



118 Central Avenue North, New Prague, MN 56071
phone: 952-758-4401 fax: 952-758-1149

MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
CC: JOSHUA M. TETZLAFF, CITY ADMINISTRATOR
FROM: KEN ONDICH, PLANNING /COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: SETTLERS PARK PRAIRIE RESTORATION PROJECT – TERMINATION OF AGREEMENT WITH ROCK LEAF WATER ENVIRONMENTAL AND PROFESSIONAL SERVICES AGREEMENT WITH RES
DATE: 10/24/2024

In 2023, New Prague was awarded \$40,475 through the DNR Conservation Partners Legacy Grant Program for the Settlers Park Prairie and Wetland Restoration project. Of the awarded funds, \$39,875 may be allocated to contracted work and native prairie seeds. The remaining amount of the project funds will go towards signage. The objective of the project is to convert the western portion of Settlers Park into native prairie land as it was originally intended when the park was founded.

In April, the City Council approved the selection of Rock Leaf Water Environmental to complete the work. Over the course of the spring and summer, Rock Leaf Water Environmental made multiple attempts at herbicide treatments to prepare the site for a fall native seeding. Despite efforts of City Staff and Rock Leaf Water Environmental meeting on a couple of occasions to correct performance issues with the herbicide treatments, City Staff ended up contacting the City Attorney's office for assistance in resolution on the matter. Ultimately, Rock Leaf Water Environmental signed the attached "Termination of Agreement" which documents that the agreement for their services is terminated and the City does not owe them anything for their services to date.

In light of the termination of the agreement with Rock Leaf Water Environmental, staff contacted the next firm on the original proposal list which was RES. RES was slightly more expensive but still within the grant funding level and had good references (including projects with the City for native plantings at park entrance signs in the past). RES re-submitted a proposal honoring their original proposal price and with a timeline that fits within the grant parameters to have the project completed in June of 2026.

Staff Recommendation

First, staff recommends that the City Council approve the Termination of Agreement with Rock Leaf Water Environmental.

Second, staff recommends that the City Council make a motion to select RES to complete the Settlers Park Native Prairie and Wetland Restoration project and to approve the Professional Services Agreement with RES in an amount not to exceed \$38,934.

Attachments:

1. Termination Agreement with Rock Leaf Water Environmental
2. Professional Services Agreement with RES
3. RES Proposal – Dated October 17, 2024

TERMINATION OF AGREEMENT

This Termination of Agreement entered into and effective this 17 day of October, 2024 (the “Effective Date”) between the City of New Prague, a municipal corporation (the “City”) and Rock Leaf Water Environmental LLC, a Minnesota limited liability corporation (“Rock Leaf”).

RECITALS

WHEREAS, the City and Rock Leaf entered into an Agreement related to a project for Settlers Park Prairie and Wetland Restoration Work on or about April 22, 2024 (the “Agreement”); and

WHEREAS, the Agreement specifically involved certain site preparation herbicide treatment, site preparation mowing, native seeding, management mowing, management spot herbicide treatment at Settlers Park (the “Work”); and

WHEREAS, the City and Rock Leaf desire to terminate the Agreement effective as of the Effective Date.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Termination of Agreement. The Agreement is hereby terminated and of no effect as of the Effective Date.
2. Payment Not Required. The parties agree that the City is not required to make any payment for the Work.
3. Mutual Release of All Claims. The City and Rock Leaf mutually release each other, their successors and assigns, from all obligations, covenants, and restrictions imposed by, and from any and all claims arising out of the Agreement, and that neither party shall have any further liability related to the Agreement.

IN WITNESS WHEREOF, the above-named parties executed the foregoing instrument on the day and year first above written.

THE CITY OF NEW PRAGUE:

ROCK LEAF WATER ENVIRONMENTAL, LLC:

By: _____
Duane J. Jirik
Its: Mayor
Date: _____

By: Michelle Binsfeld
Its: President
Date: 10/17/2024

By: _____
Joshua M. Tetzlaff
Its: City Administrator
Date: _____

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this “Agreement”) is made this 4th day of November, 2024 by and between the City of New Prague, a Minnesota municipal corporation organized under the laws of the State of Minnesota (the “City”), and RES Great Lakes LLC (RES), a limited liability company organized under the laws of the State of Minnesota and located at 20276 Delaware Avenue, Jordan, MN 55352 (the “Contractor”).

- I. SERVICES TO BE PROVIDED.** The Contractor will perform for the City the services as specified in its proposal which is incorporated into this Agreement as Exhibit A (the “Proposal”). All professional services provided by the Contractor under this Agreement shall be provided in a manner consistent with the level of care and skill ordinarily exercised by professional consultants currently providing similar services. If any terms, rights, or obligations in the Proposal conflict with the terms, rights, or obligations of this Agreement, the language of the Agreement will be deemed applicable and controlling over the language in the Proposal.
- II. COST OF SERVICES.** For the tasks outlined in the Proposal, the City shall pay the Contractor a fee of \$38,934 (the “Professional Fee”). The Professional Fee includes all professional services and all expenses related to the Proposal. The City shall not be responsible for payment for any additional work performed by the Contractor that is not expressly listed on the Proposal or otherwise pre- approved by the City in writing. The Contractor shall submit itemized invoices for the services it provides to the City on a monthly basis. The itemized invoices shall clearly identify all work completed. Invoices submitted will be processed and paid in the same manner as other claims made to the City. The sum stipulated for services shall be considered an “Hourly-Not to Exceed” cost to the City, subject only to adjustments for changes in scope of services performed.
- III. TERMINATION OF AGREEMENT.** Notwithstanding any other provision herein to the contrary, this Agreement may be terminated as follows: (1) the parties, by mutual written agreement, may terminate this Agreement at any time; (2) the Contractor may terminate this Agreement in the event of a breach of the Agreement by the City, upon providing 30 days’ written notice to the City; (3) the City may terminate this Agreement with written notice to Contractor at any time at its option, for any reason or no reason at all.
- IV. INDEPENDENT CONTRACTOR.** All services provided pursuant to this Agreement shall be provided by the Contractor as an independent contractor and not as an employee of the City for any purpose. All officers, employees, subcontractors, and agents of the Contractor, or any other person engaged by the Contractor in the performance of work or services pursuant to this Agreement, shall not be considered employees of the City. All actions which arise as a consequence of any act or omission on the part of the Contractor, its officers, employees, subcontractors, or agents, or other persons engaged by the Contractor in the performance of work or services pursuant to this Agreement, shall not be the obligation or responsibility of the City. The Contractor, its officers, employees, subcontractors, or agents shall not be entitled to any of the rights, privileges, or benefits of the City’s employees, except as otherwise stated herein.

- V. INDEMNIFICATION.** The Contractor, and any and all officers, employees, subcontractors, and agents of the Contractor, or any other person engaged by the Contractor in the performance of work or services pursuant to this Agreement, shall indemnify, defend, and hold harmless the City and its officials, employees, contractors, and agents from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligent act or omission by the Contractor, its officers, employees, subcontractors, and agents, or any other person engaged by the Contractor in the performance of work or services pursuant to this Agreement. In no event shall the City be liable to the Contractor for consequential, incidental, indirect, special, or punitive damages. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City is entitled under Minnesota Statutes, Chapter 466 or otherwise.
- VI. INSURANCE.** The Contractor agrees that before any of the services can be performed hereunder, the Contractor shall procure at a minimum: worker's compensation Insurance as required by Minnesota state law; professional liability in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate; and commercial general liability in an amount of not less than \$1,500,000.00 per occurrence for bodily injury or death arising out of each occurrence, and \$1,500,000.00 per occurrence for property damage. To meet the commercial general liability requirements, the Contractor may use a combination of excess and umbrella coverage. The Contractor shall provide the City with a current certificate of insurance listing the City as an additional insured with respect to the commercial general liability and umbrella or excess liability. Such certificate of liability insurance shall contain a statement that such policies shall not be canceled or amended unless 30 days' written notice is provided to the City, 10 days' written notice in the case of non-payment.
- VII. CONFLICT OF INTEREST.** The Contractor shall use best efforts to meet all professional obligations to avoid conflicts of interest and appearances of impropriety.
- VIII. THIRD PARTY RIGHTS.** The Parties to this Agreement do not intend to confer on any third party any rights under this Agreement.
- IX. NOTICES.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, first class and postage fully prepaid, and addressed to the addresses above, or at such other address as either party may provide to the other by notice given in accordance with this provision.
- X. MISCELLANEOUS PROVISIONS.**
- A. Entire Agreement.** This Agreement shall constitute the entire agreement between the City and the Contractor, and supersedes any other written or oral agreements between the City and the Contractor. This Agreement can only be modified in writing signed by the City and the Contractor.

- B. Data Practices Act Compliance.** Data provided, produced, or obtained under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. The Contractor will immediately report to the City any requests from third parties for information relating to this Agreement. The Contractor agrees to promptly respond to inquiries from the City concerning data requests.
- C. Audit.** The Contractor must allow the City, or its duly authorized agents, and the state auditor or legislative auditor reasonable access to the Contractor's books, records, documents, and accounting procedures and practices that are pertinent to all Services provided under this Agreement for a minimum of six years from the termination of this Agreement.
- D. Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of Minnesota. Any disputes, controversies, or claims arising under this Agreement shall be heard in the state or federal courts of Minnesota and the parties waive any objections to jurisdiction.
- E. No Assignment.** This Agreement may not be assigned by either party without the written consent of the other party.
- F. No Discrimination.** The Contractor agrees not to discriminate in providing products and services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion.
- G. Agreement Not Exclusive.** The City retains the right to hire other additional contractors in the City's sole discretion.
- H. Severability.** The provisions of this Agreement are severable. If any portion of this Agreement is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.
- I. Waiver.** Any waiver by either party of a breach of any provision of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
- J. Compliance with Laws.** The Contractor shall exercise due professional care to comply with applicable federal, state, and local laws, statutes, rules, ordinances, and regulations in effect as of the date the Contractor agrees to provide the applicable services detailed in Exhibit A.
- K. Headings.** The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit, or affect the scope and intent of this Agreement.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement as of the date first written above.

THE CITY OF NEW PRAGUE:

CONTRACTOR:

By: _____
Duane J. Jirik
Its: Mayor
Date: _____

By: _____
Its: _____
Date: _____

By: _____
Joshua M. Tetzlaff
Its: City Administrator
Date: _____

EXHIBIT A

The Proposal

[to be inserted]



City of New Prague

Settlers Park Prairie and Woodland Restoration

Restore and Manage Native Prairies





October 17, 2024

Kyra Chapman, Planner
City of New Prague
118 Central Ave North
New Prague, MN 56071

RE: Settlers Park Prairie and Woodland Restoration

Dear Kyra,

Resource Environmental Solutions (RES) is pleased to present you with the attached proposal to provide services for the restoration and management of native prairie within Settlers Park. This proposal reflects our decades of experience designing and implementing prairie restoration projects across the country, including Minnesota, for public and private sector clients. Our industry-leading capabilities and technical expertise include all aspects of grassland restoration, particularly, project, design, implementation, and maintenance. This experience makes RES uniquely qualified to execute this project to the highest possible standard to help the City of New Prague meet its natural resource goals at the park. I also have an intimate understanding of the park having grown up in New Prague, watched the area develop, and partook in early discussions of restoring native prairie at Settlers Park when on the New Prague Park Board.

We appreciate the opportunity to provide this response, and if you have any questions regarding this proposal, our qualifications, and capabilities, please feel free to contact me directly at the information listed below.

A handwritten signature in black ink that reads "Matthew Lasch".

Matthew Lasch

Operations Manager
mlasch@res.us | 952.210.8452

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1.0 Project Understanding

RES understands the intent of the Settlers Park prairie project is to restore native vegetation to the area called 'Green Meadow'. This area had been taken over by aggressive, undesirable volunteer trees. Although some desirable species still remain. The city completed removal of the woody encroachment and will finalize the removal before contracted work begins.

The process for restoring native prairie will entail site preparation, native seeding, and vegetation management. RES will work closely with city staff on scheduling this work as it can often change due to site conditions or response to other activities. The end goal is to establish native vegetation which will create wildlife habitat, an amenity for the area, and set an example for other future restoration opportunities.

2.0 RES Experience

2.1 RES Overview

RES Great Lakes, LLC is a wholly-owned subsidiary of Resource Environmental Solutions, LLC (together with all of its subsidiaries and affiliates, "RES"). RES is a national operating company focused on restoring a resilient earth for a modern world, project by project. Prior to being acquired in 2021, RES operated in the Midwest as Applied Ecological Services for the last 40+ years. And completed ecological restoration and management in Minnesota since 1999.

As the nation's largest nature-based solutions company, RES supports the public and private sectors with durable, resilient infrastructure for communities through solutions for environmental mitigation, stormwater and water quality, and climate and flooding resilience. RES has a unique operating model for delivering ecological uplift, based on science-led design, full delivery, long-term stewardship, and guaranteed performance. From forests to prairies, RES designs, builds, and sustains sites that preserve the environmental balance, lifting impaired ecosystems into restored health and ultimately, self-sufficiency. These projects restore sensitive wetlands, grasslands, and species habitats as well as floodplains, streams, river valleys, and coastal and lake systems. The result is nature-based systems that cleanse water, shelter wildlife, buffer storms, and sequester carbon from the atmosphere.

RES works closely and creatively with municipalities, developers, operators, landowners, and regulatory agencies to balance the needs of the client, community, and the resource. Our operating model is built around this approach. We employ teams covering the full project lifecycle, combining in-house analytics and technical expertise with implementational resources and capabilities.

We have helped clients successfully design and permit more than 3,900 projects, creating rich, high-functioning ecosystems as part of each project. Our clients include local and state governments, large mining operators, energy production companies, energy transmission companies, Fortune 500 companies, departments of transportation, and other public-sector organizations. RES now employs dedicated staff in 51 operational hubs across the country, including a regional office in Jordan, MN.

RES delivers customized solutions tailored to our clients' needs. RES' internal resources include environmental, health, safety, and security (EHS&S) staff, land acquisition specialists, wildlife biologists, Rosgen IV certified stream designers, professional wetland scientists, engineers, hydrologists, QA/QC oversight teams, field ecologists, regulatory project managers, analysts, certified foresters, arborists, landscape architects, construction managers, superintendents, and field crew members as well as supporting project controls, government affairs, public relations, financial, legal and analytical staff.

RES' experience includes:

- Restoration, enhancement, and preservation of over 100,000 acres of wetlands
- Restoration of over 650 miles of streams
- Rehabilitation, preservation, and/or management of over 20,200 acres of special-status species habitat
- Currently conducting monitoring and maintenance (including invasive species management) for over 50,225 acres of mitigation and restoration habitat



- Successful close-out of over 117 mitigation sites
- Permitting and development of over 210 permittee-responsible mitigation projects
- Design, permitting, management, and development of 197 wetland, stream, species, and conservation banks
- Delivery of 20,000 acres of custom, turnkey mitigation solutions
- Design and construction of over 356 stormwater management facilities
- Reductions of over 352 tons of water quality nutrients
- Planting of over 25,664,000 trees across all operating regions
- Development and operation of nurseries in six states including the largest coastal nursery in Louisiana
- Facilitation of compensatory mitigation and nutrient offsets for over 3,980 federal and state permits
- Long-term protection and conservation of over 79,600 acres
- Restoration of over 353 miles of shorelines and levees

We draw on our dedicated, in-house resources and deep experience across all phases of ecological restoration projects in defining our project approach, which seeks to balance performance and cost in the manner that is most beneficial to our clients.



2.2 Similar Projects

Additional project examples and references can be provided.

Table 1. Past Project Examples and References

Client	Relevant past project work performed
<p>Jack Distel <i>Water Resources Specialist</i> City of Bloomington 1800 West Old Shakopee Road Bloomington, MN 55431 952-563-8748 jdistel@bloomingtonmn.gov</p>	<p>Ecosystem Enhancement: RES began working with the city in 2021 to restore and enhance several natural areas around the city including Bogen Pond, Bush Lake Shoreline, and 98th Street Median. Work has included invasive brush removal, site prep, native seeding, vegetation management, and native plantings.</p>
<p>Dawn Pfarr Metropolitan Council 390 North Robert Street St Paul, MN 55101 612-756-1900 Dawn.pfarr@metc.state.mn.us</p>	<p>System-Wide Maintenance: RES has maintained various open spaces within the Metropolitan Council system since 2009. Staff meets with a representative each spring and fall to determine maintenance needs and execute the work. Sites include water treatment plant facilities, stormwater basins, rain gardens, pump stations, and natural areas. Work completed has included spot herbicide, mowing, native seeding, prescribed burning, native planting, erosion control, and invasive brush removal.</p>
<p>Gregg Thompson <i>Watershed Specialist</i> City of Eagan 3501 Coachmen Pt Eagan, MN 55122 651-675-5335 gthompson@cityofeagan.com</p>	<p>Open Space and BMP Maintenance: Since 2015, RES has worked with the city of Eagan to conduct annual maintenance activities for various sites throughout the city. City staff provide their site-specific needs each spring and RES implements the plan. Maintenance activities include spot herbicide, mowing, hand pulling, and prescribed burning. Sites include stormwater ponds, basins, natural areas, and rain gardens.</p>





2.3 Key Staff

The project team personnel and contact information will be provided to the city when preparing to start work. Staffing structure will include a Restoration Manager, Restoration Supervisor, and Restoration Technicians. The Restoration Manager and Restoration Supervisor will lead the daily tasks and complete work along with Restoration Technicians.

Below is a list of RES staff that will potentially work at Settlers Park. All RES field crew have 4-year degrees in natural resources or related fields. Coursework includes general plant identification, so RES field crew has baseline knowledge of native and non-native species. Furthermore, RES Contracting conducts weekly plant identification with all crew members during the growing season. Identification includes native and non-native species and management approach for each. During the dormant season, RES conducts woody plant identification of trees and shrubs. There are also numerous identification guides available to field crew year-round.

Table 2. Staffing Table

RES Team Member Name	Position	Years of Experience
Matthew Lasch	Operations Manager	18
Steve Salaba	Restoration Operator	6
Erik Edsten	Project Manager	6
Jake Filo	Restoration Operator	5
Dan Smucker	Restoration Manager	4
Eric Glaser	Restoration Supervisor	4
Greg Albrecht	Restoration Technician	3
Tom Kohn	Restoration Technician	2
Connor Pittman	Restoration Technician	3
Percy Robins	Restoration Technician	1
Gwen Wilkins	Restoration Technician	1
Brady Schutz	Restoration Technician	0.5
Jared Johnson	Restoration Technician	0.5

RES will provide regular communication of project progress via site meetings, emails, and annual reports. Besides a project kick-off meeting, RES anticipates 1-2 site meetings with the city representatives along with email and phone communication when planning to be on-site and completing work. All herbicide application records can be provided, along with any other project implementation information.



3.0 Project Scope and Deliverables

3.1 Site Preparation

Site preparation is important prior to installing native seed. This ensures control of existing vegetation and weeds that may be in the soil seed bank. RES will prepare the areas using herbicide application and mowing. It is anticipated to take a full growing season or more to complete several rounds of herbicide treatment and mowing. Work will be completed using tractors and/or ATVs.

Native seed will be installed using a tractor or ATV and no-till drill or broadcast seeder. Areas not accessible to equipment will be seeded by hand. A cover crop of winter wheat or oats will be included at the time of seed installation. No straw mulch or other erosion control measures are proposed as RES does not recommend tilling or discing the area prior to seeding.





3.2 Native Vegetation Establishment

Proper management of an establishing native ecosystem is paramount to the success of the site. Most native seedlings are putting all of their resources into roots during the first 2-3 years of growth. Control of weedy and non-native species is most critical during this time. RES utilizes mowing, spot herbicide, and prescribed burning as the main management techniques in restoration projects. There does need to be adaptability as site conditions and management schedules can change. All of these management techniques are expected to be used at Settlers Park, with the exception of prescribed burning.

Mowing is important to control annual and biennial weed species during the first 1-2 years of growth. It also allows sunlight to reach the native seedlings which are very small during these early years. The timing, height, and frequency of mowing need to be considered when laying out a management plan. Cutting height needs to be short enough to control weed species by not allowing them to flower and produce seed, but also tall enough that an advantage is not given to short, crawling weed species. The frequency and timing typically is 2-3 cuttings during the first growing season, and maybe 1-2 cuttings during the second growing season. The final number of cuttings will depend on the response of the site and how quickly it is growing. It is important to allow the vegetation to grow tall enough to shade some of the annual weeds and starve them of sunlight, but not get tall enough that significant thatch accumulates when getting cut. Mowing will be completed using a tractor and flail mower or skid steer and front-mounted mower. Any hand cutting will be completed using brush saws or string trimmers.

Spot herbicide is used to treat problematic, perennial species that cannot be controlled with mowing. It is used in combination with mowing during the early years of establishment and is the main management technique once mowing stops. Spot herbicide is completed using backpack sprayers or ATVs with a gun/wand. Herbicide is selected based on the species being targeted. All applicators are licensed by the Minnesota Department of Agriculture (MDA) and have a trained eye for native and non-native species. It is important for an applicator to identify the difference between a native seedling and problem species at all stages of growth. This avoids collateral damage to desirable species during applications.



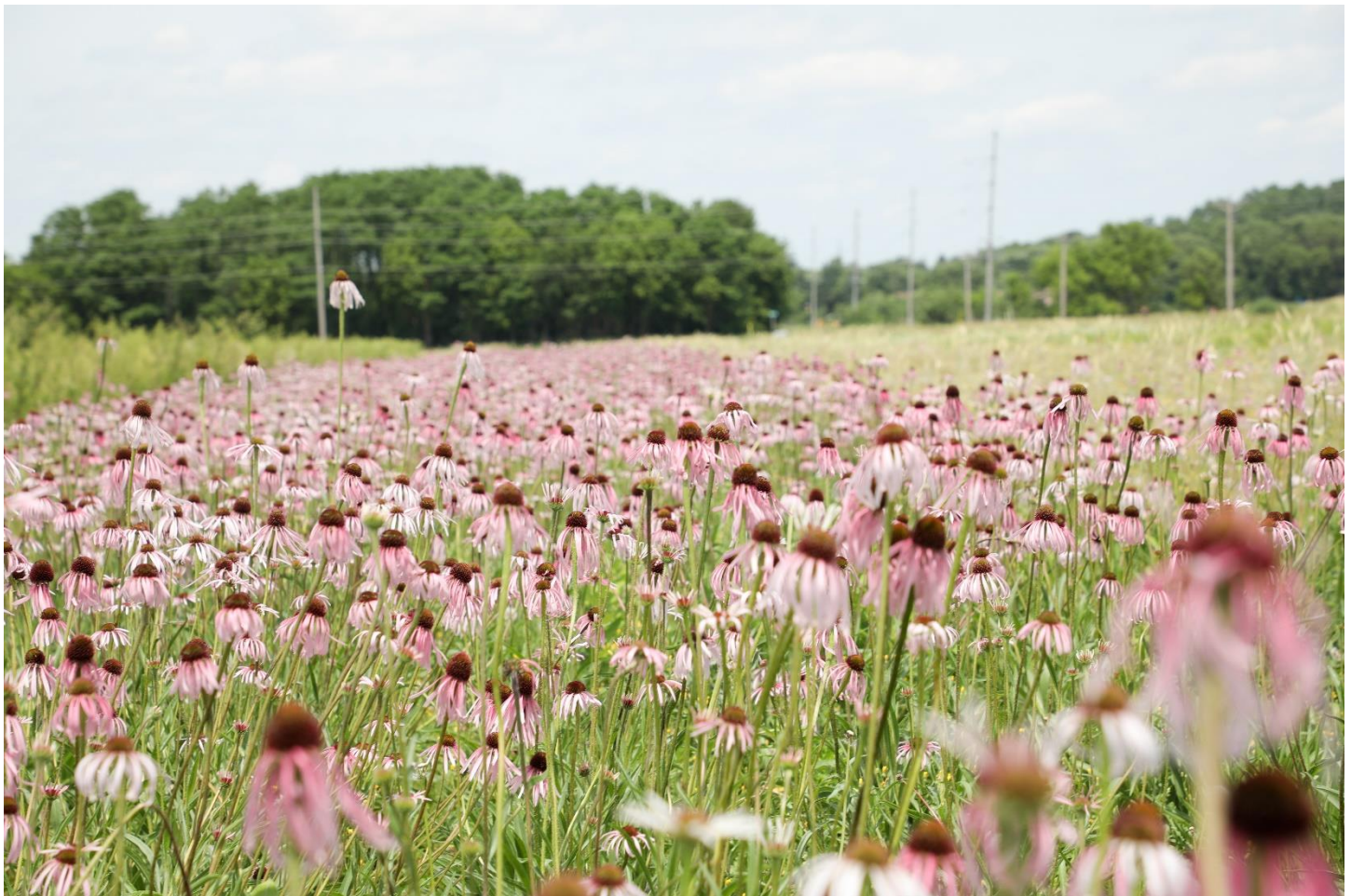


4.0 Cost Estimate

Please see the below table for RES' cost estimate of major tasks, of which RES will perform all. Per the RFP, these costs include prevailing wage rates.

Table 3. Cost Estimate

Task	Quantity	Unit	Unit Cost	Extended
Site Prep Herbicide	3	trip	\$3,184.00	\$9,552.00
Site Prep Mow	1	trip	\$3,254.00	\$3,254.00
Native Seeding – Mesic Prairie	5	acre	\$1,380.00	\$6,900.00
Native Seeding – Wet Prairie	1.5	acre	\$1,860.00	\$2,790.00
Management Mow	4	trip	\$1,903.00	\$7,612.00
Management Spot Herbicide	3	trip	\$2,942.00	\$8,826.00
			Total	\$38,934





5.0 Schedule

Below is a tentative schedule of activities. This schedule is subject to change. RES will work with the city to finalize the schedule if awarded and coordinate any adjustments as the work begins. Given work may be starting late in the year, there is the possibility of no work happening in 2024.

Table c. Schedule

2024	
October/November	Prep Herbicide (if possible)
2025	
May	Prep Herbicide
May/June	Prep Mowing
June	Prep Herbicide (if needed)
June	Native Seeding
July	Management Mowing
August	Management Mowing
August/September	Management Mowing (if needed)
September	Spot Herbicide
2026	
May	Spot Herbicide
May/June	Management Mowing
June	Spot Herbicide



ores

The logo consists of a stylized leaf icon on the left, rendered in a blue-to-green gradient, followed by the lowercase text 'ores' in a bold, blue, sans-serif font.