

2009 Request for Proposals for a Phase II Environmental Site Assessment and  
Remediation Activities at the Garver Feed Mill for the City of Madison  
RFP #: [RFP 8006-0-2009-DR](#)

## 1. INTRODUCTION

The City of Madison (City) is seeking a qualified firm to conduct an ASTM Phase II Environmental Site Assessment (Phase II ESA) at the Garver Feed Mill property located at 109 and 115 South Fair Oaks Ave. The assessment will be conducted on 10.5-acres of City-owned land surrounding the Garver Feed Mill. The work will include assessment of the extent and magnitude of environmental concerns and recommendations for remediation of the property. This Request for Proposals (RFP) provides specifications and requirements for prospective applicants to complete a proposal with cost estimates for services. Proposals submitted no later than **2 PM on Friday, May 29, 2009** will be considered.

On June 19, 2008, the City accepted the proposal of Common Wealth Development (CWD) to create an arts incubator in the Garver Feed Mill (File ID 09785, Enactment # RES-08-00623). In response, CWD conducted a Phase I Environmental Site Assessment Report (Phase I ESA) for the Garver Feed Mill and adjacent land. Using a 2009 Wisconsin Department of Natural Resources (WDNR) Site Assessment Grant (SAG), the City would like to conduct a Phase II ESA and partially remediate the site prior to selling the building to CWD. The City received \$73,600 to complete the Phase II, remediation and securing the building.

## 2. SITE DESCRIPTION

The Phase II ESA is to be completed on a 10.5-acre site currently owned by the City of Madison. The property is comprised of two land parcels: the 5-acre 109 S. Fair Oaks Avenue parcel (parcel no. 0710-054-0096-7) and 5.5 acres of the western portion of the 115 S. Fair oaks Avenue parcel (parcel no. 0710-054-0098-3). A recent aerial photo of the site along with the property boundaries in question is included with this RFP (Appendix D). City-owned property outside the Phase I ESA boundary, north and east of the Garver Feed Mill building, should not be included in the Phase II ESA.

Since 1907, the building has been used primarily for manufacturing purposes. The United States Sugar Beet Company operated the building from 1907 to 1926. From 1931 to 1997 the building was used for the manufacturing of livestock and poultry feed by Garver Feed and Supply Company. Since 1997 the building has been used by Olbrich Gardens and the City for the storage of materials. Portions of the building have also been used by various other businesses as listed in Table 3 of the Phase I ESA.

The site's Phase I ESA, historical architectural drawings of the beet factory/feed mill conversion, and the WDNR's SAG Grant Application Instructions are available for download on the City's website <http://www.cityofmadison.com/planning/garver.html>. Please refer to these documents for a more detailed description of the property's historical use and for an overview of what is and is not covered under the grant.

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### 3. OBJECTIVE AND SCOPE

The overall objective of this project is to identify and evaluate the extent and magnitude of environmental conditions and to remediate selected concerns in the building and adjacent property prior to selling the building and leasing the land to CWD.

Given the limited scope of the initial Phase I ESA, the scope of services, as outlined in this RFP, is preliminary. The final scope of services will be negotiated with the selected firm and modified as needed, depending on site conditions. Scope of the project includes the following:

- Phase II ESA following ASTM guidelines including drilling, boring, and sampling activities as needed to evaluate the presence and extent of suspected contaminants in the floors, walls, and pits inside the building and in the soil and groundwater outside the building.
- Comprehensive lead-based paint and asbestos surveys in the building
- Characterization, removal, and disposal of abandoned containers, including, but not limited to: drums, barrels, batteries, light bulbs, hydraulic lifts, etc.
- Final report on field sampling activities, analytical results, disposal manifests, conclusions on the release of hazardous substances and the risks to human health and the environment, and recommendations for remedial alternatives.

### 4. METHODOLOGY

The Phase II ESA must be adequate to determine the extent and magnitude of contamination on the subject property and to identify remediation options for contaminants that may pose a threat to redevelopment and future land use. Multiple areas within the building were not safe to access during the Phase I ESA, including the upper mill level, second stories, and basement/vault areas. The City will coordinate with a general contractor to make access to these areas safe for investigation. *The selected firm will be responsible for investigating contamination in areas not necessarily addressed during the Phase I ESA.* It is the responsibility of the selected firm to ensure that the entire building and designated property is thoroughly investigated for environmental conditions and concerns.

All work will be performed in accordance with all local, State and Federal statutes and regulations.

Some of the activities required by this Phase II ESA may not be eligible for compensation under the SAG grant. These activities should still be conducted and will be paid for by the City.

Below is an outline of the scope of services included in this RFP. Please refer to the Phase I ESA to estimate the type and quantity of sampling required. Note that once safe access is provided for all rooms and floors of the building, additional sampling may be required.

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*Garver Feed Mill*

- Sample oil stains on the floors and walls for PCBs and/or heavy metals
- Sample all abandoned containers to determine disposal options
- Sample miscellaneous electrical equipment for PCB contamination
- Recommend disposal options for all containers, bulbs, batteries, motors, etc.
- Conduct a comprehensive asbestos survey
- Conduct a comprehensive lead-based paint survey

*Surrounding Property*

- Investigate soil lead contamination on the west side of the building
- Investigate petroleum contamination near the former Frito-Lay greenhouse
- Install four to five Geoprobe borings to sample groundwater around the building

*Not included in the Scope of Work*

- The open LUST site at the former Nuendorf Trucking facility (*to be closed by the City*)
- Closed LUST or ERP sites
- Water contamination in the pits/vaults (*to be tested and emptied by the City*)

## 5. DELIVERABLES

All deliverables should be submitted to the City Contact, Dan Rolfs, in both electronic PDF (on one CD) and hard copy formats (five (5) copies). The proposal should provide a description or outline of the work plan and reports that are part of the deliverables for the project. Proposals must be submitted in sealed envelopes or boxes as per requirements identified in the "Proposal Requirements" portion of this RFP.

At a minimum, the following project deliverables are expected:

- Work Plan for Final Negotiated Scope of Services
- Monthly Progress Reports and Invoice Submittals
- Work Plans for Additional Investigations (if needed)
- Final Phase II ESA Report

## 6. PROPOSAL REQUIREMENTS

The proposal should describe your approach to the Scope of Services. It is intended that each consultant furnish all information requested by this RFP. Unless specifically requested, promotional literature is not desired and will not be considered to meet any of the requirements of this RFP. The proposal should provide sufficient detail to enable staff to thoroughly evaluate and compare it with other proposals. The proposal format should closely follow the format provided in this RFP, including:

- 1) Contact information for the firm and the project manager.

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- 2) A description of your firm, your qualifications, and a statement of the firm's ability to acquire insurance as required by contract. Also include a summary of your understanding of the City's needs and your staffing commitments to assure your ability to meet these needs in a timely fashion.
- 3) A detailed list of similar types of work previously completed, with the names, addresses, phone numbers and e-mails for who the work was performed.
- 4) A list of the consultant's staff that would be committed to the project with their professional resumes listing related project experience.
- 5) A description of any subconsultants or subcontractors you plan on working with, including the portion of work to be done by them. Explain fully the intended working relationships and responsibilities of each firm, as well as any examples of past experiences working together and working with the City.
- 6) Intent to comply with the Affirmative Action Ordinance of the City.
- 7) The terms of compensation along with a list of the Consultant's professional rates and any laboratory rates.
- 8) A list of all items, including data, to be provided by the City to assist your firm in completing the requested work.
- 9) A description of how your firm will produce the requested deliverables, including your methodology, quality control procedures, and a tentative schedule.
- 10) Samples of comparable studies undertaken by the proposed project manager. The project manager is defined as the person designated as having day-to-day responsibility to perform the work or to very closely supervise the work of others in the development of this project. Specific reference should be made to past examples where the project manager has worked on projects funded by WDNR SAG grants. One copy of each will be sufficient and will be returned to you at your request.
- 11) A proposal submitted in response to this RFP shall constitute a binding offer. Acknowledgement of this condition shall be indicated, on the Signature Affidavit Page (Appendix B) by the signature of the respondent or an officer of the respondent legally authorized to execute contractual obligations. By submitting a proposal, the respondent affirms its acceptance of the terms and conditions of this RFP, including its attachments and exhibits, without exception, deletion or qualification, and without making its offer contingent. Failure to comply with this requirement will be grounds for automatic disqualification.
- 12) Timeline – Work will commence in June 2009, with completion anticipated by October 2009.

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## 7. CONTRACT

This contract with the City shall be for the duration of the work, commencing upon execution of all appropriate documents by both the City and successful bidder. The proposed contract is attached to this document as Appendix A, Contract for Purchase of Services. No deviations from this contract will be permitted.

## 8. MANDATORY PRE-BID MEETING AND TOUR

Prior to the bid due date, the City of Madison will hold a **MANDATORY** pre-bid meeting and tour of the Garver Feed Mill. This tour will take place to provide an overview of the project as well as to ensure that all potential respondents are aware of the conditions within the building.

DATE: May 15, 2009  
TIME: Noon  
LOCATION: Olbrich Botanical Gardens, 3330 Atwood Ave., Madison,  
WI 53704 (Meeting Room)

### **Tour participants are required to provide their own:**

- OSHA approved hard hat
- Appropriate footwear
- Flashlight

**The City will reject all proposals from firms who fail to attend the mandatory pre-bid meeting and tour.**

## 9. DIRECTIONS FOR SUBMITTING PROPOSALS

Respondents should submit five (5) hard copies and one digital copy (CD) to the City Department of Planning and Community and Economic Development by 2:00 PM on Friday, May 29, 2009.

Attn: Dan Rolfs  
Department of Planning and Community and Economic Development  
Madison Municipal Building  
215 Martin Luther King, Jr. Blvd  
Room 312  
P.O. Box 2983  
Madison, WI 53701

**Late responses will not be accepted and will be returned unopened.**

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## 10. SELECTION PROCESS

Staff will select one firm, based on experience, cost, availability, and other factors. The City may require submitting firms to participate in interviews and / or negotiations.

This Request for Proposals does not commit the City to award a contract, pay any costs incurred in preparation of qualification statements, or to procure or contract for services or equipment. The City may require the submitting firm(s) to participate in negotiations and to submit such additional price, technical or other revisions to his or her submittals as may result from negotiation. The firm shall be responsible for all costs incurred as part of its participation in the pre-award process.

The City reserves the right to accept or reject any or all submittals, in whole or in part, and to waive any informalities or technicalities which at the City's discretion is determined to be in the best interests of the City. Further, the City makes no representations that a contract will be awarded to any offer or response to this request.

The City of Madison has adopted a local preference purchasing policy that grants a 1% pricing preference or 5 percent request for proposal scoring preference to local vendors. Bidders seeking to obtain local preference status must meet specific criteria and register online at: <http://www.ci.madison.wi.us/business/localPurchasing/index.cfm>.

## 11. PROJECT CONTACTS

All questions should be directed in e-mail form to:

- Mr. Dan Rolfs, Community Development Project Manager, City of Madison (608.267.8722 or [drolfs@cityofmadison.com](mailto:drolfs@cityofmadison.com))

AND

- Ms. Brynn Bemis, Hydrogeologist, City of Madison (608.267.1986 or [bbemis@cityofmadison.com](mailto:bbemis@cityofmadison.com)).

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**APPENDIX A**

**CONTRACT FOR PURCHASE OF SERVICES**

**CONTRACT FOR PURCHASE OF SERVICES**  
between the City of Madison and Full Contractor Name

1. **PARTIES.**

This is a contract between the City of Madison, Wisconsin, hereafter referred to as the "City" and \_\_\_\_\_ hereafter referred to as "Contractor."

The Contractor is a:     Corporation             Limited Liability Company     General Partnership     LLP  
(to be completed by contractor)  Sole Proprietor     Unincorporated Association     Other: \_\_\_\_\_.

2. **PURPOSE.**

The purpose of this contract is as set forth in Section 3.

3. **SCOPE OF SERVICES AND SCHEDULE OF PAYMENTS.**

Contractor will perform the following services and be paid according to the following schedule(s) or attachment(s):

(Attach and label documents as necessary.)

4. **TERM AND EFFECTIVE DATE.**

This contract shall become effective upon execution by the Mayor, (or the Purchasing Agent, if authorized) on behalf of the City of Madison, unless another effective date is specified in the Attachment(s) incorporated in Section 3, however in no case shall work commence before execution by the City of Madison. The term of this contract shall be insert dates or reference attachments as needed.

5. **ENTIRE AGREEMENT.**

The entire agreement of the parties is contained herein and this contract supersedes any and all oral contracts and negotiations between the parties.

6. **ASSIGNABILITY/SUBCONTRACTING.**

Contractor shall not assign or subcontract any interest or obligation under this contract without the City's prior written approval. All of the services required hereunder will be performed by Contractor and employees of Contractor.

7. **DESIGNATED REPRESENTATIVE.**

- A. Contractor designates \_\_\_\_\_ as Contract Agent with primary responsibility for the performance of this contract. In case this Contract Agent is replaced by another for any reason, the Contractor will designate another Contract Agent within seven (7) calendar days of the time the first terminates his or her employment or responsibility using the procedure set forth in Section 15, Notices.
- B. In the event of the death, disability, removal or resignation of the person designated above as the contract agent, the City may accept another person as the contract agent or may terminate this agreement under Section 25, at its option.

8. **PROSECUTION AND PROGRESS.**

- A. Services under this agreement shall commence upon written order from the City to the Contractor, which order will constitute authorization to proceed; unless another date for commencement is specified elsewhere in this Contract including documents incorporated in Section 3.
- B. The Contractor shall complete the services under this agreement within the time for completion specified in Section 3, the Scope of Services, including any amendments. The Contractor's services are completed when the City notifies the Contractor in writing that the services are complete and are acceptable. The time for completion shall not be extended because of any delay attributable to the Contractor, but it may be extended by the City in the event of a delay attributable to the City, or in the event of unavoidable delay caused by war, insurrection, natural disaster, or other unexpected event beyond the control of the Contractor. If at any time the Contractor believes that the time for completion of the work should be extended because of unavoidable delay caused by an unexpected event, or because of a delay attributable to the City, the Contractor shall notify the City as soon as possible, but not later than seven (7) calendar days after such an event. Such notice shall include any justification for an extension of time and shall identify the amount of time claimed to be necessary to complete the work.
- C. Services by the Contractor shall proceed continuously and expeditiously through completion of each phase of the work.
- D. Progress reports documenting the extent of completed services shall be prepared by the Contractor and submitted to the City with each invoice under Section 24 of this agreement, and at such other times as the City may specify, unless another procedure is specified in Section 3.
- E. The Contractor shall notify the City in writing when the Contractor has determined that the services under this agreement have been completed. When the City determines that the services are complete and are acceptable, the City will provide written notification to the Contractor, acknowledging formal acceptance of the completed services.

9. **AMENDMENT.**

This contract shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any other change in any provision of this contract may only be made by a written amendment, signed by the duly authorized agent or agents who executed this contract.

10. **EXTRA SERVICES.**

The City may require the Contractor to perform extra services or decreased services, according to the procedure set forth in Section 24. Extra services or decreased services means services which are not different in kind or nature from the services called for in the Scope of Services, Section 3, but which may increase or decrease the quantity and kind of labor or materials or expense of

performing the services. Extra services may not increase the total contract price, as set forth in Section 23, unless the contract is amended as provided in Section 9 above.

11. **NO WAIVER.**

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

12. **NON-DISCRIMINATION.**

In the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, or national origin.

13. **AFFIRMATIVE ACTION.**

**A. The following language applies to all contractors employing fifteen (15) or more employees: (MGO 39.02(9)(c).)**

The Contractor agrees that, within thirty (30) days after the effective date of this contract, Contractor will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the contract is still in effect, or if the City enters into a new agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. The Contractor agrees to interview and consider candidates referred by the Department if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from Sec. 13. A., at the time the Request for Exemption in 13.B. is made.

**B. Articles of Agreement, Request for Exemption, and Release of Payment:**

**The "ARTICLES OF AGREEMENT" beginning on the following page, apply to all contractors, unless determined to be exempt under the following table and procedures:**

NUMBER OF EMPLOYEES	LESS THAN \$25,000 Aggregate Annual Business with the City*	\$25,000 OR MORE Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

\*As determined by the City Comptroller

\*\*As determined by the Department of Civil Rights

**REQUEST FOR EXEMPTION:** (MGO 39.02(9)(a)2.) Contractors who believe they are Exempt from the Articles of Agreement according to the table above, shall submit a Request for Exemption on a form provided by the Department of Civil Rights ("Department"), within thirty (30) days of the effective date of this Contract. The Department makes the final determination as to whether a contractor is exempt from the Articles of Agreement. In the event the Contractor is not exempt, the Articles of Agreement shall apply. **CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO THE ARTICLES OF AGREEMENT UPON REACHING \$25,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.**

**RELEASE OF PAYMENT:** (MGO 39.02(9)(e)1.b.) Within thirty (30) days from the effective date of this contract, and prior to release of payment by the city, all non-exempt contractors are required to have on file with the Department, an Affirmative Action plan meeting the requirements of Article IV below. Additionally, contractors that are exempt from the Articles of Agreement under Table 13-B, must have a Request for Exemption form on-file with the Department, prior to release of payment by the City.

## ARTICLES OF AGREEMENT

### ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

### ARTICLE II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

### ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

### ARTICLE IV

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The Contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true (**check one**):

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.

### ARTICLE V

(This Article applies only to public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the contract compliance requirements. The Contractor agrees to submit the model affirmative action plan for public works Contractors in a form approved by the Director of Affirmative Action.

### ARTICLE VI

The Contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

### ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this contract in whole or in part.
- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

### ARTICLE VIII

(This Article applies to public works contracts only.)

The Contractor shall include the above provisions of this contract in every subcontract so that such provisions will be binding upon each subcontractor. The Contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

### ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

14. **SEVERABILITY.**

It is mutually agreed that in case any provision of this contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this contract remain in full force and effect.

15. **NOTICES.**

All notices to be given under the terms of this contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY:

\_\_\_\_\_

(Department or Division Head)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FOR THE CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

16. **STATUS OF CONTRACTOR/INDEPENDENT/TAX FILING.**

It is agreed that Contractor is an independent Contractor and not an employee of the City, and that any persons who the Contractor utilizes and provides for services under this contract are employees of the Contractor and are not employees of the City of Madison.

**Contractor shall provide its taxpayer identification number (or social security number) to the City Comptroller, 210 Martin Luther King Jr. Blvd, Room 406, Madison, WI 53703, prior to payment.** The Contractor is informed that as an independent Contractor, s/he may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes and make social security payments on the amounts received under this contract and that no amounts will be withheld from payments made to this Contractor for these purposes and that payment of taxes and making social security payments are solely the responsibility and obligation of the Contractor. The Contractor is further informed that s/he may be subject to civil and/or criminal penalties if s/he fails to properly report income and pay taxes and social security taxes on the amount received under this contract.

17. **GOODWILL.**

Any and all goodwill arising out of this contract inures solely to the benefit of the City; Contractor waives all claims to benefit of such goodwill.

18. **THIRD PARTY RIGHTS.**

This contract is intended to be solely between the parties hereto. No part of this contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

19. **AUDIT AND RETAINING OF DOCUMENTS.**

The Contractor agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this contract. Any other reports or documents shall be provided within five (5) working days after the Contractor receives the City's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Contract shall be retained by the Contractor for a period of three (3) years after completion of all work under this contract, in order to be available for audit by the City or its designee.

20. **CHOICE OF LAW AND FORUM SELECTION.**

This contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within the State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.

21. **COMPLIANCE WITH APPLICABLE LAWS.**

The Contractor shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Contractor and its agents and employees.

22. **CONFLICT OF INTEREST.**

- A. The Contractor warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this agreement.
- B. The Contractor shall not employ or contract with any person currently employed by the City for any services included under the provisions of this agreement.

23. **COMPENSATION.**

It is expressly understood and agreed that in no event will the total compensation for services under this contract exceed \$\_\_\_\_\_.

24. **BASIS FOR PAYMENT.**

**A. GENERAL**

- (1) The City will pay the Contractor for the completed and accepted services rendered under this contract on the basis and at the contract price set forth in Section 23 of this contract. The City will pay the Contractor for completed and approved "extra services", if any, if such "extra services" are authorized according to the procedure established in this section. The rate of payment for "extra services" shall be the rate established in this contract. Such payment shall be full compensation for services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the services.
- (2) The Contractor shall submit invoices, on the form or format approved by the City, specified in the Scope of Services, Section 3 of this contract. The City will pay the Contractor in accordance with the schedule set forth in the Scope of Services. The final invoice shall be submitted to the City within three months of completion of services under this agreement.
- (3) Should this agreement contain more than one service, a separate invoice and a separate final statement shall be submitted for each individual service.
- (4) Payment shall not be construed as City acceptance of unsatisfactory or defective services or improper materials.
- (5) Final payment of any balance due the Contractor will be made upon acceptance by the City of the services under the agreement and upon receipt by the City of documents required to be returned or to be furnished by the Contractor under this agreement.
- (6) The City has the equitable right to set off against any sum due and payable to the Contractor under this agreement, any amount the City determines the Contractor owes the City, whether arising under this agreement or under any other agreement or otherwise.
- (7) Compensation in excess of the total contract price will not be allowed unless authorized by an amendment under Section 9, AMENDMENT.
- (8) The City will not compensate for unsatisfactory performance by the Contractor.

**B. SERVICE ORDERS, EXTRA SERVICE, OR DECREASED SERVICE.**

- (1) Written orders regarding the services, including extra services or decreased services, will be given by the City, using the procedure set forth in Section 15, NOTICES.
- (2) The City may, by written order, request extra services or decreased services, as defined in Section 10 of this contract. Unless the Contractor believes the extra services entitle it to extra compensation or additional time, the Contractor shall proceed to furnish the necessary labor, materials, and professional services to complete the services within the time limits specified in the Scope of Services, Section 3 of this agreement, including any amendments under Section 9 of this agreement.
- (3) If in the Contractor's opinion the order for extra service would entitle it to extra compensation or extra time, or both, the Contractor shall not proceed to carry out the extra service, but shall notify the City, pursuant to Section 15 of this agreement. The notification shall include the justification for the claim for extra compensation or extra time, or both, and the amount of additional fee or time requested.
- (4) The City shall review the Contractor's submittal and respond in writing, either authorizing the Contractor to perform the extra service, or refusing to authorize it. The Contractor shall not receive additional compensation or time unless the extra compensation is authorized by the City in writing.

25. **DEFAULT/TERMINATION.**

- A. In the event Contractor shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Contractor, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Contractor, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this contract and all rights of Contractor under this contract.
- B. Notwithstanding paragraph A., above, the City may in its sole discretion and without any reason terminate this agreement at any time by furnishing the Contractor with ten (10) days' written notice of termination. In the event of termination under this subsection, the City will pay for all work completed by the Contractor and accepted by the City.

26. **INDEMNIFICATION.**

The Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Contractor's and/or Subcontractor's acts or omissions in the performance of this agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.

27. **INSURANCE.**

The Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Contractor shall not commence work under this Contract, nor shall the Contractor allow any Subcontractor to commence

work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

Commercial General Liability

The Contractor shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Contractor's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

Automobile Liability

The Contractor shall procure and maintain during the life of this contract Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.

Worker's Compensation

The Contractor shall procure and maintain during the life of this contract statutory Workers' Compensation insurance as required by the State of Wisconsin. The Contractor shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain such insurance, covering each subcontractor.

Professional Liability

The Contractor shall procure and maintain professional liability insurance with coverage of not less than \$1,000,000. If such policy is a "claims made" policy, all renewals thereof during the life of the contract shall include "prior acts coverage" covering at all times all claims made with respect to Contractor's work performed under the contract. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the City.

**Acceptability of Insurers.** The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

**Proof of Insurance, Approval.** The Contractor shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Contract. Contractor shall provide the certificate(s) to the City's representative upon execution of the contract, or sooner, for approval by the City Risk Manager. The Contractor shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

The Contractor and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Contract.

28. **OWNERSHIP OF CONTRACT PRODUCT.**

All of the work product, including, but not limited to, documents, materials, files, reports, data, including magnetic tapes, disks of computer-aided designs or other electronically stored data or information (the "Documents"), which the Contractor prepares pursuant to the terms and conditions of this contract are the sole property of the City. The Contractor will not publish any such materials or use them for any research or publication, other than as expressly required or permitted by this contract, without the prior written permission of the City. The grant or denial of such permission shall be at the City's sole discretion.

The Contractor intends that the copyright to the Documents shall be owned by City, whether as author (as a Work Made For Hire), or by assignment from Contractor to City. The parties expressly agree that the Documents shall be considered a Work Made For Hire as defined by Title 17, United States Code, Section 101(2).

As further consideration for the City entering into this contract, the Contractor hereby assigns to City all of the Contractor's rights, title, interest and ownership in the Documents, including the right to procure the copyright therein and the right to secure any renewals, reissues and extensions of any such copyright in any foreign country. The City shall be entitled to the sole and exclusive benefit of the Documents, including the copyright thereto, and whenever required by the City, the Contractor shall at no additional compensation, execute all documents of assignment of the full and exclusive benefit and copyright thereof to the City. Any subcontractors and other independent Contractors who prepare portions of the Documents shall be required by the Contractor to execute an assignment of ownership in favor of the City before commencing work.

29. **LIVING WAGE (Applicable to contracts exceeding \$5,000).**

Unless exempt by MGO 4.20, the Contractor agrees to pay all employees employed by the Contractor in the performance of this contract, whether on a full-time or part-time basis, a base wage of not less than the City minimum hourly wage as required by Section 4.20, Madison General Ordinances.

30. **AUTHORITY.**

Contractor represents that it has the authority to enter into this Contract. If the Contractor is not an individual, the person signing on behalf of the Contractor represents and warrants that he or she has been duly authorized to bind the Contractor and sign this Contract on the Contractor's behalf.

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**APPENDIX B**

**SIGNATURE AFFIDAVIT PAGE**

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

**CONTRACTOR**

\_\_\_\_\_  
(Type or Print Name of Contracting Entity)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title of Person Signing)

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

**CITY OF MADISON, WISCONSIN  
a municipal corporation**

By: \_\_\_\_\_  
David J. Cieslewicz, Mayor

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

**Approved:**

\_\_\_\_\_  
Dean Brassler, City Comptroller

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

By: \_\_\_\_\_  
Maribeth Witzel-Behl, City Clerk

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

**Approved as to Form:**

\_\_\_\_\_  
Eric T. Veum, Risk Manager

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

\_\_\_\_\_  
Michael P. May, City Attorney

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

**NOTE: Certain service contracts may be executed by the Purchasing Agent on behalf of the City of Madison:**

By: \_\_\_\_\_  
Randy A. Whitehead, Accountant 4  
Designee of Comptroller

\_\_\_\_\_ Date

Please note: MGO 4.26(3) and (5) authorize the Comptroller or designee to sign contracts for purchase or services when all of the following apply:

- (a) The funds are included in the approved City budget.
- (b) An RFP or competitive process was used, or the contract is exempt from competitive bidding under 4.26(4)(a)
- (c) The City Attorney has approved the form of the contract.
- (d) The contract complies with other laws, resolutions and ordinances.
- (e) The contract is for a period of 1 year or less, OR not more than 3 years AND the average cost is not more than \$50,000 per year, AND was subject to competitive bidding. (If over \$25,000 and exempt from bidding under 4.26(4)(a), regardless of duration of the contract, the Common Council must authorize the contract by resolution and the Mayor and City Clerk must sign, per 4.26(5)(b).)

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**APPENDIX C**

**GARVER FEED MILL PHASE I ENVIRONMENTAL REPORT  
SECTION 1.3 (PAGES 1-7)**

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## 1.0 EXECUTIVE SUMMARY

### 1.1 Basic Project Information

Project Name:	Phase I Environmental Site Assessment Garver Feed Mill property
Property Address:	109 and 115 S. Fair Oaks Avenue (Historically: 3244 Atwood Avenue) Madison, Wisconsin 53704
Property Owner:	City of Madison Parks Department Olbrich Gardens 3330 Atwood Avenue Madison, Wisconsin 53704
Client:	Common Wealth Development 1501 Williamson Street Madison, Wisconsin 53703
Environmental Consultant:	Williams Environmental Associates, Inc. 221 Frigate Drive Madison, Wisconsin 53705

### 1.2 Conclusions

#### 1.2.1 Recognized Environmental Conditions

Williams Environmental Associates, Inc. has performed a phase I environmental site assessment in general conformance with the scope and limitations of ASTM Practice E 1527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process of the Garver Feed Mill property, 109 and 115 S. Fair Oaks Avenue (historically; 3244 Atwood Avenue), Madison, Wisconsin, Dane County, Wisconsin. Any exceptions to, or deletions from, this practice are described in section 2.4 of this report. We have found the following environmental conditions in connection with the property

##### 1.2.1.1 *Recognized Environmental Conditions in Building*

The following Recognized Environmental Conditions were found in the Garver Feed Mill building.

1. Oil staining on walls was observed bleeding through paint in several locations in the mill

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- building. This staining is a potential source of PCBs and heavy metals (See Section 7.2, Item 3, for a complete listing).
2. Containers of waste oil (presumed) were found in several locations in the mill building including the electrical room in Room 4, the garage, and in the maintenance storage room accessed from the garage (See Section 7.2, Item 1, for a complete listing).
  3. Abandoned containers of unknown contents were found in several areas of the mill building (See Section 7.2, Item 1, for a complete listing).
  4. Fluorescent light bulbs, both broken and intact, were observed in the garage. These bulbs are a potential source of mercury and lead and the broken bulbs are an immediate exposure hazard.
  5. Four lead-acid batteries are located next to the waste oil containers found in the garage. One of these appears to have leaked. This is a source of lead.

*1.2.1.2 Recognized Environmental Conditions on Site*

The following recognized environmental conditions were found on the property (outside of the mill building).

1. There is an open leaking underground storage tank site associated with the former Nueundorf Trucking facility located in the northwest corner of the Garver land parcel. This is a potential source of contaminated soil and groundwater.
2. The possibility of elevated levels of lead may exist in the surface soils around the warehouse at the west end of the mill building. The lead could be a result of (rumored) painting of snow fencing with lead-based paints by the Madison Fence Company that operated in the warehouse prior to 1975.
3. There were two above ground fuel oil storage tanks located on the south side of the boiler room associated with the former greenhouse on the Frito-Lay land parcel. Photos of these tanks taken in 1993 show the tanks were rusted and in poor condition. These tanks were removed in the mid- to late 1990s. No record of soil testing or assessment of the soil under these tanks was found during this assessment and the tanks were not included in the phase II environmental site assessment of the Frito-Lay property in 1993.
4. There is a remediated leaking underground storage tank site on the north side of the mill building. This is a potential source of contaminated soil and groundwater.

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5. There is a remediated leaking underground storage tank site on the adjoining (former) Madison Silo Company site. One or possibly two of the underground tanks involved in the site were associated with the former Nueundorf Trucking facility and are located in or near the northeast corner of the Garver parcel. This is a potential source of contaminated soil and groundwater.
6. There is petroleum-contaminated soil on adjoining City-owned land north of the subject property. This contaminated soil was discovered during the cleanup of illegally-dumped drums of hazardous substances in 1993. The specific location is not known.
7. There are three electrical transformers located on a pole north of the mill building. We were unable to obtain information about these transformers from the utility. These are a potential source of PCBs.

1.2.2 Other Issues and Concerns

There are other issues and concerns discovered during this phase I environmental site assessment that do not meet the definition of a recognized environmental conditions but which may be of interest to the Common Wealth Development.

1.2.2.1 Building Concerns

The following items of concern were found in the mill building.

1. Poor lighting and limited access to parts of the building prevent a complete assessment of floor areas in the building.
2. Complete assessment of the building interior was not possible because of safety concerns and inaccessibility to areas in the building particularly, the upper mill level, second stories, and basement/vault areas.
3. Basements and pits observed in the building are flooded and inaccessible. Water and sediment in these areas are held in suspicion because it is unknown what equipment or materials may be present in the below grade locations that have the potential to contaminate the water and sediment or building surfaces.
4. Other potential sources of PCBs, including electrical motors and switching gear, an air conditioner compressor in the locker room, and fluorescent light fixtures were observed in the mill building. The concern would be with small capacitors related to this equipment.

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5. Air cell insulation (a known asbestos material) was seen on old steam pipes in parts of the feed mill building. Suspected asbestos plaster insulation was observed on the old boiler located in Room 3.
6. Interior walls in the building are, in some places, painted. Because of the age of the building, this paint could contain lead.

*1.2.2.2 Site Concerns*

The following items of concern were found on the property.

1. There are no above ground storage tanks presently on the property and no evidence of underground storage tank were observed on the property. However, in the past there were at least 17 underground and above ground storage tanks located on, or possibly on, the Garver property. Documentation of the removal, assessment, and remediation of many of these tanks exist. However, Williams Environmental Associates has been unable to fully reconcile the location and disposition of many of these tanks. It is possible that storage tanks may still exist on the property around or in the mill building.
2. Groundwater under the subject property is known to be, or to have been, contaminated from leaking underground storage tanks once located on the subject property and on adjoining properties. Although the known contaminated areas have been remediated, contaminated groundwater may still exist. Contaminated groundwater could be encountered in any dewatering operation necessary during the redevelopment of the property.
3. Known soil contamination exists on the property (see Section 3.5.12 for a listing of locations). Contaminated soil could be encountered during excavations necessary during the redevelopment of the property.
4. There are documented areas on and adjacent to the subject property where disposal of wastes has occurred (See Section 3.5.1 for a listing of specific locations).
5. Although all the outbuildings have been razed, building foundations and footings likely still exist on the property. These may be encountered during excavation necessary to the redevelopment of the property.
6. There may be old railroad tracks still on the property. These may be encountered during excavations necessary to the redevelopment of the property.

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**1.3 Recommendations**

**1.3.1 Recognized Environmental Conditions**

*1.3.1.1 Recognized Environmental Conditions in Building*

With respect to the recognized environmental conditions found in the Garver Feed Mill building, Williams Environmental Associates recommends the following.

1. Oil staining on walls should be sampled to assess whether PCB and heavy metal contamination is present and at what concentrations.
- 2.-5. We recommend that Common Wealth require as a condition of property transfer that the City remove and dispose of all containers of waste oil, abandoned containers, fluorescent light bulbs (both intact and broken), and lead-acid batteries from the building.

*1.3.1.2 Recognized Environmental Conditions on Site*

With respect to the recognized environmental conditions were found on the property, Williams Environmental Associates recommends the following.

1. Depending on choice of access road routing, utility locations, and parking areas necessary to the redevelopment of the property the open leaking underground storage tank (LUST) site located near the northwest corner of the Garver parcel could be encountered. We recommend that Common Wealth Development request the City complete the necessary investigation and remediation of this LUST area and obtain closure of the site from the Wisconsin Department of Commerce which has jurisdiction for this case.
2. We recommend that up to ten shallow soil samples be collected in the area surrounding the west end of the mill building. These samples should be analyzed for lead.
3. We recommend that two shallow soil samples be collected in the area where the Frito-Lay greenhouse fuel oil storage tanks were located. The sample should be analyzed for petroleum volatile organic compounds and polynuclear aromatic hydrocarbons.
- 4.-6. No further address of the closed LUST sites on the property is warranted. However, Common Wealth Development needs to recognize that residual contaminated soil and groundwater associated with these sites could be encountered during redevelopment of the property.
7. The electrical transformers are the responsibility of Madison Gas & Electric Company. And,

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under federal regulations, the utility is responsible for any potential PCBs releases from the transformers. No further assessment of these transformers is necessary and none is recommended.

1.3.2 Other Issues and Concerns

1.3.2.1 *Building Concerns*

With respect to the other conditions found in the Garver Feed Mill building, Williams Environmental Associates makes the following recommendations.

- 1.-2. At such time that the building can be made safe and completely accessible, those areas of the building which could not be assessed at this time should be examined.
3. Water and sediment in basement and pit areas in the building should be sampled. Water and sediment samples should be analyzed for volatile organic compounds, polynuclear aromatic hydrocarbons, PCBs, and heavy metals. After testing is completed, the basements and vaults should be pumped and cleaned out. Handling and disposal of the water and sediment will be dictated by the analytical results of the samples collected. After the basement and pit areas have been pumped and cleaned, these areas should be assessed for environmental conditions. We recommend that Common Wealth Development hold the City responsible for pumping and cleaning the basement and pit areas.
4. We recommend that the potential sources of PCBs including electrical motors and switching gear, an air conditioner compressor in the locker room, and fluorescent light fixtures were observed in the mill building be disposed of in accordance with federal PCB regulations. These regulations allow small PCB capacitors to be disposed of in a licensed sanitary; large capacitors, however, have to disposed of in a licensed PCB disposal facility. If any capacitors are found to be leaking appropriate assessment of potential PCB contamination should be made and necessary cleanups performed.
5. We recommend that an asbestos survey of the building be performed after complete and safe access to all areas of the building is made.
6. We recommend that a lead-based paint survey of the building be performed after complete and safe access to all areas of the building is made.

1.3.2.2 *Site Concerns*

With respect to the other conditions found on the property, we recommend that during the site and landscaping design for the proposed redevelopment Common Wealth Development prepare

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a waste management plan for addressing contaminated soil, contaminated groundwater, unknown buried wastes, rails, and foundations which may be encountered during excavations necessary to the redevelopment of the property.

#### 1.4 Data Gaps and Data Failure

Data gaps and data failure encountered during this phase I environmental site assessment are listed and discussed in Section 2.5 *Data Gaps, and Data Failure*.

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**APPENDIX D (Site Property Map)**

