CITY OF STOUGHTON, 207 S. FORREST STREET, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL

Authorizing and directing the proper City official to enter into an agreement with Heartland Ecological Group to complete a Woodland and Wetland Restoration Plan for Magnolia Springs Parkland and to use Park Development Fund to fund it.

Committee Action:	Parks & Recreation recommended approval 5-0 on 6/20/2023 Finance Committee recommended approval 7-0 on 6/27/2023
Fiscal Impact:	$3,500

File Number: R-113-2023	**Date Introduced:** 7/11/2023

The City of Stoughton, Wisconsin, Common Council does proclaim as follows:

RECITALS

WHEREAS, a wetland and woodland restoration plan is needed for the Magnolia Springs parkland, and

WHEREAS, the City received a proposal from Heartland Ecological Group to complete a wetland and woodland restoration plan for $3,500, and

WHEREAS, the Magnolia Springs Development will contribute $407,920 to the Park Development Fund for park improvements which can fund the wetland and woodland restoration plan, and

BE IT RESOLVED by the Common Council of the City of Stoughton that the proper City official be hereby directed and authorized to enter into an agreement with Heartland Ecological Group to complete a woodland and wetland restoration plan for Magnolia Springs parkland and to use the Park Development Fund to fund it.

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

_____

Tim Swadley, Mayor Date

Council Action: _____ ☐ **Override** **Vote** _____

CITY OF STOUGHTON
PARKS & RECREATION DEPARTMENT

Dan Glynn, Director
Tony King, Recreation Supervisor
Greg Hoyte, Youth Center Manager
207 S. Forrest Street Stoughton, WI 53589
(608) 873-6746 www.stoughtonrec.com

Date: June 14, 2023

From: Dan Glynn, Director of Parks & Recreation

To: Parks & Recreation Committee, City Council

Subject: Magnolia Springs Wetland & Woodland Restoration Plan

Background

The land dedicated for a park in the Magnolia Springs Development includes a pond and established woodlands. The ponds and the woodlands were the main reason for the site being selected for the park. After visiting the site during the site selection process, much of the area did not look like it was maintained with buckthorn present. A Woodland and Wetland Restoration Plan would:

- Assess existing plant communities (existing site conditions)
- Recommendations for enhancing existing plant communities
- Recommendations for restoring newly graded park and corridor areas (linking the habitats between the Lowell Park natural area and Magnolia Springs Park natural area utilizing the trail corridor)
- Provide a cost estimate for implementation of the Restoration Plan and three years of implementation

Completing a Wetland and Woodland Restoration Plan was recommended by the Capital Area Regional Planning Commission (CARPC) when the development was presented to them.

Restoration Timeline

2023: Restoration Plan Development

2024 – 2026: Implementation of the Restoration Plan and Development of a Long-Term Management Plan

2027+: City starts to maintain the natural area

Cost

The cost for Heartland Ecological to complete the restoration plan is $3,500. The Magnolia Springs Development is estimated to bring in $407,920 in impact fees for park development which can be used to fund the restoration plan.

Magnolia Springs Park Facility Impact Fee Calculation - Updated 5/4/2023

Housing Type	Units	Park Facility Impact Fee/Unit	Trail Fee/Unit	Total
Single Family	62	$ 3,950	$ 94	$ 250,728
Multi Family	56	$ 2,742	$ 65	$ 157,192
				$ 407,920

Impact Fees Spent	
Master Plan	$ -
Wetland Restoration Plan	
Total	$ -

Heartland
ECOLOGICAL GROUP INC
506 Springdale Street, Mount Horeb, WI 53572

May 24, 2023

Dan Glynn, CPRP
Director of Parks & Recreation
City of Stoughton
608-873-6746
DGlynn@cityofstoughton.com

RE: Proposal for Professional Consulting Services – Magnolia Springs Development, City of Stoughton, Dane County, Wisconsin

Dear Dan:

Heartland Ecological Group, Inc. (Heartland) is pleased to present this proposal for professional consulting services within future parkland of the Magnolia Springs Development (the "Project"). The Project is located southwest of the intersection of Isham Street and S 4th Street in the City of Stoughton, Dane County, Wisconsin. This proposal includes the scope of services, assumptions, cost estimate, project schedule, extra services, and terms and conditions. Heartland will initiate this project upon receipt of an executed Agreement.

PROJECT UNDERSTANDING

The Magnolia Springs Development contains approximately 5.51 acres of parkland in the northeast corner of the property. The parkland contains existing woodland, wetlands, and a pond. Following development completion, the park area will also include a playground, two stormwater ponds, and a recreational trail system with an associated 0.81-acre right-of-way corridor. A total of 3.69 acres of the parkland will be dedicated to the City of Stoughton and is shaded green on the attached plat sheet.

The City of Stoughton has requested that Heartland prepare a restoration plan for the 3.69-acre park area and the associated 0.81-acre trail corridor that provides recommendations to improve native plant communities, wildlife habitat, aesthetics, and park user experience. The restoration plan will not assess nor provide recommendations associated with the stormwater ponds, existing pond, or the playground.

SCOPE OF SERVICES

Heartland will perform the following:

- Conduct a site visit of the Property to assess existing plant communities and take representative photographs.
- Prepare a Restoration Plan that contains a description of existing conditions, photographs, recommendations for enhancing existing plant communities in line with the City's goals for the park, recommendations for restoring newly graded park and corridor areas, implementation and 3-year establishment plan, and figures depicting existing and proposed conditions.
- Provide a cost estimate for implementation of the Restoration Plan and three years of short-term management.

ASSUMPTIONS

- Heartland's understanding of the restoration plan assessment limits corresponds to areas shaded in green on the attached plat sheet.
- The Client is responsible for securing safe access onto the property and will inform Heartland of any required notifications prior to entering the property.
- Attendance and coordination of client, project team, and/or regulatory agency meetings are not included unless specified in the Scope of Services.

COST & SCHEDULE

- **$3,500 fixed fee** including reimbursable expenses (materials, equipment, mileage).
- If Heartland encounters unanticipated conditions or circumstances that result in exceeding the cost estimate or is requested to provide services that are not in the Scope of Services, Heartland will contact the Client for approval of the Extra Services and additional fees.
- Upon authorization and acceptance of a signed agreement, Heartland will initiate and schedule the project services. Heartland will coordinate the fieldwork and report schedule with you and communicate closely throughout the project so that our services are completed and delivered on-time and as expected.

EXTRA SERVICES

The following are Extra Services that Heartland can provide for this Project under a change order or new contract, if requested:

- Implementation of the Restoration Plan over a 3-year establishment period
- Development of adaptive long-term management plan that can be implemented by City staff
- Site visits with and/or training for City staff on plant communities and restoration implementation strategies for the Property

PAYMENT

All invoices are due for payment upon receipt. Additional payment conditions are identified in the attached Terms and Conditions. Payment should be mailed to the following address:

Heartland Ecological Group, Inc.
506 Springdale Street
Mount Horeb, WI 53572

TERMS AND CONDITIONS

Heartland's Professional Services Terms and Conditions are specified and included in the separate attachment.

Heartland thanks you for the opportunity to offer this Proposal for Professional Services. We share your desire for a successful project. Please reach out with any questions you may have.

Sincerely,

Sarah Kraszewski
Senior Ecologist
Heartland Ecological Group, Inc.
sarah@heartlandecological.com
(608) 490-2450 Ext. 11
(608) 598-7383

Attachments:
Signature Page, Terms and Conditions, Magnolia Springs Plat Sheet

The Proposal and Terms and Conditions are agreed upon and authorized by signature below by an authorized representative of the Client and Heartland Ecological Group, Inc.

Heartland Signature: _____

Date: May 24, 2023

Jeff Kraemer, Principal
Heartland Ecological Group, Inc.
506 Springdale Street
Mount Horeb, WI 53572

Client Signature: _____

Date: _____

Client Representative:

_____

Client Entity (if applicable): _____

Client Billing Address: _____

_____

Client Email Address: _____

Client Phone Number: _____

Heartland
ECOLOGICAL GROUP INC

TERMS AND CONDITIONS

1. **SERVICES**: Heartland Ecological Group, Inc., ("Heartland") shall provide the scope of Services (the "Services") set forth in the attached proposal only after it is accepted and signed by the client (the "Client"). The accepted and signed proposal and these Terms and Conditions are collectively referred to herein as the "Agreement". The Services shall include all Services provided by Heartland which are reasonably necessary and appropriate for the effective and prompt fulfillment of Heartland's obligations under the Agreement. It is understood that the Services are based on the information provided by Client. If the Client provides information that is incomplete or inaccurate, or if unexpected conditions are discovered, the Services may change, even as the work is in progress. In addition, Client may request additional Services which will constitute a change in the Services. When a change in the Services is necessary, a written amendment to the Agreement shall be executed by Client and Heartland prior to Heartland commencing the change in the work or Services. If Heartland believes an immediate change is necessary to protect human health or the environment, a written amendment incorporating the change shall be made as soon as is practicable, and Client's consent to such amendments shall not be unreasonably withheld.

2. **ACCEPTANCE**: If Heartland is given a verbal or written notification to proceed without first receiving a signed copy of the Agreement, it will be mutually understood that Client and Heartland will nonetheless be contractually bound by the Agreement, even in the absence of written acceptance by either party. Heartland may withhold a written report until it receives the Agreement signed by Client.

3. **ESTIMATED COSTS AND PAYMENT**:

   a. In providing opinions of probable cost and project schedule, it is recognized that neither the Client nor Heartland has control over the costs of labor, equipment or materials. The opinions of probable cost or project duration are based on Heartland's reasonable professional judgment and experience and do not constitute a warranty, express or implied, that the actual cost or schedule will not vary from the estimated costs or schedule.

   b. Invoices will be submitted by Heartland to Client monthly or upon completion of the Services with payment of the invoices being due upon receipt. Any unpaid and delinquent invoices shall bear interest at one and one-half percent per month, commencing thirty days from the date of invoice. Any attorneys' fees, court costs and other related expenses incurred by Heartland in the collection of delinquent invoice amounts shall be paid by Client. In the event any payment due Heartland under the terms is delinquent, Heartland may suspend all Services until all delinquent payments have been received. Fees charged do not include any state, federal or local applicable taxes, and taxes will be the responsibility of the Client.

4. **STANDARD OF CARE**: The Services performed by Heartland under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of Heartland's profession currently practicing in the area where the Services are being provided.

5. **RIGHT OF ENTRY**:

   a. If the Services are to be performed on property controlled by Client, Client hereby grants Heartland and its subcontractors the right to enter from time to time for Heartland to fulfill the Services. Client understands that even though Heartland will take reasonable measures to return the property to the condition it was in before Heartland commenced its activities, the use of sampling and exploration equipment may cause some damage which cannot be fully corrected. Client also understands that the discovery of certain conditions may result in a reduction of the value of the property upon which the condition is found to exist. Accordingly, Client waives any claim against Heartland and its subcontractors and agrees to defend, indemnify and hold Heartland and its subcontractors harmless from any claim based upon the diminished value of real property allegedly arising from the discovery of a condition, unless such claim is based upon the negligent performance of Services under the Services.

   b. If the Services are to be performed on property which is not controlled by Client, Client agrees to obtain permission from the party controlling the property to Heartland's entry and the performance of the Services.

   c. Heartland shall, and shall cause its subcontractors, to abide by all of Client's facility rules and regulations regarding the protection of health and safety of employees and third parties, but it shall be

Client's obligation to make such rules and regulations known to the Heartland prior to Heartland commencing work at Client's facility, property or worksite.

6. **CLIENT DISCLOSURES:**

   a. Client shall make available to Heartland all relevant information and/or data which in any way relate to or affect the Services. Heartland shall have the right to rely on the accuracy and completeness of such Client-furnished information and data in its agreement to perform the Services. Heartland shall not be responsible to the Client for the consequences of any error or omission arising from the Client furnished information or data.

   b. The Client shall be responsible for securing a safe project site. If the presence of an unanticipated hazardous condition is discovered during the performance of the Services which could pose a safety risk to Heartland's employees, agents and subcontractors, Heartland may cease work and determine the necessary health and safety precautions to continue the Services. The cost of these necessary health and safety precautions shall be a change and shall be managed in accordance with Section 1.

7. **INSURANCE**: Heartland represents that it is protected by Worker's Compensation insurance and that Heartland has coverage under liability insurance policies that Heartland deems reasonable and adequate. Upon request, Heartland shall furnish certificates of insurance to the Client evidencing the risks insured against, and the limits of liability thereunder. In the event the Client requires specific inclusions of coverage in addition to that obtained by Heartland, or increased limits of liability in Heartland's liability policies, the cost of such inclusions or increased limits shall be borne by the Client.

8. **WAIVER OF CONSEQUENTIAL DAMAGE**: Heartland shall not be liable to Client for indirect, special, incidental, consequential, punitive, or exemplary damages arising out of or in connection with the Services or any acts or omissions associated therewith, including any acts or omissions by subcontractors of Heartland, or relating to any Services furnished, whether such claim is based on breach of warranty, contract, tort or any other legal theory regardless of the causes of such loss or damages or whether any other remedy provided herein fails.

9. **CONSEQUENTIAL DAMAGES WAIVER / CAP ON LIABILITY**

   a. In no event will Heartland be liable for any incidental, consequential, punitive, exemplary or special damages or losses including without limitation loss profits, loss of business opportunities or other similar damages resulting from or arising out of this Agreement, by statute, in tort or contract, under any indemnity provision or otherwise (except with respect to indemnity obligations for third-party claims and losses.

   b. Heartland's liability to Client under this Agreement (except with respect to indemnity obligations for third-party claims and losses) as a whole for any and all damages, including without limitation, claims for indemnification, shall be strictly limited to the lesser of the amount of fees actually paid by Client under this Agreement or $250,000.

10. **INDEMNIFICATION**: Subject to the limitations set forth below, Heartland shall indemnify, defend, and hold harmless Client and its subsidiaries and affiliates, and their respective shareholders, directors, officers, employees, agents, and subcontractors ("Client's Indemnitees") from and against any and all claims, demands, losses, damages, fines, costs, and expenses of every nature, including reasonable attorneys' fees ("Claims"), incurred or suffered by any Heartland Indemnitee as a result of claims asserted by third parties unaffiliated with Client which arise from the negligent acts or willful misconduct of Heartland in performing Services under this Agreement, except to the extent such claims result from the negligent acts or omissions of Client, the inaccuracy or incompleteness of information provided by Client or any material breach by Client of its obligations under this Agreement. Heartland's indemnification obligations hereunder are limited to the limits of Heartland's insurance coverage applicable to the Claims.

11. Subject to the limitations set forth below, Client shall indemnify, defend, and hold harmless Heartland and its subsidiaries and affiliates, and their respective shareholders, directors, officers, employees, agents, and subcontractors ("Heartland Indemnitees") from and against any and all Claims incurred or suffered by any Heartland Indemnitee as a result of claims asserted by third parties unaffiliated with Client which arise from the negligent acts or willful misconduct of Client, except to the extent such claims result from the negligent acts or omissions of Heartland.

12. **CONSTRUCTION LIEN NOTICE**: As required by the Wisconsin Construction Lien Law, Heartland hereby notifies Client that persons or companies furnishing labor or materials for the construction, or Services

provided, on Client's land may have lien rights on Client's land and building if not paid. Those entitled to lien rights, in addition to the undersigned Heartland, are those who contract directly with Client or those who give Client notice within 60 days after they first furnish labor or materials for construction or performance of Services. Accordingly, Client probably will receive notices from those who furnish labor or materials for the construction or performance of Services, and should give a copy of each notice received to the mortgage lender, if any. Heartland agrees to cooperate with Client and Client's lender, if any, to see that all potential lien claimants are duly paid.

13. **FORCE MAJEURE**: Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, including, without limitation, acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, acts of other contractors, strikes, or lock-outs.

14. **ASSIGNMENT AND SUBCONTRACT**: Heartland may employ any other party it deems necessary or proper for any part of the Services required to be performed by Heartland under the terms of this Agreement. Client shall not assign this Agreement without prior written consent of Heartland, which consent will not be unreasonably withheld.

15. **TERMINATION**: Either party may terminate this Agreement at any time upon written notice to the other sent to the address set forth on the Agreement. In the event of termination of the Agreement, Heartland will be compensated for Services performed under this Agreement to the termination date together with all costs arising out of such termination.

16. **TIME LIMIT FOR CLAIMS**: Any claim brought by Client against Heartland will be brought not later than one year after the date of substantial completion of Heartland's Services for which the claim is made or the expiration of the appropriate statute of limitation, whichever is earlier.

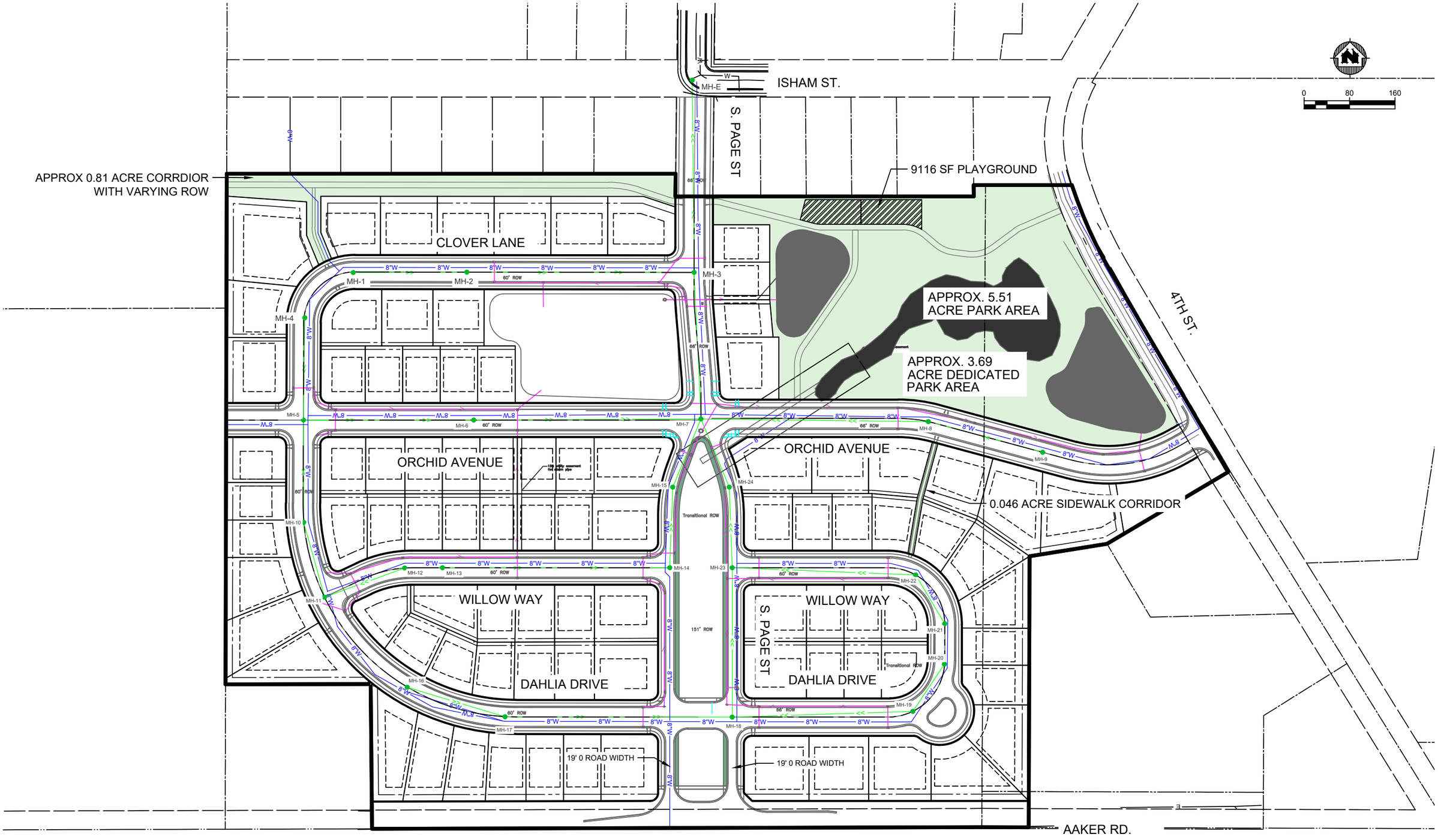
17. **USE OF DOCUMENTS**: All reports and documents (the "Documents") generated by Heartland pursuant to this Agreement are not intended or suitable for reuse by Client or any other party for any purpose other than set forth in this Agreement. Reuse of any reports or documents for any other purpose without written consent of Heartland shall be at Client's and the user's sole risk without any liability on Heartland's part. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Heartland against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any unauthorized use or reuse of the Documents. The provisions of this Paragraph shall survive the termination of this Agreement.

18. **ATTORNEY FEES:** In the event of a dispute hereunder, the prevailing party is entitled to recover from the other party all costs incurred by the prevailing party in enforcing this Agreement and prosecuting the dispute, including reasonable attorneys' fees.

19. **GOVERNING LAW**: This Agreement shall be governed by and interpreted pursuant to the laws of the State of Wisconsin.

20. **ENTIRE AGREEMENT**: The terms and conditions set forth herein along with the Agreement (and any referenced attachments) constitute the entire understanding of the parties relating to the provision of Services by Heartland and supersede all prior or contemporaneous communications, representations or agreements, whether oral or written, between the parties. No alterations to or modifications of the terms and conditions of this Agreement shall be effective unless such alteration or such modification is reduced to writing and properly executed by the parties hereto.

21. **SEVERABILITY**: The invalidity or unenforceability of any particular provision of this Agreement or any portion thereof shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provision or any portion thereof were omitted.



		NO.	DATE	REVISION	BY
PROJECT DATE: 2022	DRAWN BY: JN	.	.	.	.
	DESIGNED BY: JN	.	.	.	.
	CHECKED BY: ST	.	.	.	.

PLOT DATE: 10/21/2022 3:14 PM, G:\21\21669\21669000\CADD\Construction Documents\21669000 Site Plan Concept 10202022.dwg

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HOSTRAWSER CONCEPT GRADING PLAN
CITY OF STOUGHTON
DANE COUNTY, WISCONSIN

CONCEPT PARK AREA

PROJECT NO.
21669000

SHEET
C5