

**From:** Greg Buckley <grebuc@two-rivers.org>  
**Sent:** Monday, July 22, 2019 11:37 AM  
**To:** David De Courcy Bower  
**Cc:** Beggs, Tauren R - DNR; Bruce, Jack; McDonald, James; SCOTT Ahl; sboerst@mcmgrp.com  
**Subject:** Re: ERM Monitoring Well on City of Two Rivers Property

THANK YOU, David; we appreciate it.

Greg

On Mon, Jul 22, 2019 at 11:32 AM David De Courcy Bower <[david.decourcybower@erm.com](mailto:david.decourcybower@erm.com)> wrote:

Greg,

We are working to get this scheduled and will let you know dates once they are firmed up.

David

David de Courcy-Bower, P.E.

Principal Consultant

**ERM**

700 W. Virginia Street | Ste. 601 | Milwaukee, WI 53204

T 414-977-4705 | M 414-335-0877

E [david.decourcybower@erm.com](mailto:david.decourcybower@erm.com) | W [www.erm.com](http://www.erm.com)

*"The Business of Sustainability"*

**From:** Greg Buckley <[grebuc@two-rivers.org](mailto:grebuc@two-rivers.org)>  
**Sent:** Monday, July 22, 2019 11:24 AM  
**To:** Beggs, Tauren R - DNR <[Tauren.Beggs@wisconsin.gov](mailto:Tauren.Beggs@wisconsin.gov)>

**Cc:** David De Courcy Bower <[david.decourcybower@erm.com](mailto:david.decourcybower@erm.com)>; Bruce, Jack <[jmb@schoberlaw.com](mailto:jmb@schoberlaw.com)>; McDonald, James <[jammcd@two-rivers.org](mailto:jammcd@two-rivers.org)>; SCOTT AHL <[SCO AHL@two-rivers.org](mailto:SCO AHL@two-rivers.org)>; [sboerst@mcmgrp.com](mailto:sboerst@mcmgrp.com)

**Subject:** Re: ERM Monitoring Well on City of Two Rivers Property

Tauren--

Thank you for your very prompt response on this matter; we truly appreciate it.

David--will you proceed to make arrangements for abandonment of the monitoring well? Thanks to you, as well, for promptly attending to this matter.

Greg

On Mon, Jul 22, 2019 at 9:52 AM Beggs, Tauren R - DNR <[Tauren.Beggs@wisconsin.gov](mailto:Tauren.Beggs@wisconsin.gov)> wrote:

Hi David and Greg,

Thanks for both of your calls this morning and this summary email below. This monitoring well (MW-22S) can be abandoned. MW-22S has never had any detections above groundwater standards for volatile organic compounds (VOCs). I don't see a need to install a replacement monitoring well in the right-of-way at this time. MW-10 and MW-21S as shown on the attached figure can continue to be used for delineation and monitoring purposes.

If you have any questions, please feel free to contact me.

Regards,

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Tauren R. Beggs

Phone: (920) 662-5178

[Tauren.Beggs@wisconsin.gov](mailto:Tauren.Beggs@wisconsin.gov)

**From:** Greg Buckley <[grebuc@two-rivers.org](mailto:grebuc@two-rivers.org)>

**Sent:** Friday, July 19, 2019 9:41 PM

**To:** David De Courcy Bower <[david.decourcybower@erm.com](mailto:david.decourcybower@erm.com)>

**Cc:** Beggs, Tauren R - DNR <[Tauren.Beggs@wisconsin.gov](mailto:Tauren.Beggs@wisconsin.gov)>; Bruce, Jack <[jmb@schoberlaw.com](mailto:jmb@schoberlaw.com)>; McDonald, James <[jammcd@two-rivers.org](mailto:jammcd@two-rivers.org)>; SCOTT Ahl <[SCOAHL@two-rivers.org](mailto:SCOAHL@two-rivers.org)>; [sboerst@mcmgrp.com](mailto:sboerst@mcmgrp.com)

**Subject:** ERM Monitoring Well on City of Two Rivers Property

David--

Following up on our phone conversation today, I am writing to request that ERM make arrangements for removal of the monitoring well located on City of Two Rivers property on the west side of Jefferson Street in the 1500 block. The location of this well is circled on the attached map.

This well was placed there under terms of a revocable license agreement in late 2017. The City of Two Rivers has contracted to sell the property where this well is located as part of the site for development of a new downtown hotel, and closing on the sale of the property is scheduled for next week.

I am sorry for the short notice, but would appreciate your cooperation in addressing this promptly, as the well location lies within the footprint of the proposed construction, which should start in August. The City would gladly allow a new monitoring well in the public right-of-way adjacent to this property, if Thermo Fisher or WDNR wish to pursue such an installation.

I am copying this communication to Tauren Beggs at WDNR, as I understand you will be contacting Tauren about this.

Tauren, the development I am speaking of is the proposed hotel on the former Suettinger Hardware property--and adjacent properties--that we have previously discussed.

I understand that ERM has also been pulling groundwater samples from monitoring wells that the City installed as part of Phase 2 testing for the City-owned parking lot just west of this well site. That property is also planned for sale for the hotel project, so any future use of those wells will need to be arranged with the new owner.

Thank you to both of you for your prompt attention to this matter.

Best Regards,

Greg Buckley

--

Greg Buckley

City Manager

City of Two Rivers

Telephone 920.793.5532

Fax 920.793.5563

Check out our new [HarborCam](#), for great live views

of the Two Rivers waterfront, at [www.two-rivers.org](http://www.two-rivers.org)

--

Greg Buckley

City Manager

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This message contains information which may be confidential, proprietary, privileged, or otherwise protected by law from disclosure or use by a third party. If you have received this message in error, please contact us immediately and take the steps necessary to delete the message completely from your computer system. Thank you.

Please visit ERM's web site: <http://www.erm.com>. To find out how ERM manages personal data, please review our [Privacy Policy](#)

--

Greg Buckley

City Manager

City of Two Rivers

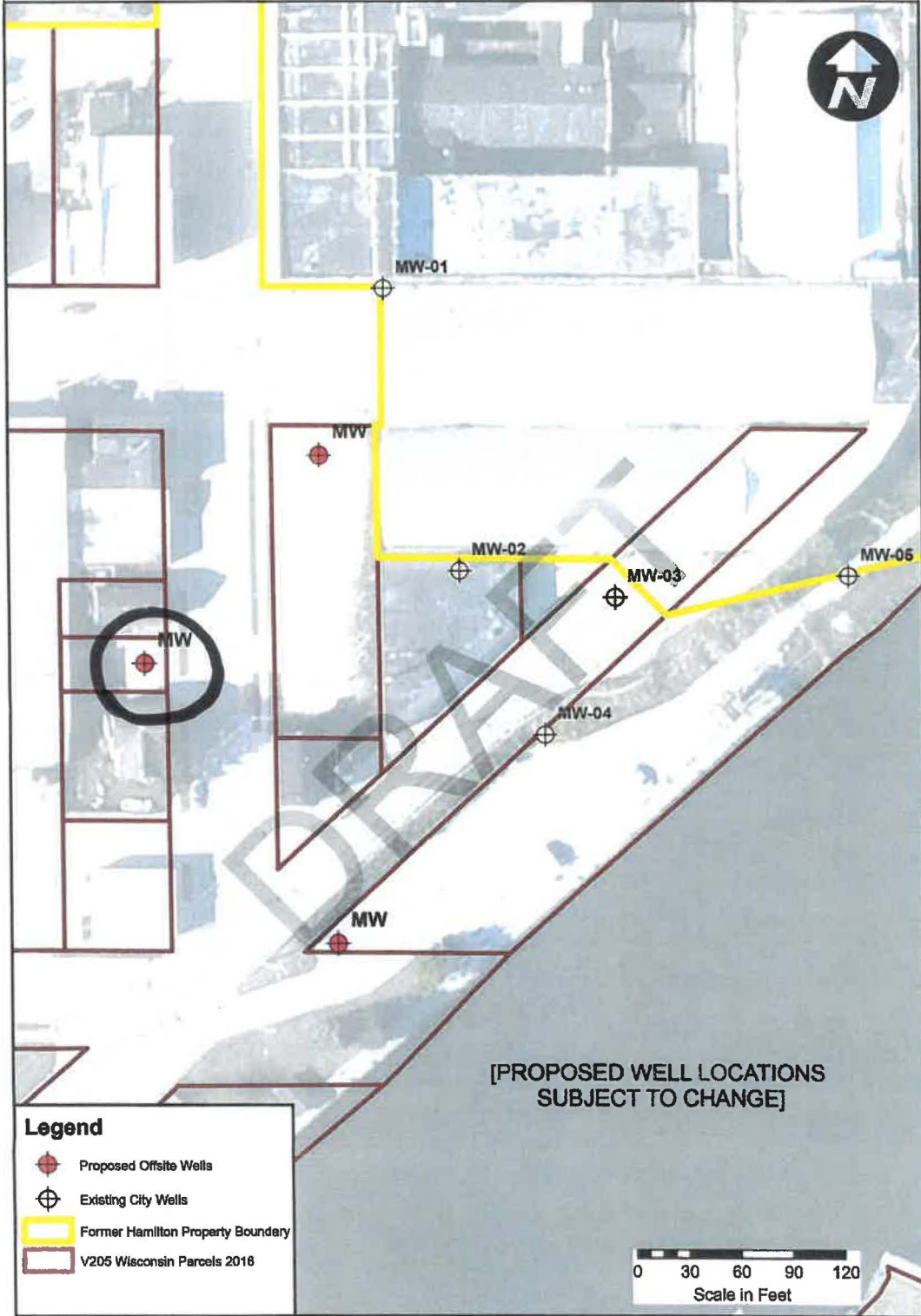
Telephone 920.793.5532

Fax 920.793.5563

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# PROPOSED OFF-SITE WELL LOCATIONS



### Legend

- Proposed Offsite Wells
- Existing City Wells
- Former Hamilton Property Boundary
- V205 Wisconsin Parcels 2016

0 30 60 90 120  
Scale in Feet

CADD Review CBS		<b>Former Hamilton Industries</b> <b>Two Rivers, WI</b>	CHK'D BY: DCB
DRAWN BY: CBS			0383990
Date Drawn/Rev'd 9/27/2017		<b>Environmental Resources Management</b>	<b>FIGURE 2</b>

ACCESS AGREEMENT

THIS ACCESS AGREEMENT ("Agreement") is made as of this 7<sup>th</sup> day of ~~October~~ November, 2017 by and among the City of Two Rivers, Wisconsin ("Grantor"), on the one hand, and Environmental Resources Management, Inc. ("Consultant") and Fisher Scientific International, LLC ("Fisher"), on the other hand. Consultant and Fisher are sometimes collectively referred to herein as "Grantee Parties."

WITNESSETH:

WHEREAS, Grantor owns certain real Properties and improvements thereon located in Two Rivers, Wisconsin, with parcel numbers 053-000-069-041.06 (1401 East River Street), 053-000-071-012.07 (Jefferson Street), and 053-000-070-050.01 (Jefferson Street) (together, the "Properties"); and

WHEREAS, Consultant, on behalf of Fisher, is performing certain environmental assessment and monitoring work on and around the Properties, under the oversight and direction of the Wisconsin Department of Natural Resources ("WDNR"); and

WHEREAS, Fisher desires to have performed on its behalf certain assessment Activities (as defined herein below) on the Properties, as described in the "Off-Site Investigation Work Plan, Former Hamilton Industries Facility, Two Rivers, Wisconsin" dated November 2017 and included as "Exhibit A" ("Off-Site Work Plan"); and

WHEREAS, Grantor has agreed to grant a temporary, non-exclusive and revocable license to the Grantee Parties with respect to the Properties solely for the purpose of permitting the Activities to be conducted on the Properties.

NOW, THEREFORE, for good and valuable consideration as further described herein, and intending to be legally bound hereby, Grantee Parties and Grantor hereby agree as follows:

1. Grant of Temporary License. Grantor hereby grants and conveys to the Grantee Parties temporary, non-exclusive and revocable permission to allow the Grantee Parties, along with their respective contractors, subcontractors and agents ("Environmental Representatives"), to enter upon and access the Properties solely for the following investigation activities (collectively, the "Activities"), which are more fully described in the Off-Site Work Plan. The Activities include, but are not limited to, the following:

- (a) Conduct a sub-surface utility investigation;
- (b) Install, develop, and sample three groundwater monitoring wells (the "Wells");
- (c) Sample existing City-owned groundwater monitoring wells in the vicinity of the Wells;
- (d) Collect soil samples from the unsaturated interval at each well location; and

- (e) Decommission the Wells in accordance with applicable WDNR standards once groundwater sampling is no longer required by WDNR.

This Agreement is intended and shall be construed only as a temporary, non-exclusive and revocable license to allow the Activities to be conducted upon the Properties and not as a grant of easement or any other interest in the Properties.

No activities other than those identified in the Off-Site Work Plan are authorized by this Agreement without the express advance written consent of Grantor.

2. Rights and Responsibilities of Grantee Parties and Conditions of Entry. The foregoing rights and restrictions are granted by Grantor for the benefit of the Grantee Parties, which rights and restrictions shall be expressly subject to the following terms and conditions:

- a. Notwithstanding the foregoing, in conducting the Activities, the Grantee Parties shall not unreasonably interfere with any ongoing or planned activities on the Properties to the extent communicated in advance to the Grantee Parties. Consultant shall give Grantor five (5) business days' advance notice of the Consultant's intent to perform the Activities. Such notice shall set forth the date and approximate time when the Activities are proposed to occur. Grantor shall notify Consultant within two (2) business days of receipt of said notice as to whether Consultant's proposed date and time for the Activities are acceptable. In the event the proposed date and time are unacceptable to Grantor, Grantor agrees to cooperate with Consultant in scheduling a substitute date and time.

- b. Consultant shall give Grantor at least 72 hours advance notice of the Consultant's intent to sample existing City-owned groundwater monitoring wells, which may be provided as part of any other notice required by this Agreement.

- c. The Grantee Parties and Environmental Representatives shall take reasonable precautions to minimize damage to the Properties from the Activities. The Grantee Parties and Environmental Representatives shall restore the Properties to as close as the conditions existing at the time the Activities began as is reasonably possible, except for the Wells, which may remain in place until the expiration of this Agreement (as set forth in Section 6) or the completion of the monitoring, whichever comes first. Fisher shall be responsible for the costs of properly decommissioning the Wells in accordance with applicable law.

- d. Consultant agrees to ensure that all cuttings, well development fluids, or any other fluid generated by the Activities will be containerized and staged on the Properties pending disposal. Grantee Parties agree to ensure that all cuttings, well development fluids, or any other fluid generated by the Activities will be removed from the Properties within (1) month of generation or recovery for disposal in accordance with all applicable laws and regulations.

- e. The Activities shall be performed in compliance with all applicable laws, rules, regulations, ordinances, permits and requirements of the WDNR. The Grantee Parties shall not suffer or permit to be enforced against the Properties any mechanic's, materialman's, contractor's or subcontractor's liens or any claim for damage arising from the Activities and shall pay any and all such liens before any action is brought to enforce such liens.



f. Fisher, through its Consultant, agrees to provide Grantor, upon written request and at no cost to Grantor, with electronic copies of all analytical data obtained from the Activities, after the data has been validated and with any electronic copies of reports to be submitted to the WDNR, regarding the findings from the Activities.

g. Grantor shall have no responsibility for any of the costs and expenses incurred or to be incurred by or on behalf of Fisher in the performance of the Activities.

3. Insurance. The following insurance shall be maintained by the Consultant in full force and effect during the term of this Agreement:

a. Commercial general liability insurance (including contractual liability coverage) on an occurrence basis for bodily injury, death, "broad form" property damage, and personal injury, with coverage limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate for bodily injury and property damage;

b. Auto liability insurance covering all owned, non-owned and hired vehicles, with coverage limits of One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage;

c. Worker's compensation insurance with limits as required under applicable state statute, and employer's liability insurance coverage for injury, disease and death, with coverage limits of One Million Dollars (\$1,000,000) per accident and employee;

d. Umbrella liability insurance on an occurrence form, for limits of Three Million Dollars (\$3,000,000) per occurrence and in the aggregate; and

e. Professional liability (Errors & Omissions) on a claims-made form, for limits of Two Million Dollars (\$2,000,000) annual aggregate.

f. The comprehensive general liability insurance shall be specifically endorsed to include the Grantor as listed herein as an additional insured.

4. Indemnification. Consultant hereby agrees to indemnify and save harmless Grantor and its officers, directors, employees, legal representatives, and agents (the "Grantor Indemnified Parties") of, from and against, but shall not defend, any and all actions, claims, losses, costs, damages, expenses, penalties, assessments, injury, liability and judgments (including, without limitation, reasonable attorney's fees and reasonable expert witness fees incurred in the defense of the Grantor Indemnified Parties) (collectively "Loss") for personal injuries, including disease and death, property damage or injuries to others to the extent caused by the Grantee Parties' or Environmental Representatives' negligent performance of the Activities on the Properties and/or any other negligent activities of the Grantee Parties or Environmental Representatives which occur on the Properties while exercising access rights under this Agreement; provided, however, that any indemnity or protection provided hereunder shall not apply if and to the extent of the Grantor Indemnified Parties' individual or collective negligence or willful misconduct. Fisher agrees that, in the event that Consultant fails to indemnify and save harmless the Grantor Indemnified Parties of, from and against any and all Loss as aforesaid, then Fisher will indemnify and save harmless the Grantor Indemnified Parties

of, from and against any such Loss on the terms set forth above. The foregoing indemnity shall survive the termination of this Agreement.

5. Notices. Any notice, communication, report or demand required or desired to be given under this Agreement shall be in writing and shall be deemed to have been received for all purposes if it is delivered (i) personally, (ii) by overnight courier prepaid by the sender, (iii) by registered or certified mail, return receipt requested, postage prepaid, or (vi) by email, to the parties at the addresses shown below or at such other address as the respective parties may from time to time designate by like notice. Each such notice shall be effective upon being so delivered. Such addresses shall be the following:

To Grantor:                   City of Two Rivers  
                                  Attention: City Manager  
                                  Address: P.O. Box 87  
  Two Rivers, WI 54241  
                                  Email: grebuc@two-rivers.org

To Grantee Parties:       Environmental Resources Management, Inc  
                                  Attention: Mr. David de Courcy-Bower  
                                  700 W. Virginia Street, Suite 601  
                                  Milwaukee, WI 53204  
                                  david.decourcybower@erm.com

Fisher Scientific International, LLC  
Attention: Mr. Rick Podlaski  
P.O. Box 17340  
Stamford, CT 06907  
rick.podlaski@thermofisher.com

or to such other addresses as the parties may designate from time to time by written notice to the others.

6. Termination of Agreement. If any of the Grantee Parties fail to observe the conditions of this Agreement after notice from Grantor and fail to cure within twenty (20) business days, this Agreement may be terminated by Grantor without further notice. This Agreement may terminate upon notice by the Grantee Parties to Grantor that access is no longer needed, or in the absence of such notice, at such time as the Wells are properly decommissioned in accordance with applicable law. This Agreement shall otherwise terminate 24 months following the date of execution, unless the parties mutually agree in writing to extend the period of the Agreement, provided that Grantee parties may continue to have access after such termination in order to promptly decommission the Wells in accordance with applicable WDNR standards.

7. Miscellaneous.

a. Captions. The captions of the sections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation and construction.

b. Governing Law. This Agreement shall be construed, interpreted and applied in accordance with the internal laws of the State of Wisconsin, without regard to principles of conflicts of law.

c. Integration; Amendment. This Agreement may not be altered, modified, or amended unless by an instrument in writing duly executed by each of the parties then bound by this Agreement. This Agreement constitutes all of the agreements and understanding of the parties concerning the subject matter contained herein and supersedes all prior oral or written agreements or understandings regarding same.

d. Severability. If any one or more of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision herein and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been included, provided, however, in no event shall either party be deprived of a material consideration by operation of this provision.

e. Attorneys' Fees and Expert Witness Fees. In the event any party hereto brings an action or proceeding for a declaration of the rights of the parties under this Agreement, an interpretation of this Agreement, for injunctive relief, or for an alleged breach or default of, or any other action arising out of, this Agreement or the transactions contemplated hereby, the prevailing party in any such action shall be entitled to seek an award of reasonable attorneys' fees and costs and expert witness fees incurred in such action or proceeding, without regard to any rule of court or schedule of such fees maintained by the court, in addition to any other direct and actual damages or relief awarded, regardless of whether such action proceeds to final judgment.

f. Binding Effect. The Grantee Parties shall not have the right to assign this Agreement without the prior written consent of Grantor, which may be withheld in Grantor's reasonable discretion. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, lenders, and successors and assigns.

g. Warranty of Authorized Signatories. Each of the parties hereto warrants and represents that the signatory hereto on its behalf is authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

h. Reservation of Rights. Each of the rights of the parties set forth in the individual sections of this Agreement are in addition to, and not exclusive of, the rights of such party, at law, in equity or otherwise. No damages or remedies available to a party at law, in equity or otherwise, shall be deemed or construed to be limited by or under the terms of this Agreement.

i. Counterparts. The parties may execute this Agreement in one or more counterparts, all of which when taken together will constitute one and the same instrument. Signatures transmitted by electronic mail or facsimile shall be effective and binding in the same manner as original signatures.

*[Signatures on following page]*

Executed as of the date last written below (the "Effective Date").

**GRANTOR PARTIES:**

**"GRANTOR"**

CITY OF TWO RIVERS, WISCONSIN

By: Gregory E. Rockley  
Name: Gregory E. Rockley  
Title: City Manager

Date: 11/07/2017

By: Kim M. Graves  
Name: Kim M. Graves  
Title: City Clerk

Date: 11/07/2017

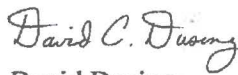
GRANTEE PARTIES

FISHER SCIENTIFIC INTERNATIONAL, LLC  
a Delaware corporation  
(Fisher)

By:   
Name: \*Richard T. Podlaski  
Title: Senior Risk Manager

Date: 11-7-2017  
\*Per authority of Robert Fetter,  
Vice President, Risk Management

ENVIRONMENTAL RESOURCES  
MANAGEMENT, INC.  
a Pennsylvania corporation  
(Consultant)

By:   
Name: David Dusing  
Title: Midwest Managing Partner

Date: 11/7/2017

By:   
Name: David de Courcy-Bower  
Title: Principal Consultant

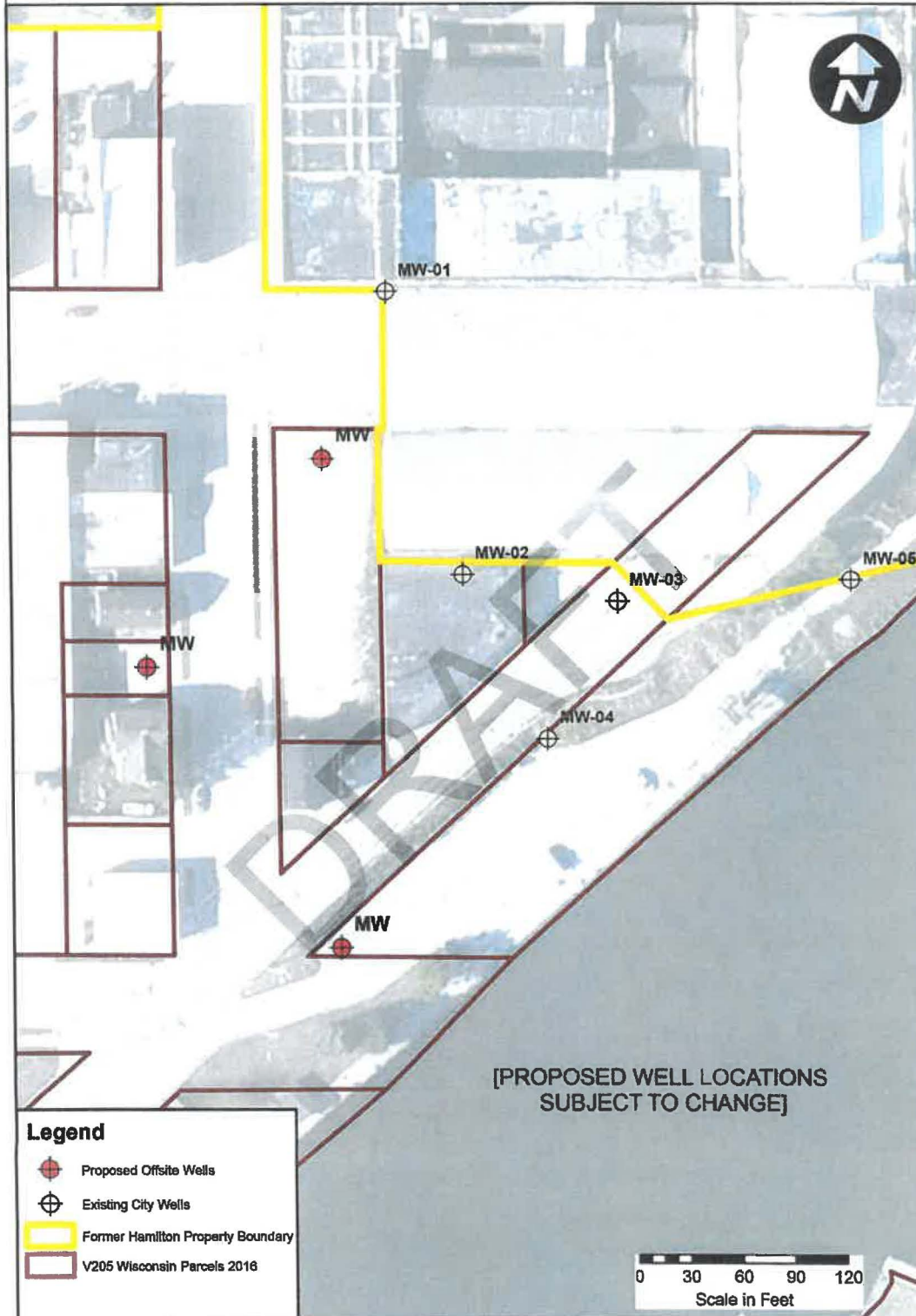
Date: 11/7/2017

**ACCESS AGREEMENT**

“Exhibit A”

*Off Site Investigation Work Plan, Former Hamilton Industries Facility, Two Rivers, Wisconsin  
dated November 2017*

# PROPOSED OFF-SITE WELL LOCATIONS



**Legend**

-  Proposed Offsite Wells
-  Existing City Wells
-  Former Hamilton Property Boundary
-  V205 Wisconsin Parcels 2016

CADD Review CBS
DRAWN BY: CBS
Date Drawn/Rev'd 9/27/2017



**Former Hamilton Industries  
Two Rivers, WI**

**Environmental Resources Management**

CHK'D BY: DCB
0383990
<b>FIGURE 2</b>