with such directions as it deems necessary to change the plans and specifications as to accomplish a fair and equitable assessment.
  - (2) Continue the public hearing, preliminarily approve plans and specifications and, if the project requires advertising for bids, authorize and direct the advertisement therefor with a date certain for consideration and taking action thereon, inclusive of action on said report and action on final resolution.
- (b) If an assessment be made against any property and an award of compensation or damage be made in favor of the property, the Common Council shall assess only the difference between such assessment of benefits and the award of compensation or damage.
- (c)
  - (1) If the work or improvement has not been previously authorized or approved, the Common Council shall approve the work or improvement and by resolution direct that the same be done and paid for in accordance with the report finally approved.
  - (2) If the work or improvement has been approved by the Common Council or work commenced or completed prior to the filing of the report or prior to the hearing, then the Common Council shall by resolution confirm the report as made or modified and provide for payment in whole or in part by assessment.
- (d) The City Clerk shall publish the final resolution as required in Section 3-2-5 of this Chapter.
- (e) After the publication of the final resolution, any work or improvement provided for and not yet authorized shall be deemed fully authorized and all awards of compensation or damage and all assessments made shall be deemed duly and properly made, subject to the right of appeal by Section 66.60(12), Wis. Stats., or any other applicable provision of law.

**SEC. 3-2-7 COMBINED ASSESSMENTS.**

If more than a single improvement is undertaken, the Common Council may combine the assessments as a single assessment on each property affected except that the property owner may object to any one or more of said improvements.

**SEC. 3-2-8 COUNCIL'S POWER TO AMEND, CANCEL OR CONFIRM SPECIAL ASSESSMENT.**

If, after completion or after the receipt of bids, the actual cost of any work or improvement is found to vary materially from the original estimate, or the assessment is void or invalid for any reason, or if the Common Council determines to reconsider an assessment, it is empowered, after giving notice as required in Section 3-2-5 to amend, cancel or confirm any prior assessment; and notice of this amending, canceling or confirming be given by the City Clerk as provided in Section 3-2-6 of this Chapter.

**SEC. 3-2-9 WHERE COST OF IMPROVEMENT IS LESS THAN ASSESSMENT.**

If the cost of the work or improvement is less than the assessment levied, the Common Council without notice or hearing shall reduce each assessment proportionately. If the assessment has been paid either in part or in full, the City shall refund the property owner such overpayment.

**SEC. 3-2-10 APPEALS; APPEALED ASSESSMENTS PAYABLE WHEN DUE.**

- (a) Any person against whose property a special assessment is levied under this Chapter may appeal there from in the manner prescribed by Section 66.60(12) of the Wisconsin Statutes, as amended, within forty (40) days of the date of the final determination of the Common Council.
- (b) Pursuant to Section 66.60(f), Wis. Stats., it shall be a condition to the maintenance of any appeal that any assessment appealed shall be paid when due and payable, and upon default in payment any such appeal shall be dismissed.

**SEC. 3-2-11 PAYMENT OF SPECIAL ASSESSMENTS; SPECIAL ASSESSMENT A LIEN ON PROPERTY.**

Pursuant to Subsection (13) of Section 66.60, Wis. Stats., any special assessment levied under this Chapter shall be a lien on the property against which it is levied on behalf of the City. The Common Council shall provide for the collection of such assessments and may establish penalties for payment after the due date. The Common Council shall provide that all assessments not paid by the date specified shall be extended upon the tax roll as a delinquent tax against the property and all proceedings in relation to the collection of such delinquent taxes shall apply to such assessment, except as otherwise provided by statute.

**SEC. 3-2-12 SPECIAL CHARGES PERMISSIBLE.**

- (a) In addition to all other methods provided by law, special charges for current services may be imposed by resolution by the Common Council by allocating all or part of the cost of the property served. Such resolution setting forth the property location, the current service rendered by the City and special charge therefor or cost thereof. Such resolution for special charges may include snow and ice removal, weed elimination, street sprinkling oiling or tarring, repair of sidewalks or curb and gutter, garbage and refuse disposal, sewer and water

service and tree care or removal. The provision for notice of such charges shall be optional with the Common Council except that in the case of street, sidewalk, curb or gutter repair, twenty (20) days' notice published in the official City newspaper, or by posting such notice in three (3) places in the City and a copy of such notice mailed to every interested person whose post office address is known, at least ten (10) days before the hearing or proceeding. Such notice shall specify that on a certain date a hearing will be held by the Common Council as to whether the service in question shall be performed.

- (b) Special charges for current services shall not be payable by installments. If not paid within the period fixed by the Common Council in said resolution, such delinquent special charges, pursuant to Section 3-2-11, shall become a lien on said property as of the date of such delinquency and shall automatically be extended upon the current or next tax roll as a delinquent tax against the property, as provided by Section 66.60(16) of the Wisconsin Statutes, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charge. Notice of special charges for current services need not be given except as required by Section 66.60(16) of the Wisconsin Statutes, as amended.
- (c) Section 3-2-2(a) of this Chapter shall not be applicable to proceedings under this Section.

State Law Reference: Section 66.60(16), Wis Stats.

#### **SEC. 3-2-13 MISCELLANEOUS PROVISIONS.**

- (a) If any assessment or charge levied under this Chapter is invalid because such Statutes are found to be unconstitutional, the Common Council may thereafter reassess such assessment or charge pursuant to the provisions of any applicable law.
- (b) Notwithstanding any other provision of law, or this or other ordinance or resolution, it is specifically intended and provided by this Chapter that the City may levy special assessments for work or improvement against the property affected either before or after the approval of the work plans and specifications, contracting for the work or completing the work or improvement.

#### **SEC. 3-2-14 INSTALLMENT AND DEFERRED SPECIAL ASSESSMENTS.**

##### **(a) INSTALLMENT PAYMENT.**

- (1) All special assessments may be paid, at the option of the property owner according to the following:
  - a. Special assessments less than or equal to Five Hundred Dollars (\$500.00) shall be paid to the City Treasurer without interest within thirty (30) days of billing.
  - b. Special assessments greater than Five Hundred Dollars (\$500.00) but less than or equal to Two Thousand Five Hundred Dollars (\$2,500.00) may be paid in five equal installments due and payable on or before November 1 commencing with the year the special assessment is levied and each November 1, thereafter, together with the interest as assigned. Interest shall accrue at the rate the City has borrowed the money plus 1% for administrative expenses. Should the money to pay for the project not be borrowed, interest shall be set at a rate established by the Common Council

in the final resolution required by Sec. 3-2-6.

- c. Special assessments greater than Two Thousand Five Hundred Dollars (\$2,500.00) may be deferred for the initial five years after passage of the final resolution required by Sec. 3.2.6. Thereafter they shall be paid in five equal installments due and payable on or before November 1 commencing with the sixth year after the special assessment is levied and each November 1 thereafter, together with the interest as assigned. Interest shall accrue at the rate the City has borrowed the money plus 1% for administrative expenses. Should the money to pay for the project not be borrowed, interest shall be set at a rate established by the Common Council in the final resolution required by Sec. 3-2-6.
- (2) The City Comptroller shall enter the first installment due on the subsequent year's tax roll as a special tax on the property on which the special assessment was levied, and thereafter this tax shall be treated in all respects as any other city tax, and one of the subsequent installments shall be included in like manner and with like effect in each of the annual tax rolls thereafter until all are collected.
- (3) If any installment so entered in the tax roll shall not be paid to the City Treasurer with the other taxes it shall be returned to the county as delinquent and accepted and collected by the county in the same manner as delinquent general taxes on real estate.
- (4) Whenever the Common Council shall permit any special assessment for any such improvement to be paid in installments, the City Clerk shall cause to be published in the official paper of the City the "Installment Assessment Notice" as provided under Chapter 66.54(7), Wis. Stats.
- (5) After the time for making election as provided in the notice shall have expired, all remaining assessment installments may be paid in full before due by the payment of the installments together with interest to become due at the next installment due date on all of the remaining installments.
- (6) A schedule of the special assessment and all installments thereof shall be recorded in the office of the City Treasurer.
- (b) **DEFERRED SPECIAL ASSESSMENTS.**
  - (1) Deferred Special Assessments Permitted. The Common Council may by motion direct the City Treasurer to pay all or any portion of special assessments or special charges extended upon the current or next tax roll against property owned by or upon which reside worthy, indigent persons in accordance with the provisions of Chapter 74.77, Wis. Stats., with an annual interest rate as established by the Common Council.
  - (2) Who May Apply. Applications for deferment of payment shall be made upon a form provided by the City Clerk, verified by the applicant, and the information only contained therein shall be treated as confidential, privileged information.
  - (3) Who Shall Make Determination. Application shall be reviewed by the Board of Public Works for the Common Council. All the provisions of Section 74.77, Wis. Stats., shall be applicable.
  - (4) Duty of City Attorney. Upon the Common Council granting such application, it shall be the duty of the City Attorney to file the necessary lien on said property.
  - (5) Deferred Assessments (pursuant to Sections 66.60 and 66.605, Wis. Stats.).
    - a. Wetlands. Property designated as protected "wetlands" on the DNR-approved wetlands map shall be assessed, but the assessment deferred. However, upon change from wetland to developable status in the future, for any reason, the assessment shall then immediately become due and payable

as otherwise required by this section. Conclusive evidence of this change to assessment-due status shall be deemed to exist upon the issuance of any building permit on any lot or parcel with a contiguous property parcel held by a single legal entity.

- b. Agricultural. Property used in agriculture for crops or pasture and over five (5) acres in size shall be assessed, but the assessment deferred, upon approval of request for deferment by the Common Council.
- c. Topographically Unbuildable Parcels. If an entire, defined, platted lot is deemed by the Common Council to be unbuildable, any assessment may be deferred by the Common Council. However, upon change from topographically unbuildable parcel to developable status in the future, for any reason, the assessment shall then become due and payable as otherwise required by this section. Conclusive evidence of this change to assessment-due status shall be deemed to exist upon the issuance of any building permit for any lot or parcel within a contiguous property parcel held by a single legal entity.
- d. Under paragraph a. above, the wetlands deferred assessment may remain in force in perpetuity, unless there be the change from wetlands to developable status in the future. Under paragraph c. above, the topographically unbuildable parcel deferred assessment may remain in force i perpetuity, unless there be a change from topographically unbuildable parcel to developable status in the future.

#### **SEC. 3-2-15 STREET ASSESSMENTS.**

- (a) It is the policy of the City of Menasha that all property owners shall pay for a road and that all subsequent repair and maintenance shall be borne from the general funds and shall not be assessed against the property of the owner. However, nothing shall prevent the abutting property owners to petition the Council for a higher classification of a road than now exists or the Council from on its own motion ordering such classification. In that event, the provisions of Chapter 66.60, Wis. Stats., of the assessment powers or the police powers permitted by law shall prevail.
- (b) Temporary asphalt mats are determined to be one step in the construction of a permanent finished urbanized road section and may be assessable. When the Director of Public Works determines that a permanent finished, urbanized road section is needed to replace the temporary asphalt mat, the assessment policies of this chapter will apply irrespective of 3-2-15.

#### **SEC. 3-2-16 ASSESSMENT DETERMINATIONS.**

- (a) **SCHEDULE**. Special assessments shall be levied against all property fronting or abutting on a proposed improvement at a rate to be determined per project by the Board of Public Works on the basis of a unit cost per foot fronting or abutting in the proposed improvement. Such rates of assessment shall be approved by motion and resolution passed by the Common Council. Should the bids come in lower than the established assessment ratios, credit may be granted.
- (b) **INTERIOR LOTS**. On interior lot road construction and improvements including the

laying of a base course, paving and curb and gutter, said footage shall be determined as shown on the plat or other recorded instrument. This shall also apply to sanitary sewers and water mains.

- (c) **CORNER LOTS.** (All Assessments)
  - (1) If the long side of a corner lot is developed first and any special assessments are levied, then the entire footage shall be assessed. Later when the short side is improved, there shall be no assessment.
  - (2) If the short side of a corner lot is developed first and in which normal assessment procedures shall apply, then the property owner shall be assessed in full for the short side and later when the long side is developed said property owner will be given credit for the footage on the short side.
- (d) **MULTIPLE FRONTAGE LOTS.**
  - (1) If a lot has been developed so that it fronts two parallel streets or two streets travelling in the same general direction, any special assessment to be levied will not exceed the amount subject to assessment if the longest frontage is developed first. Any assessment levied and paid for any shorter side will be credited against the assessment which would normally be levied for the longer side.
  - (2) In the event the lot is also a corner lot, Section 3-2-16(c) will also apply.
- (e) **LIMITED ACCESS LOTS.** If the City improves a street such that there is no benefit to adjoining property owners, no assessment will be levied.
- (f) **STREETS.** All street assessments shall be based upon excavation, graveling, grading, curb and gutter, and finished asphalt. Should the Common Council determine that due to the nature of the affected properties that it is more appropriate to construct streets with concrete, then assessments will be based upon excavation, graveling, grading, curb and gutter and finished concrete.
- (g) **STORM SEWERS.** All storm sewer construction shall be based upon an eighteen (18) inch main in newly developed areas and:
  - (1) Shall be assessed one hundred percent (100%) based upon frontage.
  - (2) All storm sewer mains to newly developed areas shall be assessed one hundred percent (100%).
- (h) **SANITARY SEWER MAINS.** All sanitary sewer mains shall be based upon an eight (8) inch diameter main in newly developed areas and:
  - (1) Shall be assessed one hundred percent (100%) based upon frontage.
  - (2) All sanitary sewer mains to newly developed areas shall be assessed one hundred percent (100%).
- (i) **WATER MAINS.** All water mains shall be based upon an eight (8) inch diameter main in newly developed areas and:
  - (1) Shall be assessed one hundred percent (100%) based upon frontage.
  - (2) All water mains to newly developed areas shall be assessed one hundred percent (100%).
- (j) **SERVICE AND LATERALS.** Property owners will be assessed one hundred percent (100%) for the service laterals from the main to the terminal point on their lots.
- (k) **STREET LIGHTING.** All street lighting in newly developed areas shall be assessed one hundred percent (100%). Any decorative street lighting must be approved by the Common Council. Decorative street lighting shall be assessed such that the annual increased charge above normal street lighting is assessed against benefited property owners.
- (l) **UNPLATTED LANDS.** Where the lands are unplatted and where the property is not to be served in its entirety by sewer and/or water, then only that portion actually served shall be

assessed.

- (m) **NEWLY ANNEXED AND UNDEVELOPED AREAS.** Subdividers and other individuals and corporations bringing into the City of Menasha newly annexed areas with inadequate public improvements, as determined by the Director of Public Works, shall pay one hundred percent (100%) assessments for all streets. The same shall hold true for the undeveloped areas within the City. It shall make no difference whether such road work shall be considered repair or rebuilding. Such assessments shall include excavation, graveling, grading, surfacing, and curb and gutter.
- (n) **DEPRECIATION FACTOR.** For property in newly annexed areas where sewer and water have been previously laid, the owners of the newly annexed lots or parcels not previously served by such water or sewer mains shall pay in proportion to the depreciated value of the sewer or water main. The depreciated value shall be determined by the sewer or water assessments at the time water and sewer mains were laid, less an annual depreciation of 1.25%. The 1.25% shall not be prorated on a monthly basis, but shall commence with January 1 of each and every year. Such assessment shall not be used to reimburse any property owners who have been previously assessed.

#### **SEC. 3-2-17 UNPAID UTILITIES BILLS**

- (a) At least once each year the General Manager of the Utilities shall certify to the City Treasurer those utility bills, water, sewer and electric, deemed by him as uncollectible with administrative reasons therefor. An unpaid bill in the hands of a collection agency for more than 120 days without being collected is deemed uncollectible.
- (b) Prior to the General Manager's certifying to the City Treasurer real estate against which utility bills are outstanding, he shall serve such notice on the owners of the real estate as many times as he deems necessary. However, the notice shall contain information to the fact that a penalty assessment will be made in the amount of 10% unless such utility charges are paid by November 1<sup>st</sup> of each year. The deadline for payment of such bills plus penalty shall be November 15<sup>th</sup> of each and every year.
- (c) Each and every notice shall contain a provision that the user may appeal the amount owed to the Electric & Water Utility Commission and hearing granted. In no event will a hearing be granted after November 1<sup>st</sup> of each and every year.
- (d) Pursuant to Statutes, such notice shall be served by delivery to either the owner or occupant, either personally or by letter addressed to such owner/occupant at the post address of such lot or parcel of real estate. On November 16<sup>th</sup> of each and every year, the General Manager of the Utility or his designee shall certify and file with the Clerk, pursuant to statute, a list of all lots or parcels of real estate, and state the amount of such arrears, together with any added penalties that may apply.
- (e) Each such delinquent amount, including such penalty, shall thereupon become a lien upon the lot or parcel of real estate to which utility service has been furnished. All proceedings in relation to the collection of general property taxes and to the return of sale of property for delinquent taxes shall apply to said tax if the same is not paid within the time required by law for payment of taxes upon real estate



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[www.nrc-inc.net](http://www.nrc-inc.net)

October 17, 2007

Mr. Mark Radtke, P.E., Director  
Menasha Department of Public Works  
140 Main Street  
Menasha, WI 54952-3151

**RE: *Proposal for Environmental Services – Channel Landscape Design  
Ridgecrest Lane and Grassy Plains Drive  
Menasha, Wisconsin***

Dear Mark:

Natural Resources Consulting, Inc. (NRC) is pleased to provide you with this proposal for completion of a landscape design at the above-referenced site. We have prepared this proposal based on our understanding of the site following our October 1, 2007 field review.

This proposal includes sections presenting our scope of work, cost estimate and schedule for your consideration. This proposal includes sections presenting our scope of work, cost estimate, and schedule. Attached is a standard consultant agreement for review and approval. Once we receive an executed contract or a written authorization to proceed, we will initiate this project and will certainly be able to meet your schedule.

#### **PROJECT UNDERSTANDING**

The City of Menasha is working closely with residents adjacent to an existing stormwater channel and is considering options to naturalize the channel. The channel is located crosses Ridgecrest Lane and Grassy Plains Drive. During our field review we discussed several options that include installing rock in the base of the channel to stabilize the channel base, installing low rock weir structures within the channel to retain low flow stormwater events, installing retaining walls adjacent to existing homes, and landscaping with native vegetation to stabilize the channel slopes and improve aesthetics.

NRC is prepared to work closely with the City of Menasha to develop a conceptual design plan for this site. We are also prepared to support this project by participating in public information meetings or neighborhood meetings to discuss the site design.

#### **SCOPE OF WORK**

NRC proposes the following Scope of Work to support the City of Menasha on this project:

- Meet with the City of Menasha to evaluate options and develop a conceptual design plan for the channel. The City of Menasha staff will provide engineering support during the project design.
- Attend one public information meeting with City of Menasha staff and local residents to review the conceptual design plan and select a preferred design option.
- Prepare a scaled planting plan using PRO Landscape v. 13 software to naturalize the channel. The planting plan will include a mix of native shrubs, native herbaceous plants (live stock), and a seed mix of native grasses and herbaceous species. The City of Menasha will provide an AutoCAD drawing of the site to serve as the base map for the planting plan.

- The planting plan will include project-specific planting notes and installation recommendations. NRC assumes that standard landscaping practices for installation of plant material will apply.
- Prepare a materials list, including species, quantity, and size. Project specifications will not be prepared as part of this project scope.
- Attend one site meeting prior to installation to review the planting plan with the selected contractor. NRC assumes on-site inspection services will be provided by the City of Menasha.
- Prepare general vegetation maintenance guidelines. Maintenances will be the responsibility of the supplier and installation contractor.

### EXTRA SERVICES

Extra services are those services that are not part of the scope of work detailed in this proposal but, based on our experience, may potentially be needed for a project of this type. NRC is available to complete extra services as authorized by the Client on a time and materials basis. Extra services may include, but are not necessarily limited to, the following:

- Regulatory agency coordination and permit application preparation.
- Monitoring and maintenance of established plant communities.
- Attendance at meetings beyond those described above.

### PROJECT COSTS

NRC will complete the services outlined in this Scope of Work on a **time and materials basis of \$3,495**, including reimbursable expenses (such as mileage, copying, etc.).

Any additional costs that arise in association with this Scope of Work will be closely coordinated with the Client so that the fee estimate is not exceeded without clear understanding of both parties. NRC will complete other tasks in addition to the outlined Scope of Work, as authorized by the Client, on a time and materials basis at the following hourly billing rates:

Principal Scientist	\$88-94 / Hour
Senior Scientist	\$77-88 / Hour
Staff Scientist	\$61-69 / Hour
Technician/Administrative	\$50-55 / Hour
Reimbursables	Cost + 15%
Mileage	\$0.445 / Mile

### PROJECT SCHEDULE

NRC is prepared to initiate this project immediately following acceptance of a signed agreement. We will complete the landscape plan within 15 business days following approval of the conceptual design plan. If this schedule does not meet your project timeline, please contact me immediately and we will certainly arrange a project schedule that will work for you.

### CONTRACT CONDITIONS

The above-stated fee and specified hourly rates proposed for this scope of work are valid for 60 days from the date of this proposal and may be subject to annual increases. A service agreement for work on this project is attached. We would be happy to discuss contract issues with you, at your request.

Mr. Mark Radtke  
October 17, 2007

Channel Landscape Design Proposal  
Menasha, Wisconsin

If you have any questions, or require any additional information, please call me at our Menasha office location at (920) 980-2800. We are looking forward to working with you on this project.

Sincerely,

*Natural Resources Consulting, Inc.*



Jon H. Gumtow, PWS, PSS

Principal Wetland Scientist

Enclosure

## Agreement

Natural Resources Consulting, Inc. (Consultant) will perform services according to the terms and conditions of this Agreement for City of Menasha (Client). The Consultant shall perform the services outlined in the attached proposal dated October 17, 2007, in consideration of the stated fee and payment terms. For additional services not included above, the Consultant shall be compensated according to hourly rates agreed to between Consultant and Client, or as specified in the Proposal referenced above.

### Terms and Conditions

1. **Access to Site:** Unless otherwise stated, the Consultant will have access to the site for activities necessary for the performance of the services. The Consultant will take reasonable precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage and will not be responsible for such costs.
2. **Retainer, Billing, and Payment:** The Client agrees to pay the Consultant for all services performed and all costs incurred, as described in the Proposal attached to this Agreement. Invoices for the Consultant's services shall be submitted, at the Consultant's option, either upon completion of such services or on a monthly basis. Invoices shall be due and payable upon receipt. For any invoice is not paid within 60 days, the Consultant may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, suspend or terminate the performance of services. Any retainer shall be credited on the final invoice. Accounts unpaid 30 days after the invoice date may be subject to a monthly service charge of 1.5% (or the maximum legal rate) on the unpaid balance. In the event any portion of the account remains unpaid 90 days after the billing, the Consultant may institute collection action and the Client shall pay all costs of collection, including reasonable attorney's fees.
3. **Indemnification:** The Client shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless the Consultant and subconsultants from and against all damage, liability and cost, including reasonable attorney fees and defense costs, arising out of or in any way connected with the performance of the services under this Agreement, excepting only those damages, liabilities or costs attributable to the negligence or willful misconduct of the Consultant.
4. **Information for the Sole Use and Benefit of the Client:** All opinions and conclusions of the Consultant, whether written or oral, and any plans, specifications or other documents and services provided by the consultant are for the sole use and benefit of the Client and are not to be provided to any other person or entity without the prior written consent of the Consultant. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Consultant or the Client.
5. **Certifications, Guarantees and Warranties:** The Consultant shall not be required to execute any document that would result in the Consultant certifying, guaranteeing or warranting the existence of any conditions. The Consultant will render services and opinions according to the standards of practice of consulting professional engineering.
6. **Limitation of Liability:** In recognition of the relative risks, rewards and benefits of the project to both the Client and the Consultant, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the Consultant's total liability to the Client for any and all injuries, damages, claims, losses or expenses arising out of this Agreement from any cause or causes, shall not exceed the contract value. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.
7. **Use of Documents:** All documents produced by the Consultant under this Agreement are instruments of the Consultant's professional service for use in the project for which the Consultant was retained. These documents may not be used by the Client for any other purpose without the prior written consent of the Consultant.

8. **Dispute Resolution:** Any claims or disputes between the Client and the Consultant arising out of the services to be provided by the Consultant or out of this Agreement shall be resolved by following a three-step process: (1) project managers resolution; which if not successful will be followed by (2) mediation; then (3) arbitration in event that mediation is not successful. If the parties are unable to agree upon an arbitrator, the parties shall apply to a Dane County, Wisconsin circuit court who shall appoint an arbitrator. The arbitrator shall use the then-current American Arbitration Association Construction Industry Rules for arbitration.
9. **Termination of Services:** This Agreement may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, the Client shall pay the Consultant for all services rendered to the date of termination, and all reimbursable expenses incurred prior to termination and reasonable termination expenses incurred as the result of termination.
10. **Severability:** Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law be deemed omitted and the remainder of this Agreement shall remain in full force and effect.
11. **Survival:** Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

**The above Agreement, Terms and Conditions, and referenced Proposal scope of work and fees are agreed upon:**

Consultant:  \_\_\_\_\_

Date: October 17, 2007

Jon H. Gumtow, Principal Scientist  
Natural Resources Consulting, Inc.  
P.O. Box 128, Cottage Grove, WI 53527-0128

Client: \_\_\_\_\_

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

Client Name (Printed): \_\_\_\_\_

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