



## PROFESSIONAL SERVICES AGREEMENT

June 10, 2019

**Sand Creek Consultants, Inc.**

151 Mill Street, P.O. Box 218  
Amherst, WI 54406  
Phone: 715.824.5169  
President: Mark Dawson

**Client:** Village of Nelsonville  
9500 County Road SS  
Nelsonville, WI 54458  
Phone: 715.252.6386  
Representative: Lisa Anderson/Village Clerk

**Project:** Evaluation of Private Well Water Sample Results

**Project Location:** Village of Nelsonville  
Nelsonville, Wisconsin

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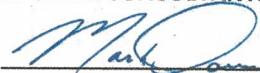
Sand Creek Consultants, Inc. ("Sand Creek") and the above named client ("Client") do hereby enter into this Professional Services Agreement (this "Agreement") as of the date stated below, for the performance of the Services described herein at the project identified above (the "Project Location"). The following documents are attached and made a part of this Agreement.

**Attachment A:** Proposal dated June 10, 2019, to Nelsonville Village Board/Village of Nelsonville, from Mr. Peter Arntsen/Sand Creek, Re: Village of Nelsonville Drinking Water  
Subject: Proposal to Evaluate Private Well Water Sample Results

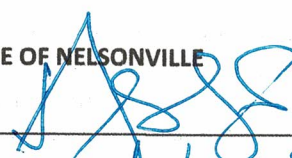
Sand Creek will perform the Project for a lump sum fee of \$2,000, including labor, report preparation, and all other anticipated expenses. Sand Creek warrants to the Client that total costs of the Project, identified in this section, will not exceed the costs estimated herein without approval by Client.

The undersigned have agreed to the terms and conditions of this Agreement as defined below (Sections 1 through 12g) and as of the date stated below.

**SAND CREEK CONSULTANTS, INC.**

By:   
Mark Dawson – President

**VILLAGE OF NELSONVILLE**

By:   
Print: Joshua Golzeburg  
Date: 6/11/19

Client and Sand Creek do hereby covenant and agree to the following terms and conditions:

- 1. Description of Services.** Sand Creek agrees to perform the services for and on behalf of Client described in one or more proposals or statements of work agreed to by Sand Creek and Client (the "Services"), which are attached hereto or that otherwise reference this Agreement (collectively the "Proposal" whether one or more). Subject to the terms and conditions of this Agreement, Sand Creek shall control the means of performing the Services rendered hereunder. Sand Creek shall comply with all applicable laws, ordinances, codes and regulations applicable to the Services (collectively the "Regulations"). Notwithstanding the foregoing, the parties acknowledge and agree that the interpretation of the Regulations by any public authority may differ from the interpretation of Sand Creek and as a result, Sand Creek shall not be responsible for any interpretations of the Regulations that are more restrictive or exceed common application of such Regulations. Sand Creek may, at its discretion, engage subcontractors and/or consultants to perform all or any part of the Services. Sand Creek and Client may, by written amendment to this Agreement, make changes to the Services. In addition to the foregoing, Sand Creek may rely on verbal field orders provided by Client's authorized representative described in Section 3 below. All Services performed pursuant to either an oral field order or written amendment to this Agreement shall be executed under the terms and conditions of this Agreement. If any oral field order or written amendment to this Agreement causes an increase or decrease in the compensation to be paid by Client to Sand Creek or an extension or shortening of the estimated completion date of the Services, then an equitable adjustment will be made.
- 2. Compensation and Payment.** As consideration for Sand Creek's performance of the Services, Client shall compensate Sand Creek as described in the Proposal. In the event additional services are requested by the Client, Sand Creek will perform such Services on a time-and-materials basis based on Sand Creek's then current rates. Client shall further reimburse Sand Creek for all disbursements made by Sand Creek in association with the performance of the Services. Client shall pay all amounts due Sand Creek hereunder within thirty (30) days following Client's receipt of an invoice from Sand Creek. Any amounts due that remain unpaid shall bear interest at a rate of 18% per year, provided such interest shall not exceed the maximum rate permitted by law.
- 3. Client Responsibilities.** Client shall make available to Sand Creek all relevant information or data pertinent to the Project and Services to be performed by Sand Creek. Sand Creek shall be entitled to rely upon the accuracy and completeness of all information and data furnished by Client, including information and data originating with other consultants employed by Client. Client shall designate a person authorized to act as Client's representative with respect to the Services to be performed hereunder. Client or Client's representative shall receive and examine documents submitted by Sand Creek and shall be empowered to interpret and define Client's policies and render decisions and authorizations orally and in writing promptly to prevent unreasonable delay in the performance of the Services. Whenever applicable, Client shall arrange and make provision for Sand Creek's entry to the Project site as well as other public and private property as necessary for Sand Creek to perform the Services. Client shall obtain any required approvals, licenses, and permits from governmental or other authorities having jurisdiction over the Project so as not to delay the performance of the Services.
- 4. Sand Creek Responsibilities.** Sand Creek shall furnish the necessary qualified personnel to perform the Services with reasonable skill and diligence in a manner consistent with that level of care and skill ordinarily exercised under similar circumstances by other professional consultants practicing in similar locations. No other representations or warranties, express or implied, are given and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, professional advice or otherwise. Sand Creek does not warrant the Services to any third party and shall not be liable for any third party's unauthorized use or reliance on the Services.
- 5. Suspension of Services.** In the event Client provides Sand Creek with written notice to suspend the Services, or the Project is suspended, and such suspension continues for more than thirty (30) days in the aggregate,

Client shall compensate Sand Creek for the Services performed prior to the date Sand Creek receives notice of such suspension. Upon resumption of the Services, Sand Creek shall be entitled to an equitable adjustment to its fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment to estimated completion date of the Services as a result of such suspension. In the event the Services are suspended for more than ninety (90) days in the aggregate, sand Creek may, at its option, terminate this Agreement immediately upon written notice to Client.

- 6. Term and Termination.** The term of this Agreement shall commence on the date stated above and shall continue until all of the Services described in the Proposal have been completed by Sand Creek and payment has been made by Client, unless terminated earlier as provided herein. Either party may voluntarily terminate this Agreement at any time by providing the other party with fifteen (15) days prior written notice. In addition to the foregoing, in the event either party materially breaches this Agreement and such breach continues for a period of seven (7) days following receipt of written notice from the other party, then the non-breaching party may terminate this Agreement immediately and without further notice. In the event of a termination of this Agreement, Client shall pay Sand Creek for all Services performed in accordance with this Agreement.
- 7. Project Site and Hazardous Substances.** Sand Creek shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities, but shall not be responsible for any damage to such structures or utilities if they were not called to Sand Creek's attention and correctly identified in the information to be provided by Owner as described in Section 3 above. Sand Creek does not assume control of or responsibility for the Project site, the safety of anyone other than its employees at the Project site, or undertake responsibility for reporting to any federal, state, or local public agencies any conditions at the Project site that may present a potential danger to public health, safety, or the environment. Client does hereby agree to assume such control or responsibility, and further agrees to notify the appropriate federal, state, or local public agencies as required by law. Except as specifically described in this Agreement, Sand Creek's field investigation, laboratory testing, and engineering recommendations will not address or evaluate pollution of soil or pollution of groundwater. Except to the extent cause by the negligence or willful misconduct of Sand Creek, Client shall indemnify and hold Sand Creek harmless from and against all claims, costs, liabilities, or damages whatsoever arising from any stormwater pollution, erosion, sedimentation, or discharge of silt or other deleterious substances into any waterway, wetland, or woodland and any resulting charges, fines, legal action, cleanup, or related costs.
- 8. Test Samples.** If the Services include obtaining samples or specimens for testing (collectively "Samples"), actions that may result in the production of investigative waste (Waste), such Samples and Waste shall remain the sole and exclusive property of Client. Samples are generally consumed or substantially altered during the conduct of tests and Sand Creek may, in its sole discretion, dispose of any remaining Samples or residue thereof immediately upon completion of the tests. Waste shall be, unless requested otherwise by Client, managed according to regulatory requirements for such Waste. Client shall be solely responsible for all costs and fees associated with the handling, storage, transport and disposal of any Waste.
- 9. Insurance.** Sand Creek shall maintain worker's compensation and employer's liability insurance as required by law. Sand Creek shall further maintain the insurance coverages identified in the Proposal and agrees to provide Client with evidence of such coverages upon execution of contract. Such coverages shall be maintained by Sand Creek during the duration of its performance of the Services and may not be cancelled without thirty (30) days prior written notice to Client. Client and Sand Creek waive all rights against each other for damages caused by fire or other perils to the extent reimbursed by any builder's risk or any other insurance, except such rights as they may have to the proceeds of such insurance.

**10. Indemnification and Limitation of Liability.**

- (a) Sand Creek shall indemnify and hold Client harmless from and against all claims, losses, damages, costs (including reasonable attorneys' fees), actions and other proceedings made, sustained, brought, or prosecuted in any manner based upon, occasioned by, or attributable to any injury, default, or damage arising from, and to the extent caused by, any negligent act, error, omission, or willful misconduct of Sand Creek, its employees, agents, or persons for whom it has assumed responsibility in the performance of the Services described herein. The foregoing indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Sand Creek under Worker's Compensation Act, disability benefits, or other employee benefit acts.
- (b) Client shall indemnify and hold Sand Creek harmless from and against all claims, losses, damages, costs (including reasonable attorneys' fees), actions and other proceedings made, sustained, brought, or prosecuted in any manner based upon, occasioned by, or attributable to any injury, default, or damage arising from, and to the extent caused by, any negligent act, error, omission, or willful misconduct of Client, its employees, agents, or persons for whom it has assumed responsibility. The foregoing indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Client under Worker's Compensation Act, disability benefits, or other employee benefit acts.
- (c) Notwithstanding the foregoing and except as otherwise expressly stated in Section 10(a) and 10(b) above, the liability of either party to the other party for any claim whatsoever related to this Agreement, including any cause of action arising in contract, tort, or strict liability, shall not exceed the total amount of insurance coverage available at the time of settlement or judgment. IN NO EVENT WILL EITHER BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE SERVICES DESCRIBED HEREIN OR THE PROJECT EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11. Instruments of Service.** All reports, surveys, data, and other documents delivered to Client by Sand Creek pursuant to the terms of this Agreement shall be deemed instruments of service of Sand Creek for use solely with respect to the Project (the "Instruments of Service"). Sand Creek shall be deemed the author and owner of the Instruments of Service and shall retain all common law, statutory, and other reserved rights, including copyrights. Upon completion of the Services and payment by Client to Sand Creek for said Services, Sand Creek grants to Client a limited nonexclusive and nontransferable license to use and reproduce the Instruments of Service solely in relation to the Project. Any termination of this Agreement prior to completion of the Services shall terminate this license immediately and without notice. Except for the foregoing, no other license or right shall be deemed granted or implied under this Agreement. Client shall not modify, sell, assign, delegate, sublicense, pledge, or otherwise transfer the limited license granted herein, without Sand Creek's express written consent. Any unauthorized use of the Instruments of Service shall be Client's sole risk and without liability to Sand Creek. Sand Creek further does not guarantee the authenticity, integrity, or completeness of data files supplied in electronic format that do not contain stamps or seals and Sand Creek shall not be liable for any claims or damages arising from the use of any such electronic files, which shall remain the sole and exclusive property of Sand Creek.

**12. Interpretation and Construction.**

- (a) All Services performed by Sand Creek under the terms of this Agreement shall be as an independent contractor of Client and not as an employee. The parties agree to report and file their tax returns in a manner consistent with this independent contractor relationship. Nothing in this Agreement or otherwise shall be construed as constituting an appointment of Sand Creek as agent, legal representative, joint venture, partner, or employee of Client for any purpose whatsoever. Neither party is authorized to

transact business, incur obligations, or assign or create any obligation of any kind, express or implied, on behalf of the other party, or bind it in any way whatsoever, or to make any contract promise, warranty, or representation on the other party's behalf.

- (b) This Agreement shall be governed by the laws of the State of Wisconsin and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior and contemporaneous representations, proposals, agreements, statements, or understandings, whether oral or written. No amendment to this Agreement shall be binding on either party unless such amendment is in writing and signed by the parties hereto. No provision of this Agreement shall be construed for or against either of the parties based on whether it or its representative drafted this Agreement.
- (c) Each party agrees that no failure or delay by the other party in exercising any rights, power, or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.
- (d) Any notice, consent or other communication given pursuant to this Agreement shall be in writing and shall be given by personal delivery or mailed to the address designated in the introductory paragraph of this Agreement, or such other address as the parties may designate in writing, mailed by registered or certified mail, return receipt requested, with postage prepaid. Notice shall be deemed effective when personally delivered or when deposited in the United States mail in the manner described above.
- (e) If any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding, and enforceable and in full force and effect, and such invalid or unenforceable provision shall be construed in a manner so as to give the maximum valid and enforceable effect of the intent of the parties expressed herein.
- (f) The provisions contained in Sections 7, 9, 10, 11, this Section, and any other provisions of this Agreement which by their very nature are intended to survive the termination of this Agreement will survive the termination or expiration of this Agreement and will inure to the benefit of and be binding upon the parties hereto.
- (g) This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement. The parties agree that original signatures of a party transmitted by facsimile or in portable document format (pdf) or electronic signatures affixed to this Agreement shall be as valid as an original signature of such party to this Agreement.

**Attachment A**

**Proposal dated June 10, 2019, to Nelsonville Village Board/Village of Nelsonville,  
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