CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: October 17, 2016

ITEM: Motion – Approval of Professional Services Agreement – Jordan Creek Assessment & Restoration Prioritization Analysis – Barker Lemar

FINANCIAL IMPACT: Expense of $13,750 to be paid from the Stormwater Fund. Funding will be included in Budget Amendment #4.

BACKGROUND: The Council is asked to approve an agreement with Barker Lemar Engineering Consultants of West Des Moines to complete an assessment of Jordan Creek and its tributaries where the creeks run through public property. A preliminary watershed analysis will be done on the 7,800 acre Jordan Creek watershed. The existing conditions of 11.3 miles of creek will be evaluated from Valley View Park to its confluence with the Raccoon River. This will be done by qualified personnel walking the entire length of the creek.

Staff is interested in identifying and prioritizing locations within the creek corridor that may benefit from future restoration efforts. The Consultant will do this work and prioritize potential restoration projects based on the severity of current conditions. This information will allow the City to be prepared to apply for any future grants related to water quality. The Consultant will also perform baseline water quality sampling that can be used when evaluating the impact of any future restoration efforts. This information is also important to have for any future grant reporting.

The agreement with Barker Lemar is attached along with their proposal that includes a detailed scope of work.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the City Council approve the agreement with Barker Lemar for the Jordan Creek Assessment & Restoration Prioritization Analysis project.

Lead Staff Member: Sally Ortgies, Interim Director of Parks & Recreation

STAFF REVIEWS

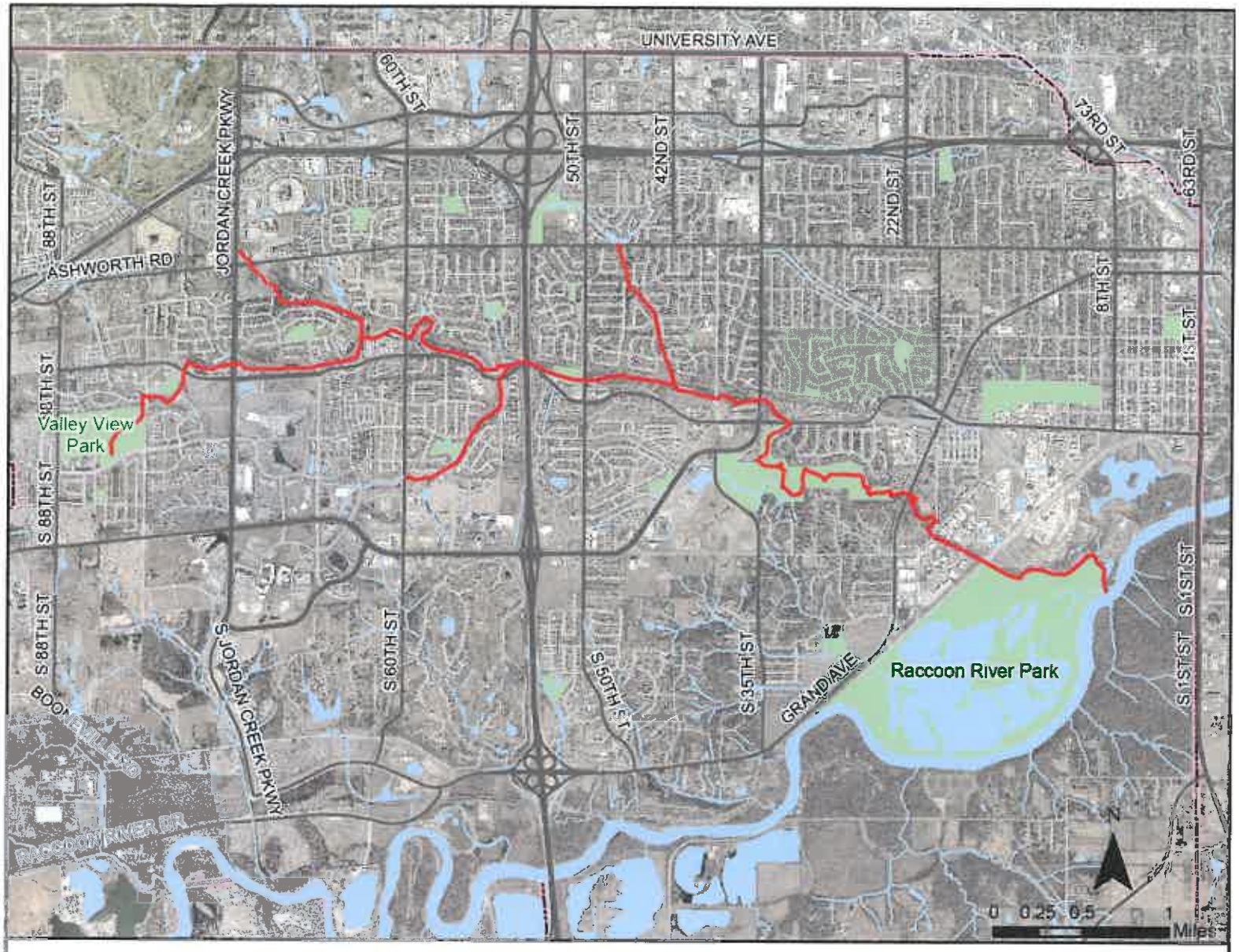
Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	RTJ

PUBLICATION(S) (if applicable)

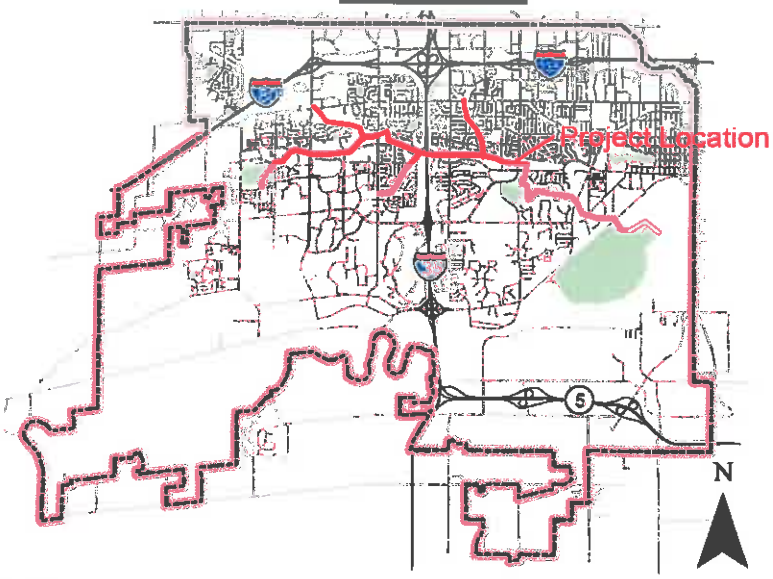
Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split



Vicinity Map



LEGEND

- Project Location
- Parks
- Water Boundary

THE CITY OF WEST DES MOINES

PROJECT: **JORDAN CREEK ASSESSMENT & RESTORATION PRIORITIZATION ANALYSIS**

LOCATION: **JORDAN CREEK & TRIBUTARIES**

DRAWN BY: MAA	DATE: 10/27/2016	PROJECT NO.:	SHT. 1 of 1

BARKER LEMAR
ENGINEERING CONSULTANTS

October 24, 2016

Ms. Sally Ortgies, PLA
Interim Director of Parks and Recreation
City of West Des Moines
PO Box 65320
West Des Moines, IA 50265

RE: Jordan Creek Assessment & Restoration Prioritization Analysis
City of West Des Moines – Polk County
BARKER LEMAR Proposal No. 164536 Updated

Dear Ms. Ortgies:

BARKER LEMAR ENGINEERING CONSULTANTS (BARKER LEMAR) appreciates the opportunity to provide consulting services described as the Jordan Creek Assessment & Restoration Prioritization Analysis to the City of West Des Moines (Client).

1.0 PROJECT UNDERSTANDING

BARKER LEMAR understands the Client is interested in utilizing and/or restoring the Jordan Creek Stream Corridor (Creek) to provide recreational pedestrian use, bicycle trails, and urban green space for the residents of West Des Moines. With these goals in mind, the Client would like to evaluate existing conditions of the Creek, which extends approximately 11.3 miles throughout the City (see Attachment A), with the majority traversing highly urbanized areas from Valley View Park to the confluence with the Raccoon River.

2.0 SCOPE OF SERVICES

The Client is interested in identifying and prioritizing locations within the Creek corridor that may benefit from future restoration efforts. This Stream Assessment (Assessment) would provide an analysis of current conditions of the Creek and identify potentially degraded areas within the corridor. Potential benefits from these efforts may include improvement of corridor aesthetics, a decrease in property damage and streambank erosion, and improvement of water quality.

BARKER LEMAR would present the findings upon completion of the Assessment in a Stream Analysis Report, which would include prioritization of potential restoration efforts based on the severity of physical conditions assessed within the Creek corridor.

Based on the above information, BARKER LEMAR proposes the following Scope of Services by Task:

1. Preliminary Watershed Analysis & Stream Assessment
2. Stream Analysis and Restoration Prioritization Report
3. Baseline Creek Sampling

Each task is further defined on the following page.

Task 1 – Preliminary Watershed Analysis & Stream Analysis

The Preliminary Watershed Analysis will include desktop review of current land use within the approximately 7,800-acre watershed, and any potential water resource information available from the Client and/or public natural resource agencies. In preparation for physical assessment, the Creek would be delineated into stream reaches of similar status, vegetative community, and potential condition. Boundaries of stream reaches would be confirmed upon field assessment of the stream corridor.

BARKER LEMAR will conduct an assessment of the Creek corridor within the City of West Des Moines. The approximate 11.3-mile stretch of Jordan Creek will be walked by qualified personnel to assess the condition of the corridor utilizing collection parameters based on a combination of the IOWATER (Iowa's Volunteer Water Quality Program) Habitat Assessment Protocols and the Rapid Assessment of Stream Conditions Along Length (RASCAL) data collection techniques.

The RASCAL assessment protocol is the Iowa-specific modification of the Natural Resource Conservation Service (NRCS) Stream Visual Assessment Procedure (SVAP2), and is designed to assess in-stream and near-stream environments of Iowa's streams and rivers with the intention of identifying priority areas for targeted conservation and/or restoration practice implementation. Evaluation parameters would include visual assessment of channel conditions, observed hydrologic alterations, and bank conditions within each delineated reach of the Creek. Risks to infrastructure, public safety, or public use areas would also be documented during the field assessment activities.

The following parameters will be assessed within the corridor:

i. **Flow:**
The ordinary high water mark (OHM) will be documented and the estimated volume of water will be visually classified into low, normal, high, or no flow categories at the time of field assessment.

ii. **Stream Habitat Types, Conditions, and Quality:**
Stream habitat will be visually classified into a riffle, run, pool/glide, pond, or dry channel categories at the time of field assessment.

iii. **Dominant Substrate:**
The dominant material forming the streambed segment along the length of the reach will be visually classified into bedrock, boulder, cobble, gravel, sand, clay/hard pan, leaf litter/organic matter, or silt/mud categories at the time of field assessment.

iv. **Channel Condition:**
The condition of the channel within the reach will be visually categorized into a natural channel category indicating that no artificial structures were observed, a past channel alteration category exhibiting signs of past alterations were observed, or an altered channel category demonstrating evident signs of alteration were observed at the time of the field assessment.

v. **Pool Frequency:**
Pools are defined as areas of slow moving water with depths greater than three feet. The frequency of pools within a reach would be visually categorized into none, less than one pool

every 250 feet, more than one pool every 250 feet, or frequent pools were observed categories within the reach.

vi. **Embeddedness:**
Embeddedness is defined as the degree which large particles such as boulders, cobble, or gravel, are surrounded or covered by silt or fine sediment. The reach will be visually categorized into the large particles are completely exposed, partially exposed, mostly embedded, completely embedded, or not applicable categories at the time of field assessment.

vii. **In-Stream Habitat:**
In-stream habitat includes logs, fallen trees, backwater pools, deep pools, overhanging vegetation, riffles, floating leaf clutter, aquatic vegetation, root mats, undercut banks, or any notable observation. The habitat will be visually classified as excellent habitat if observed in many examples of in-stream habitat are observed within the reach, average classification as some examples are observed within the reach, or poor as few to no examples of in-stream habitat present within the reach at the time of observation.

viii. **Losing Flow:**
Flow loss is characterized by stream segments losing flow to cracks in bedrock or stream sinks and is generally a function of karst geology. Flow loss would be classified as a yes, losses were observed or no, they were not observed within the reach at the time of field assessment.

ix. **Riparian Zone Width:**
The riparian zone is defined as the transition between the water and upland habitat, and typically consists of natural vegetation. The width of the riparian area along the left and right stream banks will be visually estimated into categories of less than 10 feet, 10-30 feet, 30-60 feet, or more than 60 feet observed within the reach at the time of field assessment.

x. **Adjacent Land Use:**
The adjacent land use will be visually assessed along the left and right banks into categories of agricultural, trees, grass, pasture, conservation reserve program (CRP) land, residential, commercial, farmstead, cliff, or other within the reach at the time of field assessment.

xi. **Percent Bare Bank:**
The percentage of the left and right stream bank that is void of vegetation or other bank stabilization materials will be visually estimated into categorized of 0-20%, 20-40%, 40-60%, 60-80%, or 80-100% of the bank is bare at the time of field assessment.

xii. **Stream Bank Material:**
The composition of the left and right stream banks will be visually classified as consisting of sand/gravel, rock/rip rap, soil, or constructed stream banks at the time of field assessment.

xiii. **Stream Bank Height and Stability:**
The height and stability of the left and right stream bank will be visually classified as stable, moderately stable, moderately unstable, unstable, or artificially stable depending on conditions at the time of field assessment. If the bank is classified as less than moderately stable, the cause of the instability will be classified (i.e., undercutting, sloughing, etc.).

xiv. **River/Stream Access Points:**
Conditions and GPS coordinates of access points to the water trail will be documented and photographed at the time of field assessment.

xv. **Potential Protected Species Habitat:**
Any appropriate habitat observed during the field assessment that could potentially be habitat for a State or Federally listed Threatened or Endangered Species or Species of Concern will be documented with GPS coordinates and conditions at the time of field assessment for inclusion in the final report.

xvi. **Potential Hazardous Locations and Areas of Concern:**
Any potentially hazardous conditions and/or areas of concern will be described and documented with GPS coordinates and photographs within the datasheet for the applicable reach which contains the area. If the hazardous condition falls outside a defined reach area, an independent data sheet will be completed to document the conditions observed at the time of field assessment.

xvii. **Notable Characteristics including Geological Landforms/Landmarks:**
Additional notable characteristics (cultural landmarks, previously observed wildlife, geological landforms, etc.) observed within a reach will be noted on the completed datasheet for the applicable reach in which the feature resides.

xviii. **Discharge Points:**
Discharge points (i.e., field tile outlets, residential pipes, roadway drains, etc.) within the corridor will be documented with GPS coordinates and photographs.

xix. **Illegal Dumping:**
Illegal dumping sites within the corridor will be documented and the size estimated with GPS coordinates and photographs. The illegal dumping site will also be categorized by type of material (i.e., construction and demolition, tire, residential garbage, etc.) and assessed if the site is visible to the public.

Applicable variables will be recorded for each stream reach with correlating GPS data, photo documentation at each point of interest, or at a minimum of one data point per mile throughout the project area. Utilizing a combination of RASCAL and SVAP2 assessment and scoring techniques, each reach within Jordan Creek will be assigned an overall numeric score representing overall condition. Should degraded areas be identified, each area will be ranked into a priority list to assist with potential restoration planning purposes. All findings of the field assessment and priority analysis will be compiled into a final report further described in Task 3.

Task 2 – Stream Analysis and Restoration Prioritization Report

Based upon the results of the Stream Assessment, BARKER LEMAR will prepare a Stream Analysis and Restoration Prioritization Report (Report) summarizing stream assessment results and identify areas that would maximize ecological and stormwater retention benefits for the City from future restoration efforts. Desktop assessment of potential priority areas will be completed utilizing data collected during the stream assessment. Each priority area will be ranked according to current conditions and the

potential ecological impact of restoration activities within specific reaches. Upon completion of this document, BARKER LEMAR will provide a draft copy to the Client for review.

At the Client's request, BARKER LEMAR will present Report findings during a regularly scheduled meeting.

Task 3 – Baseline Water Quality Sampling

BARKER LEMAR will conduct four (4) water quality sampling events during the recreation season, approximately April 1 – October 31, from appropriate locations determined in the completion of Task 1. Collected information will be compiled into baseline data that could be utilized to assess the ecological impacts of future restoration efforts in the City. Each sampling event will include the following parameters:

- pH;
- dissolved oxygen;
- Nitrate/Nitrite Nitrogen;
- Phosphorous and Phosphate;
- Chloride;
- Physical assessment of stream corridor observed at sample lcoations (i.e., width & depth, velocity, flow, etc.);
- Streambed substrate;
- Transparency;
- Turbidity;
- Air and water temperature;
- Presence/absence of benthic macroinvertebrates; and
- Escherichia coli *(E. coli)* sample collection for laboratory analysis.

Summaries of each data collection event will be submitted to the Client in a single report upon completion. E. coli samples will be collected in sterile bacteria sample bottles and submitted to Keystone Materials Testing, Inc. for analysis within six hours of sample collection, per Standard Method 9223 requirements. Laboratory fees are estimated to be $22 per sample and will be submitted directly to the Client upon completion of laboratory analysis.

3.0 SCHEDULE

Services not set forth in section 2.0, scope of services, are excluded from this proposal. BARKER LEMAR has no responsibility to perform such excluded services and has no liability associated with the non-performance of such services.

4.0 SCHEDULE

BARKER LEMAR will begin these services subsequent to receiving the signed confirmation of notice to proceed, or the Client's verbal authorization followed by the signed notice to proceed. Barring circumstances beyond BARKER LEMAR's control, BARKER LEMAR anticipates completing Tasks 1 and 2 of the scope of services within three (3) months of receiving authorization from Client; Task 3 will be completed within twelve (12) months of receiving authorization from the Client.

5.0 COMPENSATION

BARKER LEMAR agrees to perform the above scope of services on a lump sum by task basis. Total compensation for scope of services proposed: $13,750. Compensation detail per task is shown in Table 1 below. Although compensation is shown by task, the compensation for individual tasks are not independent of each other, and elimination of any task or part of a task shall justify a review and potential adjustment of the compensation for the remaining scope of services. BARKER LEMAR invoices will be submitted monthly and will reflect the percentage complete of each task as of the date of the invoice. The compensation for the proposed scope of services is valid for 60 days following the date of this proposal. Payment terms are as described in the attached terms and conditions. Should conditions be encountered that require a significant change in the scope of services, compensation, or schedule, BARKER LEMAR will contact Client and proceed only with Client authorization, followed by a signed change order.

6.0 HEALTH & SAFETY

This proposal assumes that Level D safety precautions are adequate. Level D safety attire generally consists of a normal work uniform including safety shoes, hard-hat where required, and appropriate eye protection. A health and safety plan will be developed for the site. The costs will be adjusted accordingly if site specific conditions require more stringent health and safety procedures.

7.0 CONDITIONS

Items to be provided by the Client include the right-of-entry to conduct surveying, sampling operations, or other on-site activities requested by the Client. The Client is responsible for making BARKER LEMAR aware of any restrictions or special requirements regarding the site and its required activities prior to the commencement of the fieldwork. We have enclosed our Terms and Conditions that should be considered part of this proposal.

BARKER LEMAR
ENGINEERING CONSULTANTS

CONFIRMATION OF NOTICE TO PROCEED

Proposal No. 164536 Updated

The above proposal and attached Terms and Conditions are understood and accepted.

BARKER LEMAR agrees to perform and complete the following services for the Client at its facilities located in West Des Moines, IA.

The scope of services is described as the Jordan Creek Assessment & Restoration Analysis Report, and will include other technical and/or administrative services as outlined in this proposal.

BARKER LEMAR agrees to perform the above scope of services for a total compensation estimated to be $13,750, as shown on the table below. Client will be invoiced for the percent of project completed at the time of the invoice. The compensation for the proposed scope of services is valid for 60 days following the date of this proposal.

If this proposal meets with your approval, sign two originals of this confirmation of notice to proceed, retain one original for Client files, and return one original or copy via email, fax to 515-256-0572, or U.S. mail to BARKER LEMAR Engineering Consultants, 1801 Industrial Circle, West Des Moines, IA 50265.

If you have questions regarding any of the information above please contact us at 515.256.8814.

BARKER LEMAR ENGINEERING CONSULTANTS

Carly Kalina
Ecological Team Lead
10/24/2016
ckalina@barkerlemar.com

Jeff Phillips
Project Manager
10/24/16
jphillips@barkerlemar.com

CITY OF WEST DES MOINES

Ms. Sally Ortgies, PLA

Title: Interim Director of Parks and Recreation

Date:

Email:

Copies: File
Addressee (2)

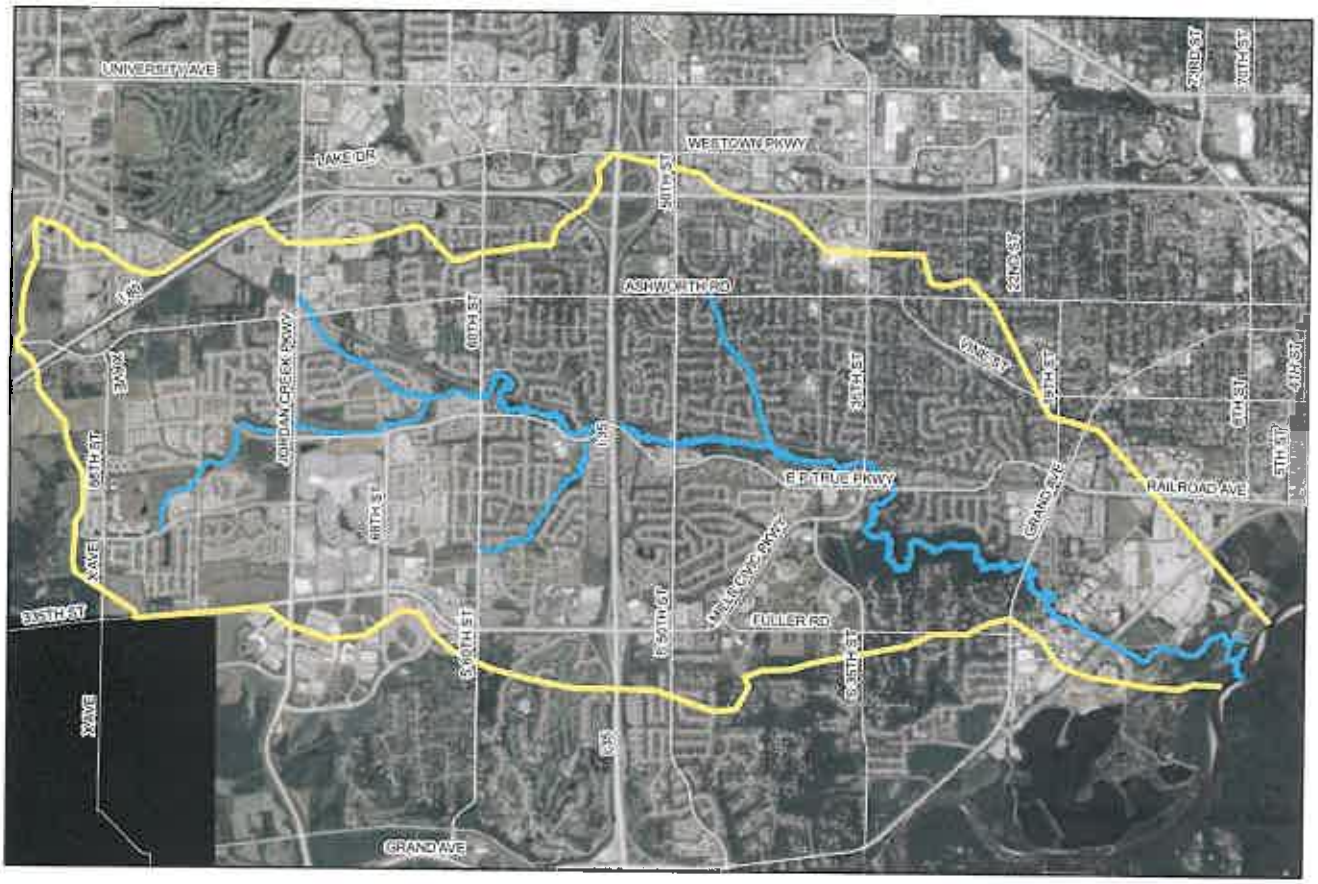
TABLE 1
COMPENSATION DETAIL
JORDAN CREEK STREAM ASSESSMENT & RESTORATION ANALYSIS REPORT
CITY OF WEST DES MOINES
PROPOSAL NO. 16536

SCOPE ITEM	TOTAL COMPENSATION
Task 1 – Preliminary Watershed Analysis & Stream Assessment	$ 6,750
Task 2 – Ecological Restoration Analysis	$ 4,500
Task 3 – Baseline Water Quality Sampling	$ 2,500
TOTAL COMPENSATION	**$ 13,750**

ATTACHMENT A

JORDAN CREEK WATERSHED

Jordan Creek Watershed



Legend

- Jordan Creek
- Jordan Creek Watershed

0 0.5 1 2 Miles

N

Jordan Creek Watershed Layer receved from the Jordan Creek Flood Plain Study, Iowa Natural Resources Council, 1980

BARKER LEMAR
ENGINEERING CONSULTANTS

TERMS AND CONDITIONS

PAYMENT TERMS

Payment is due upon receipt of our invoice. If payment is not received within 30 days from the invoice date, Client agrees to pay a finance charge on the principal amount of the past due account of 1 ½% per month. If 1 ½% per month exceeds the maximum allowed by law; the charge shall automatically be reduced to the maximum legally allowable. In the event the Client requests termination of the services prior to completion, a termination charge in an amount not to exceed 30% of all charges incurred through the date services are stopped plus any shutdown costs may, at the discretion of Barker, Lemar & Associates, Inc., be made. If during the execution of the services, Barker, Lemar & Associates, Inc., is required to stop operations as a result of changes in the scope of services such as requested by the Client or requirements of third parties, additional charges will be applicable. Client is responsible for all cost of the collection of unpaid accounts, including reasonable attorney fees.

INSURANCE

Barker, Lemar & Associates, Inc. maintains Workers' Compensation and Employers Liability Insurance in conformance with applicable state law. In addition, we maintain Commercial General Liability Insurance with combined Single Bodily Injury and property damage limits of $1,000,000 and Automobile Liability Insurance with combined Single Bodily Injury and property damage limits of $1,000,000. A certificate of Insurance can be supplied evidencing such coverage, which contains a clause providing that 10 days written notice be given prior to cancellation. Cost of the above coverage is included in our quoted fees. If additional coverage or increased limits of liability are required, Barker, Lemar & Associates, Inc. will endeavor to obtain the requested insurance and charge separately for costs associated with additional coverage or increased limits.

LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and Barker, Lemar & Associates, Inc., the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Barker, Lemar & Associates, Inc. and Barker, Lemar & Associates, Inc.'s officers, directors, partners, employees, shareholders, owners and sub consultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorney's fees and costs and expert-witness fees and costs, so that the total aggregate liability of Barker, Lemar & Associates, Inc. and Barker, Lemar & Associates, Inc.'s officers, directors, partners, employees, shareholders, owners and sub consultants shall not exceed the applicable insurance coverage available at the time of settlement or judgment. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

Client agrees that Barker, Lemar & Associates, Inc.'s liability for any damage on account of any error, omission, or other professional negligence by Barker, Lemar & Associates, Inc. will be limited to a sum not to exceed $50,000 or the amount presently due Barker, Lemar & Associates, Inc. for services rendered hereunder, whichever is greater.

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Barker, Lemar & Associates, Inc., their respective officers, directors, partners, employees, contractor or sub consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. The mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Barker, Lemar & Associates, Inc. shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and sub contracts with others involved in this project. Barker, Lemar & Associates, Inc. is not liable for consequential damages.

Barker, Lemar & Associates, Inc. shall not be responsible for any acts or omissions of the Contractor, any sub contractor, any entity performing any portions of the Work or any agents or employees of any of them. Barker, Lemar & Associates, Inc. does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

POLLUTION CLAIMS

Client hereby understands and agrees that Barker, Lemar & Associates, Inc. has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at Client's premises, or in connection with or related to this project with respect to which Barker, Lemar & Associates, Inc. has been retained to provide professional engineering services. Barker, Lemar & Associates, Inc.'s total liability to Client resulting from any release or threatened release of any hazardous waste, substance, pollutant or contaminant, whether or not directly or indirectly generated by Barker, Lemar & Associates, Inc.'s performance of the work hereunder (including any injury to persons or property or death resulting there from), shall not exceed the amount due Barker, Lemar and Associates, Inc. for services rendered hereunder. This limitation applies to all liabilities, including indemnification liabilities, whether based on contract, tort (including negligence), and strict liability or otherwise. This limitation of liability does not in any way limit or affect Client's obligations to indemnify and hold Barker, Lemar & Associates, Inc., its owners, officers, directors, and employees harmless. This limitation of liability shall not apply to the extent it is held that the loss or damage arose from Barker, Lemar & Associates, Inc.'s gross negligence or intentional misconduct. In addition, Client agrees to limit Barker, Lemar & Associates, Inc.'s liability to the same extent that Client's liability is limited pursuant to its contract with its client (if one exists).

DOCUMENTS

Barker, Lemar & Associates, Inc.'s liability to Owner for any computer programs, software products, or related data furnished hereunder is limited solely to the correction of residual errors, minor maintenance, or update(s) as agreed. Barker, Lemar & Associates, Inc. makes no warranties of any kind, including any implied warranty of merchantability or of fitness for any particular purpose, or against infringement, with respect to computer programs, software products, related data, technical information, or technical assistance provided by Barker, Lemar & Associates, Inc. under this Agreement. In no event shall Barker, Lemar & Associates, Inc., its officers, agents, or employees be liable under or in connection with this Agreement under any theory of tort, contract, strict liability, negligence, or other legal or equitable theory for incidental or consequential damages relating to any computer programs, software products, or related data furnished hereunder.

STANDARD OF CARE

In providing services under this Agreement, Barker, Lemar & Associates, Inc. shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same or similar locality. Barker, Lemar & Associates, Inc. makes no warranty, express or implied, as to its professional services rendered under this Agreement.

RIGHT-OF-ENTRY

Unless otherwise agreed, Client will furnish right-of-entry on the property for Barker, Lemar & Associates Inc. to make the planned borings, surveys, tests, and/or explorations. Barker, Lemar & Associates Inc. will take reasonable precautions to limit damage to the property caused by our operations, but we have not included in our fee the cost of restoration of damage that may result. If Client desires Barker, Lemar & Associates Inc. to restore the property to its former condition, we will accomplish this, to the extent reasonably possible, and add the cost to the proposed fee.

SITE VISITS

Barker, Lemar & Associates, Inc. shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and Barker, Lemar & Associates, Inc., in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of Barker, Lemar & Associates, Inc.'s work but rather are to allow the Consultant to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, Barker, Lemar & Associates, Inc. shall keep the Client informed about the progress of the Work and shall advise the Client about observed deficiencies in the Work.

If the Client desires more extensive project observation or full-time project representation, the Client shall request that such services be provided by Barker, Lemar & Associates, Inc. as Additional Services in accordance with the terms of this Agreement.

Barker, Lemar & Associates, Inc. shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected neither by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

SAMPLING OR TESTING OF LOCATION

The fees do not include costs associated with surveying of the site or the accurate horizontal and vertical locations of tests, unless otherwise specifically agreed to by the parties. Field test or boring locations described in Barker, Lemar & Associates, Inc.'s report contemplated by these Terms and Conditions or shown on sketches are based on specific information furnished by others or estimates made in the field by our technicians. Such dimensions, depths, or elevations should be considered as approximations unless otherwise stated in the reports contemplated by these Terms and Conditions.

The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. Barker, Lemar & Associates, Inc. may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. Barker, Lemar & Associates, Inc. shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.

SAMPLE DISPOSAL AGREEMENT

Unless otherwise requested, test specimens or samples will be disposed of immediately upon completion of tests unless otherwise regulatory required. Upon written request, Barker, Lemar & Associates, Inc. will retain test specimens or drilling samples for mutually acceptable storage charge and period of time.

DAMAGE TO EXISTING MAN-MADE OBJECTS

It shall be the responsibility of the Client or his duly authorized representative to disclose the presence and accurate location of all hidden or obscure man-made objects and underground utilities relative to field tests or boring locations. Barker, Lemar & Associates, Inc.'s field personnel are trained to recognize clearly identifiable stakes or markings in the field and without special written instruction to initiate field testing drilling and/or sampling within a reasonable distance of each designated location. If Barker, Lemar & Associates, Inc. is cautioned, advised, or given data in writing that reveal the presence or potential presence of underground or over ground obstructions, such as utilities, Barker, Lemar & Associates, Inc. will give special instructions to its field personnel. As evidenced by Client's acceptance of this proposal, Client agrees to indemnify and save harmless from all claims, suits, losses, personal injuries, death, and property liability resulting from unusual subsurface conditions or damages to subsurface structures, including utility lines, owned by Client or third parties, occurring in the performance of the proposed services, whose presence and, exact locations were not revealed to Barker, Lemar, & Associates, Inc. in writing, and to reimburse Barker, Lemar & Associates, Inc. for expenses in connection with any such claims or suits, including reasonable attorney fees.

DISPOSAL

Barker, Lemar & Associates, Inc. is not, and has no authority to act as, a handler, generator, operator, treated, storer, transporter or disposer of hazardous waste, substances, pollutants or contaminates found or identified at the site. Barker, Lemar & Associates, Inc. shall have no responsibility for the transportation, storage, treatment or disposition of contaminated or potentially contaminated waste materials of any kind, which are directly or indirectly generated from Barker, Lemar & Associates, Inc.'s performance of the work in accordance with these Terms and Conditions. Client shall be responsible for the disposal of any such waste materials.

SAFETY

Should Barker, Lemar & Associates, Inc. provide periodic observations or monitoring services at the job site during construction, Client agrees that in accordance with generally-accepted construction practices, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work and compliance with OSHA regulations, and that these requirements will apply continuously and not be limited to normal working hours. Any monitoring of the contractor's procedures conducted by Barker, Lemar & Associates, Inc. is not intended to include review of the adequacy of the contractor's safety measures in, on, adjacent to, or near the construction site.

CONSTRUCTION COST OPINIONS

Opinions of probable cost for the facilities considered and designed under this Agreement are prepared by Barker, Lemar & Associates, Inc. through exercise of its experience and judgment in applying presently available cost data, but it is recognized that Barker, Lemar & Associates, Inc. has no control over costs of labor and materials, or over the construction contractor's methods of determining prices, or over competitive bidding procedures, market conditions, and unknown field conditions so that Barker, Lemar & Associates, Inc. cannot and does not guarantee that proposals, bids, or the project construction costs will not vary from Barker, Lemar & Associates, Inc.'s opinion of probable construction costs.

OWNERSHIP OF DOCUMENTS

All documents, including, but not limited to, drawings, specifications, reports, boring logs, field notes, laboratory test data, calculations, and estimates, prepared by Barker, Lemar & Associates, Inc., are instruments of service pursuant to these Terms and Conditions and shall be the sole property of Barker, Lemar & Associates, Inc. Client agrees that all documents of any nature furnished to Client or Client's agents or designees, if not paid for, will be returned to Barker, Lemar & Associates Inc. upon demand and will not be used by Client for any purpose whatsoever. Client further agrees that under no circumstances shall any documents produced by Barker, Lemar & Associates Inc., pursuant to these Terms and Conditions, be used at any location or for any project not expressly provided for in these Terms and Conditions without the written permission of Barker, Lemar & Associates, Inc. At the request and expense of Client, Barker, Lemar & Associates, Inc. will provide Client with copies of documents created in the performance of the work for a period not exceeding five years following submission of the report contemplated by these Terms and Conditions.

SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and are binding upon the parties hereto and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without written consent of the parties of this Agreement.

SEVERABILITY

If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

WAIVER

Barker, Lemar & Associates, Inc.'s waiver of any term, condition, or breach of any term, condition, covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

GOVERNING LAW

These Terms and Conditions shall be governed in all respects by the laws of the State of Iowa. Any litigation to be filed by either party to the contract shall be filed in Polk County, Iowa District Court or Federal Court for the Southern District of Iowa.

ENTIRE AGREEMENT

This Agreement, and its attachments, contains the entire understanding between Owner and Barker, Lemar & Associates, Inc. relating to professional engineering services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties to this Agreement.