

RESOLUTION R-87-08

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF WHEATON AND DAI ENVIRONMENTAL FOR "EARLY ACTION" AND "SITE INVESTIGATION" FOR THE COUNTRYSIDE INGROUND FUEL TANK

WHEREAS, the City of Wheaton, Illinois ("City"), is an Illinois Home Rule Municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such, the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this resolution pertains to the government and affairs of the City and its residents; and

WHEREAS, the City had entered into an agreement with BURKE, LLC for the removal, disposal and replacement of the Countryside Underground Storage Tank; and

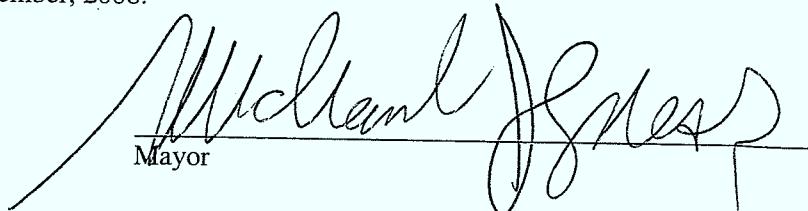
WHEREAS, BURKE, LLC subcontracted DAI ENVIRONMENTAL to assist in the "Early Action" and "Site Investigation" work necessary to complete this scope of work; and

WHEREAS, BURKE, LLC and DAI ENVIRONMENTAL and the City agree that it is in the best interests of all parties that the City works directly with DAI ENVIRONMENTAL; and

WHEREAS, DAI ENVIRONMENTAL submitted a proposal and contract to the City which the Facilities Manager and Purchasing Officer found acceptable

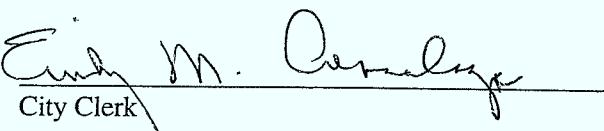
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign and the City Clerk is authorized to attest to an agreement between the City of Wheaton and DAI ENVIRONMENTAL of Lake Forest, IL for "Early Action" and "Site Investigation" services for the City for the Countryside Inground Fuel Tank.

ADOPTED this 1st day of December, 2008.



Mayor

ATTEST:



Cindy M. O'Dowd
City Clerk

Roll Call Vote

Ayes:	Councilman Mouhelis Councilman Prendiville Councilman Suess Councilwoman Corry Councilman Johnson Councilman Levine Mayor Gresk
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Nays:	None
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Absent:	None
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Motion Carried Unanimously

**Agreement Between the City of Wheaton, Illinois
and DAI ENVIRONMENTAL
for COUNTRYSIDE INGROUND FUEL TANK SERVICES**

This Agreement is entered into by and between the City of Wheaton, an Illinois municipal corporation ("City"), 303 West Wesley Street, Wheaton, IL 60187, and DAI Environmental "Consultant"), Polo Park business Center; 27834 N. Irma Lee Circle; Lake forest, IL 60045-5130.

WITNESSETH:

Whereas, the City has determined that it is necessary to obtain the services of a professional environmental consultant to finalize all EPA approvals and reimbursements for the Countryside inground fuel tank as listed in Exhibit A identified as DAI ENVIRONMENTAL WORK SCOPE 2804-3; and

Whereas, the prior contractor for the Countryside inground fuel tank, Burke Engineering, had previously engaged the Consultant for related services; and

Whereas, the Consultant did submit a proposal to the City for the work specified, which is attached hereto and incorporated herein as Exhibit A; and

Whereas, the City finds the proposal submitted by the Consultant meeting the required services of the City.

Now, therefore, for in consideration of their mutual promises, terms, covenants, agreements, and conditions recited in this Agreement, the City and the Consultant hereto do hereby agree as follows:

1. *Scope of Services.* The Consultant shall furnish all labor, materials, and equipment to provide the City of Wheaton with the stated services as described in this Agreement and attached Exhibit A. The Consultant represents and warrants that it shall perform the services in a manner consistent with the level of care and skill customarily exercised by other professional Consultants under similar circumstances.

2. *Compensation.* The City shall compensate the Consultant according to the terms of the Consultant's proposal which is attached hereto as Exhibit A.

3. *Additional Services.* The Consultant shall provide only those goods and perform only those services specified in this Agreement and attached Exhibits. In the event the Consultant or the City determines that additional goods and/or services are required to complete the project, such additional goods shall not be provided and/or such additional services shall not be performed unless directed in writing by the City. Terms, frequency, and prices for additional services shall be as mutually agreed upon in writing by the City and the Consultant.

4. *Hold Harmless and Indemnification.* The Consultant shall defend, hold harmless, and indemnify the City, its directors, officers, employees, and agents, from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses, including, but

not limited to, reasonable attorneys' fees and costs of litigation, and all causes of action of any kind or character, except as otherwise provided herein, to the extent that such matter arises from either of the following:

- a) The Consultant's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of this Agreement pertaining to the Consultant's services; or
- b) The negligence or willful misconduct of the Consultant, its employees, agents, representatives, and subcontractors.

In the event that any claim for indemnification hereunder arises from the negligence or willful misconduct of both the Consultant and the City, the parties agree that any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses shall be apportioned between the parties on the basis of their comparative degrees of fault, except as otherwise herein provided.

5. Insurance. The Consultant and each of its agents, subcontractors, and consultants hired to perform any services provided for herein shall purchase and maintain during the term of this contract insurance coverage which will satisfactorily insure the Consultant and, where appropriate, the City against claims and liabilities which may arise out of the services referred to in this Agreement. Such insurance shall be issued by companies authorized to do business in the State of Illinois and approved by the City. The insurance coverages shall include, but not necessarily be limited to, the following:

- a) Worker's compensation insurance with limits as required by the applicable statutes of the State of Illinois. The employer's liability coverage under the worker's compensation policy shall have limits of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each accident/injury and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each employee/disease.
- b) Commercial general liability insurance protecting the Consultant against any and all public liability claims which may arise in the course of performance of this contract. The limits of liability shall be not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence bodily injury/property damage combined single limit and ONE MILLION DOLLARS (\$1,000,000.00) aggregate bodily injury/property damage combined single limit. The policy of commercial liability insurance shall include contractual liability coverage and an endorsement naming the City as an additional insured.
- c) Commercial automobile liability insurance covering the Consultant's owned, non-owned, and leased vehicles which protects the Consultant against automobile liability claims whether on or off of the City's premises with coverage limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident bodily injury/property damage combined single limit.
- d) Professional liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per claim covering the Consultant against all sums which the Consultant may become obligated to pay on account of any liability arising out of the performance of the professional services for the City under this contract when caused by any negligence act, error, or omission of the Consultant or of any person employed by the Consultant

or any others for whose actions the Consultant is legally liable. The professional liability insurance shall remain in force for a period for not less than four (4) years after the completion of the services to be performed by the Consultant under this contract.

6. *Compliance with Laws.* The Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations, and all City ordinances, rules and regulations now in force or hereafter enacted, in the provision of the goods and/or performance of the services required under this Agreement.

7. *Termination of Contract.* If the Consultant fails to perform according to the terms of this Agreement, then the City may terminate this Agreement upon seven (7) days written notice to the Consultant. In the event of a termination, the City shall pay the Consultant for services performed as of the effective date of termination, less any sums attributable, directly or indirectly, to Consultant's breach. The written notice required under this paragraph shall be either (i) served personally during regular business hours; (ii) served by facsimile data transmission during regular business hours; or (iii) served by certified or registered mail, return receipt requested, addressed to the address listed in this Agreement with postage prepaid and deposited in the United States mail. Notice served personally and by facsimile data transmission shall be effective upon receipt, and notice served by United States mail shall be effective three (3) business days after mailing.

8. *Discrimination Prohibited.* The Consultant shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/1-101 et seq. (1992 State Bar Edition), and with all rules and regulations established by the Department of Human Rights. The Consultant agrees that it will not deny employment to any person or refuse to enter into any contract for services provided for in this Agreement to be performed on its behalf on the basis of unlawful discrimination as defined in the Illinois Human Rights Act.

9. *Status of Independent Consultant.* Both City and Consultant agree that Consultant will act as an Independent Consultant in the performance of duties under this agreement. Accordingly, the Independent Consultant shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Consultant's activities in accordance with this agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, and any other taxes or license fees as may be required under the law. Consultant further acknowledges under the terms of this Agreement, that it is not an agent, employee, or servant for the City for any purpose, and that it shall not hold itself out as an agent, employee, or servant of the City under any circumstance for any reason. Consultant is not in any way authorized to make any contract, agreement, or promise on behalf of City, or to create any implied obligation on behalf of City, and Consultant specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Consultant, except those specifically identified in this Agreement. City shall not have the authority to control the method or manner by which Consultant complies with the terms of this Agreement.

10. *Assignment; Successors and Assigns.* This Agreement may not be assigned by either of the parties hereto without the written consent of all other parties. Upon approval of assignment, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11. *Recovery of Costs.* In the event the City is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, the City shall be entitled to recover all costs and expenses incurred as a result of the action or proceeding, including expert witness and attorney's fees, if so provided in any order of the Court.

12. *Notification.* All notification under this Agreement shall be made as follows:

If to the Consultant:	If to the City:
DAI ENVIRONMENTAL	City of Wheaton
Attn: Christopher Cailles, P.E.	Attn: City Clerk
Polo Park business Center	303 W. Wesley Street, Box 727
27834 N. Irma Lee Circle	Wheaton, IL 60189-727
Lake forest, IL 60045-5130	

13. *Waiver.* Any failure of either the City or the Consultant to strictly enforce any term, right, or condition of this Agreement shall not be construed as a waiver of such term, right, or condition.

14. *Integration.* The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, contracts, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

15. *Non-disclosure.* During the course of the work specified in this Agreement, Consultant may have access to proprietary and confidential information including, but not limited to, methods, processes, formulae, compositions, systems, techniques, computer programs, databases, research projects, resident name and address information, financial data, and other data. Consultant shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose such information to any third party without the express written consent of the City.

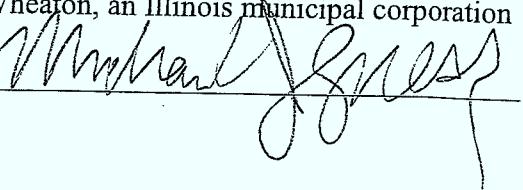
16. *Severability.* If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.

17. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to its conflict-of-laws rules.

18. *Validity.* In the event that any provision of this Agreement shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

In Witness Whereof, the parties have entered into this Agreement this 2nd day of December 2008.

City of Wheaton, an Illinois municipal corporation

By 
Mayor

Attest:

Emily Consolazio, City Clerk

DAI ENVIRONMENTAL

By 
Christopher Cailles, P.E.

Attest:

A
**DAI ENVIRONMENTAL
WORK SCOPE
2804 - 3**

TO: Al Schefske, Facilities Manager
City of Wheaton
303 West Wesley Street
Wheaton, IL 60018

DATE: November 4, 2008

PROJECT NAME: City of Wheaton

PROJECT #: 2804

OBJECTIVES

Investigate any residual petroleum located between the former UST and sump system and ensure no groundwater impact from the observed free-product. Obtain a No Further Remediation letter closing Incident Number 20071362. Seek reimbursement for "Early Action" costs and "Site Investigation" costs.

SCOPE OF SERVICES

- Complete, certify and submit an "Early Action" reimbursement.
- Write/submit Site Investigation Plan/Budget to Illinois EPA proposing a limited soil boring/monitoring well installation and sampling.
- Perform Site Investigations after Illinois EPA approval.
- Write/submit Site Investigation Complete Report to Illinois EPA detailing site investigations and requesting closure of Incident Number 20071362.
- Complete, certify and submit a "Site Investigations" reimbursement (**cannot** be combined with "Early Action" reimbursement).

ASSUMPTIONS

- Required monetary documentation (invoices/receipts) for costs paid by the City of Wheaton will be provided to DAI for completion of the "Early Action" reimbursement.
- One (1) soil sample per soil boring location and only one (1) monitoring well approved by Illinois EPA.
- One (1) round of investigations is sufficient (i.e. full delineation or no contamination identified).
- Standard laboratory turn-around time.
- No Corrective Actions are required (i.e. site closure pursued following field investigations).

BASIS FOR CHARGES

Time and Materials – Payment terms are net-30-days from invoice date. A finance charge of 1.5% per month will be assessed on accounts past 30-days.

COST ESTIMATE

ACTIVITY	ESTIMATED COST
<u>Costs Previously Incurred (through July 31, 2008)</u>	
Balance Due on DAI Invoice 16937 (unpaid out-of-scope costs)	\$2,043.75
Finalization/submission of 45-Day Report and E&D Re-application	\$1,506.25
Subtotal (exact costs)	\$3,550.00
<u>Estimated Additional Costs</u>	
Project Management/Subcontractor Coordination.....	\$1,000.00
"Early Action" Reimbursement, Site Investigation reimbursement	\$5,000.00
Site Investigation Plan and Budget, Site Investigation Completion Report/NFR Request	\$8,000.00
Stage I Site Investigations (including driller/laboratory costs)	\$5,750.00
Estimated Total.....	\$23,300.00

WORK SCOPE ACCEPTANCE AND AUTHORIZATION

DAI Environmental, Inc.

City of Wheaton

BY: *Christopher Cailles*

Christopher Cailles, P.E.

BY: _____

Al Schefske

DATE: 11/4/08

DATE: _____