

Memorandum

To: Mayor and City Council

CC:

From: Grayson Bottom

Date: 1/2/2009

Re: Pond Liner

Included in the budget for the Golf Course Improvement was a line item for a pond liner. The amount of the line item was \$15,000. This amount came from a relatively recent contract amount for lining a 40,000 sq ft. pond. The original estimate of our pond size was 54,000 sq. ft. Our pond ended up being just over 108,000 sq. ft.

Realizing that our pond was considerably larger than anticipated Kelly, Arnold and I began exploring alternatives. We were trying to compare the costs associated with not lining the pond with a polyethylene liner versus a tilled in mineral to seal the pond from the leaking problems we had experienced in the past. I called the U.S. Army Corp of Engineers, the local and state offices of the U.S. Natural Resource Conservation Service, local pond builders, and the OSU Agriculture Engineering School. The best and most complete information came from OSU. The professor indicated that in a golf course irrigation application, as opposed to an agriculture application, that water quality was critical. Lining the pond with polyethylene solves water quality issues. If we wanted to use a mineral to stop leaking it could be done, however we would need a mineral not readily available in Oklahoma and not the mineral utilized by oil field service companies. Further, we would need to add a floating intake and a filter to achieve the water quality necessary for a golf course.

	Cost Associated with Mineral Liner	
Purchase of Mineral directly from mine in Montana		\$10,000 plus shipping by rail
Cost of Transfer and application		Unknown
Purchase of Filter		\$25,000
Purchase of Floating Intake		\$15,000
	Total	Over \$50,000

The next issue was to find a firm that could supply the material and do the installation. I visited with the people at Superior Oilfield Service about who they use for this purpose. They gave me the names of two companies. Both of those companies were no longer in the business or had sold their

January 2, 2009

operation. I asked to be referred to their successor companies. That didn't happen. While excavating the pond at the golf course I was approached by a gentleman by the name of Benny Whery. Mr. Whery lives in Yukon but purchases his vehicles and does other business in Clinton. He had seen what we were doing and asked if we were going to line the pond. We indicated that we were in some fashion. He indicated that he was bound by a non-compete agreement with the company he had sold to out of state, but would be released from that agreement after December 31, 2008. It was his intention to go back into business after that time and would be interested in providing the polyethylene liner and installing it.

After searching for several months I have found two companies that have an interest in a project as small as ours. The first is Extreme Plastics Plus, Inc. of Yukon which has quoted \$42,500 and the second is In-Line Plastics, LC of Houston, TX that has quoted \$64,125 with the City being required to provide some of the labor.

It is my recommendation that we accept the quote of Extreme Plastics Plus, Inc. for the lining of the pond with a 30 mil. Polyethylene Liner and approve the expenditure of funds from the Capital Improvement Fund in the amount of \$42,500 for labor and material.

Extreme Plastics Plus, Inc.

Bid

PO BOX 851340
 Yukon, OK 73085-1340
 866-408-2837
 Fax 405-354-3277

Date	Estimate #
12/21/2008	2

Name / Address
City of Clinton Attn: Grayson Bottom PO BOX 1177 CLINTON, OK 73601-1177

Description	Qty	Cost	Total
Install 30 Mil Polyethylene Liner on approximately 2.5 acres for Retention Pond. Extreme Plastics Plus would like to submit a turn key bid of \$42,500. Included in EPP bid are as follows. 30 Mil Polyethylene Liner manufactured by Raven Industries suitable and approved for this application. Mobilization to and from site. Labor and Equipment to deploy Liner and to dig and backfill anchor trench. Furnish and build boot per 1 penetration. Quality Control Technician to perform non destructive testing to assure leak proof field seam.	1	42,500.00	42,500.00
Thanks for giving us the opportunity to bid on this project.		Total	\$42,500.00

Customer Signature _____



IN- LINE PLASTICS, LC

January 2, 2009
 Grayson Bottom
 City of Clinton OK
 PO Box 1177
 415 Gary Blvd.
 Clinton, OK 73601

Phone: (580)323-0261

Fax: (580) 323-0346

PRICE QUOTE FOR MATERIAL AND LABOR

PROJECT: • City of Clinton OK

MATERIAL: • 30 mil Hercupline

DESCRIPTION: • In-Line Plastics to supply and install approximately 112,500 SF of net lined area 30mil. One 14" boot included. Additional boots, battering or attachments will be an added cost. City to do all earthwork including digging and backfilling anchor trench.

AMOUNT: • \$.57/SF = \$64,125.00

NOTES:

- In-Line Plastics' Project Scope & Specification sheet is the basis for this bid. Please approve and return with purchase order.
- This bid is based on one mobilization and one shipment of materials.
- This proposal is valid only upon execution of a mutually agreeable subcontract (if applicable).
- In-Line Plastics, LC reserves the right to revise this proposal as required to comply with any specification or bid document not provided for bid preparation or any variations between drawings provided and the actual on-site requirements.
- In-Line Plastics' bid is contingent upon acceptance by the owner/engineer of the attached exceptions to specifications.

- All material is sold FOB Plant. The above freight cost is an estimate. Customer shall be responsible for actual freight charges.
- This quote is valid for 15 days from the date above. (Subject to raw material availability and price fluctuations)
- The prices quoted are based on non-union / non-prevailing wage rate.
- This quote does not include tax. Terms (with approved credit) are 30 days from the date of invoice.
- No other terms and conditions will supersede the "In-Line Plastics General Terms and Conditions of Sale" on the second page of this proposal. Please advise if it was not received.
- The above pricing is contingent upon purchase of all materials bid. Individual items may not be deleted from this bid. If bid items are deleted, In-Line reserves the right to re-bid this project.
- Before using an In-Line Plastics product, customers and other users should make their own independent determination that the product is suitable for the intended use.
- Quantities are based on In-Line's take-off and are not guaranteed. In-Line shall be paid on the total square feet of material installed.
- This shall be governed by Texas law and disputes shall be determined by Texas courts.
- Customer is to notify In-Line Plastics of any hazardous substances, as defined by the EPA, that may be contained in the lined area.
- This bid is based on a non-hazardous working environment. In-Line's standard PPE shall be provided.
- Prefabricated pads must be handled carefully to avoid damage to liner. Appropriate equipment and personnel must be available at time of offloading and deployment of prefabricated pads to prevent damage and to properly deploy material. In-Line Plastics is not responsible for damages due to improper handling of the material.
- Typographical errors are subject to correction
- In-Line Plastics standard warranty applies to this product.

If I can be of additional assistance, please do not hesitate to contact me.

Sincerely,

PO # _____

Date: January 2, 2009

John Oberly
 In-Line Plastics, LC

Approved By: Grayson Bottom

In-Line Plastics General Terms and Conditions of Sale

1. **NOTICE:** The offer, order acknowledgment, order acceptance, or sale of my products is conditioned upon the terms contained herein. Any additional or different terms proposed by the Purchaser are objected to and will not be binding upon In-Line Plastics, LC unless specifically assented to in writing by In-Line. In the event of any conflict between the provisions of any purchase order and this quotation (including those terms of sale), the provisions of the quotation/terms of sale shall control, unless an authorized representative of In-Line acknowledges otherwise in writing. Failure of In-Line to object to provisions contained in any order or other communication from the prospective buyer shall neither be construed as a waiver of these terms or an acceptance of any such provision. In-Line reserves the right to correct clerical, arithmetic, or stenographic errors and omissions in quotations, orders, acknowledgements, invoices or other documents.
2. **PRICES:** The attached quotation supersedes all previous quotations.
3. **TAXES:** Unless otherwise stated in In-Line's proposal, the prices quoted do not include any federal, state, provincial or local taxes or duty of any kind which may be applicable to the sale, use, or any disposition of the material. Consequently, in addition to the prices specified herein, the amount of any present or future taxes or duties mentioned above shall be paid by the Purchaser, or in lieu thereof the Purchaser shall provide In-Line with a tax exemption or resale certificate acceptable to the taxing authorities. Purchaser agrees it will reimburse In-Line for the amount of all governmental taxes, excise and/or other charges (except taxes on or measured by net income) that In-Line may be required to pay with respect to (a) the sale and/or installation of any material delivered hereunder, and (b) the production or transportation of any material delivered hereunder.
4. **SHIPMENTS:** Time of delivery shall not be of the essence unless expressly agreed to by the parties in writing. In no event shall In-Line be liable for any consequential or other damages. Any time stated for delivery by In-Line is an estimate only and shall not form part of the contract. No delivery dates are guaranteed. Any failure by In-Line to deliver the Product by such time shall not be a breach or repudiation, and In-Line shall not be liable for any loss or damage suffered by the Purchaser as a result of such failure. Title and Risk of Loss shall pass to Purchaser at the point of loading—all Product(s) are sold FOB plant, unless otherwise specified in In-Line's proposal. Freight charges reflected in the quotation are an estimate only. Purchaser is responsible for all actual freight charges. Where delivery of Product is delayed for any reason outside of the reasonable control of In-Line or under the control of Purchaser, In-Line reserves the right to amend the prices for the Product to the rate current at the date when delivery is made. Additionally, In-Line shall not be held responsible for loss or damage resulting from the choice of carrier or means of shipment or routing used or for any other losses or damages arising while in transit or related to the material. The Purchaser agrees to make any claim therefore directly against the carrier.
5. **PAYMENT:** Terms of payment shall be a 2% discount for payment within ten (10) days after In-Line's shipment or net thirty (30) days after the date of In-Line's shipment [date of mobilization shall dictate due date for installation work] subject to change by written notice to Purchaser (except where otherwise provided on attached schedules). Any payment not received when due shall bear interest at the rate of 1-1/2% per month, eight percent per annum from the original due date, or the highest rate allowed by law, on the unpaid balance until paid in full. Any sale to Purchaser of In-Line's Products/Services is subject to In-Line's approval of the credit worthiness of the Purchaser. Additionally, in the event that payment is not made by Purchaser within the agreed upon terms and any legal and/or collection action is used by In-Line to secure payment, Purchaser shall be liable for all legal and/or collection costs incurred by In-Line. This includes, but is not limited to, the costs of notices, liens, claims, foreclosures, suits, and arbitrations.
6. **LIMITED WARRANTY:** In-Line warrants that its fabricated Products shall be free from defects in material and workmanship at the time of sale. In the case of a defect, at In-Line's option In-Line will repair or replace the Product. However, this remedy is only available if Purchaser notifies In-Line of the defect prior to use of the Product and within thirty (30) days of receipt of shipment. This Limited Warranty applies to factory-fabricated products only and does not cover damage to the Product sustained after it left In-Line's fabrication facility. For products installed by In-Line personnel, In-Line's standard Limited Installation Warranty shall apply. For materials manufactured by others, the manufacturer's standard warranty shall apply, not In-Line's. In-Line's liability under this warranty shall in no event exceed the replacement cost of the Product(s) sold to the Purchaser (fabricated or installed). **THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BY ACCEPTING DELIVERY OF THE PRODUCT(S), PURCHASER WAIVES ALL OTHER POSSIBLE WARRANTIES. IT IS THE RESPONSIBILITY OF BUYER AND OTHER USERS TO MAKE THEIR OWN INDEPENDENT DETERMINATION THAT THE PRODUCT IS SUITABLE FOR THEIR INTENDED USE.**
7. **CONTINGENCIES:** Neither Purchaser or In-Line shall be liable for its failure to perform hereunder if performance is made impracticable due to any occurrence beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes, inability to obtain economic materials, governmental laws, ordinances, rules, regulations, standards or decrees, inability to obtain raw material, equipment or transportation, and any other similar or different occurrence.
8. **NON-WAIVER:** Failure of Purchaser or In-Line to exercise any right hereunder upon one or more occasions shall not waive the right to exercise the same on another occasion.
9. **INSPECTION AND CONDITION OF THE PRODUCT:** The Purchaser shall carefully examine the Products on receipt of same. Claims by Purchaser must be made in writing within no later than two (2) business days from the date Purchaser learns of the nonconformity, but in no event no later than 30 days after the date of receipt of shipment, which Purchaser and In-Line agree is a reasonable time, or Purchaser's claims shall be barred. Failure of such notice before In-Line has the opportunity to respond, shall be deemed acceptance of goods as received. In addition, In-Line must be given opportunity to investigate the claim before Purchaser disposes of Product or else Purchaser's claim will be barred. In-Line's liability to Purchaser shall in no event exceed the difference between the purchase price and the value as delivered. ANY damage to Product sustained during shipment MUST be noted on the Bill of Lading at the time of receipt or claim will be barred.
10. **LIMITATION OF DAMAGE:** In no event shall In-Line be liable for any special, indirect, consequential or incidental damages arising from this transaction. In-Line's total liability is limited to amounts actually paid by Purchaser hereunder with respect to direct damages arising from Purchaser's lawful rejection of goods from In-Line's breach of any applicable warranty, or at the option of In-Line, replacement of the nonconforming Product with a conforming Product.
11. **RETURN POLICY:** No returns. All sales are final.
12. **MISCELLANEOUS:** The laws of the State of Texas shall govern the execution, interpretation, and enforcement of this agreement, without giving effect to the principles of conflicts of laws thereof and Purchaser submits to the jurisdiction of Texas courts. This contract is performable in Harris Co., Texas, and venue of any legal settlement shall be in Harris Co., Texas. These terms and conditions hereof constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supercedes all previous communications, either oral or written, between the parties hereto. There are no understandings or representations of any kind whatsoever, except as expressly set forth herein. This Agreement shall be binding upon and enforce to the benefit of the respective successor and assigns of each of the parties hereto, but any assignment or delegation thereof by either party without the prior written consent of the other party shall be void, except where such assignment or delegation is in connection with the sale of the business to In-Line to which this Agreement relates. No modification or waiver of the terms and conditions hereof shall be binding on Purchaser or In-Line unless approved in writing by an authorized representative, nor shall the terms and conditions hereof be affected by the acknowledgment or acceptance of purchase order forms containing additional or different terms or conditions, whether or not signed by an authorized representative of Purchaser or In-Line. Neither course of performance nor course of dealing nor usage of trade shall be used to interpret, construe, qualify, modify, explain, or supplement any of the terms hereof.
13. **FORCE MAJEURE:** In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labor shortage, fire, flood, or other casualty, governmental regulation or requirement, shortage or failure of raw material, supply, fuel, power or transportation, breakdown of equipment or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or due to any strike, labor dispute, or difference with worker, regardless of whether or not Seller is capable of settling any such labor problem. Seller shall not be liable for any breach of this contract by an act of God, civil insurrection or disobedience, pestilence, war, or acts of third parties not under direct control of Seller.
14. **SEVERABILITY:** In case any provision herein shall be declared void, illegal, or otherwise invalid, the remaining provisions shall remain in effect and binding upon the parties.
15. **ARBITRATION:** Any dispute, controversy, or claim arising in connection with this Agreement shall be settled by binding arbitration as the sole remedy of the parties hereto, conducted in accordance with the American Arbitration Association arbitration rules for commercial disputes as in effect on the date of the order. The proceedings shall be concluded, and the Arbitrator shall render an award within ninety (90) days following selection. No award shall be made for punitive, special, exemplary, or consequential damages, including loss of profits or loss of business opportunity. The parties agree that any arbitration commenced under this provision shall take place in the State of Texas. The decision of the Arbitrator pursuant hereto shall be final and binding upon the parties.



PROJECT SCOPE AND SPECIFICATIONS

General Requirements

1. Provide 120/240 Volt power for extrusion and wedge welding. A 6.5 kw generator or on site electrical outlets with the following:
 - 240 V NEMA configuration L6-20 (20A, 250V) receptacle
 - 120 V NEMA configuration L5-15 (15A, 125V) receptacle—SW
2. Ensure removal of all water prior to deployment and seaming.
3. Provide front end loader/operator capable of handling 3,500 pound rolls with spreader beam and axle bar to off load and deploy.
4. Provide access to construction dumpster.
5. Provide qualified laborers and equipment to unload material on site.
6. Provide experienced and trained operators to operate heavy machinery (Minimum lift, 10,000 lbs.).
7. Provide convenient access to and use of potable water for In-Line personnel.
8. Provide convenient access to and use of sanitary facilities for In-Line personnel.

Specifications For Area Subgrade Preparation (Customer to perform all earthwork, including anchor trench)

- No sharp stones or hard objects that could penetrate the liner will be present in the top one inch (1" or 2.5cm) of the surface in contact with the liner.
- Surfaces to be lined will be smooth and free of all rocks, sharp stones, sticks, roots, other sharp objects, or debris of any kind. The surface should provide a firm, unyielding foundation for the liner with no sudden, sharp, or abrupt changes or breaks in grade.
- Concrete surfaces to which the liner must be attached shall be clean and smooth and free of discontinuities, cracks, or expansion joints.

In-Line Plastics must approve subgrade prior to commencement of work.

Schedules

The time schedule for project completion is based on:

1. In-Line Plastics requires, in writing, a minimum of two (2) weeks notice prior to each mobilization (including remobilizations). In-Line Plastics, LC will attempt to commence work earlier, if possible, with good faith intentions to meet customer needs.
2. No restrictions being placed on starting or stopping time on any days. Work is performed on a continuous basis until finished. This includes weekends and holidays, excluding major national holidays.
3. No delays from causes beyond In-Line Plastics' control such as labor disputes (union or others), weather, etc.
4. In-Line Plastics, LC being provided all project documentation one week after submission of In-Line bid.

Delays/Penalties

If In-Line Plastics is delayed in the performance of the work by an act or omission of the owner, consultant, other contractors, or causes beyond In-Line Plastics' control, the contract schedule will be extended. No charges will be imposed for any delays up to the first four hours. Thereafter, a \$250 per technician per day fee will be imposed. If more than a four (4) hour delay occurs, a full day will be charged.

Customer to make arrangements for all third party testing and pay associated expenses.

In-Line's Customer is responsible for maintaining the safety of all materials left on site.

All expenses incurred by In-Line Plastics due to lack of adherence to these terms and conditions will be charged to customer. Any additional work performed by In-Line Plastics, Inc. that is requested by the customer or different from the original drawings or In-Line Plastics, LC bid will result in additional charges to customer.

In-Line Plastics, LC is on site to provide welding/seaming expertise and general consulting regarding installation under the supervision of the customer.

Signature Title

Date

Customer

In-Line Controller