

**EDGERTON CITY COUNCIL
MEETING AGENDA
CITY HALL, 404 EAST NELSON STREET
JANUARY 11, 2018
7:00 P.M.**

Call to Order

1. **Roll Call** ____ Roberts ____ Longanecker ____ Crooks ____ Brown ____ Crist ____ Conus
2. **Welcome**
3. **Pledge of Allegiance**
4. **Official 2017 Fall Election Results:**
 - Donald Roberts, Mayor
 - Ron Conus, City Council
 - Josh Lewis, City Council
5. **Installation of Mayor and City Council and Oath of Office.** The City Clerk will administer the Oath of Office.

Consent Agenda *(Consent Agenda items will be acted upon by one motion unless a Council member requests an item be removed for discussion and separate action)*

6. Agenda Approval
7. Approve Minutes for December 14, 2017 City Council Meeting

Regular Agenda

8. **Public Comments.** Persons who wish to address the City Council regarding items not on the agenda and that are under the jurisdiction of the City Council may do so when called upon by the Mayor. Comments on personnel matters and matters pending before court or other outside tribunals are not permitted. Please notify the City Clerk before the meeting if you wish to speak. Speakers are limited to three (3) minutes. Any presentation is for informational purposes only. No action will be taken.
9. **Declaration.** At this time Council members may declare any conflict or communication they have had that might influence their ability to impartially consider today's issues.

Business Requiring Action

10. **CONSIDER DESIGN AGREEMENT AND SCOPE OF SERVICES WITH HDR FOR 207TH STREET GRADE SEPARATION PROJECT**

Motion: _____ Second: _____ Vote: _____

11. **Report by the City Administrator**

12. **Report by the Mayor**

13. **Future Meeting/Event Reminders:**

- January 17th Noon – Senior Lunch
- January 25th 7:00 PM – City Council meeting

- February 8th 7:00 PM – City Council meeting
- February 13th 7:00 PM – Planning Commission Meeting
- February 15th 6:00 PM – State of the City
- February 19th – City Offices Closed in observance of Presidents' Day
- February 21st Noon – Senior Lunch
- February 22nd 7:00 PM – City Council Meeting

**14. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319
(b) (6) FOR PRELIMINARY DISCUSSION RELATED TO ACQUISITION OF REAL
PROPERTY TO INCLUDE CITY ATTORNEY AND CITY ADMINISTRATOR**

Motion: _____ Second: _____ Vote: _____

RECONVENE INTO OPEN SESSION

**15. CONSIDER RECESSING INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319
(B) (2) FOR CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE
ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY, BOND
COUNSEL, FINANCIAL ADVISOR AND CITY ADMINISTRATOR**

RECONVENE INTO OPEN SESSION

16. Adjourn Motion: _____ Second: _____ Vote: _____

**City of Edgerton, Kansas
Minutes of City Council Regular Session
December 14, 2017**

A Regular Session of the City Council was held in the Edgerton City Hall, 404 E. Nelson Edgerton, Kansas on December 14th, 2017. The meeting convened at 7:00 p.m. with Mayor Roberts presiding.

1. ROLL CALL

Darius Crist	present
Jody Brown	present
Ron Conus	present
Clay Longanecker	present
Cindy Crooks	present

With a quorum present, the meeting commenced.

Staff in attendance:	City Administrator Beth Linn
	Assistant City Administrator Scott Peterson
	City Attorney Lee Hendricks
	Public Works Superintendent Trey Whitaker
	Finance Director Karen Kindle
	Parks Bob McVey
	Mike Mabrey Utility Superintendent
	Nikki Walford Account Clerk
	Katy Crow Development Services Director

2. WELCOME

3. PLEDGE OF ALLEGIANCE

CONSENT AGENDA

4. Agenda Approval was considered and approved
5. Approval of Minutes from November 9, 2017 was considered and approved
6. Approval of Animal Permit for H.M. and B.K. Damet for 202 West 8th Street was considered and approved
7. Approval of Animal Permit for Glyn Powers at 1606 West 8th Street was considered and approved
8. Approval of Animal Permit for Sergio Galaz at 1300 West Braun Street was considered and approved
9. Approval of Animal Permit for Michael Mabrey at 1200 West Braun was considered and approved
10. Approval of Animal Permit for Jarold and Sharon Owens at 410 West Braun was considered and approved
11. Approval of Animal Permit for Darius Crist at 510 West Braun Street was considered and approved
12. Approval of Animal Permit for Marvin Vail at 1405 West 8th Street was considered and approved
13. Approval of Renewal of a Cereal Malt Beverage License Application for 2018 was considered and approved
14. Approve Resolution No. 12-14-17A Declaring the Boundaries of the City of Edgerton,

Johnson County, Kansas was considered V

15. Approve Resolution No. 12-14-17B Establishing Fees and Rates for Permits, Licenses And Services within the City of Edgerton, Kansas was considered and approved
16. Approve Amendment No. 2 to the Loan Agreement with KDHE for Project No. 2903 was considered and approved
17. Approve Final Acceptance of the Automated Meter Reading Project was considered and approved
18. Approve an Amendment to provide a continuation and modification to the Community Lakes Assistance Program Memorandum of Understanding between the City of Edgerton and The Kansas Department of Wildlife, Parks and Tourism **was pulled for separate consideration**
19. Approve Ordinance No. 1068 Establishing Big Bull Creek Wastewater Treatment Plant Major Maintenance Reserve Fund in the City Of Edgerton Pursuant To the Contract For Services for Construction of Wastewater Improvements and Transportation and Treatment of Wastewater in an area between The City of Edgerton, Kansas and Gardner, Kansas was considered and approved

Motion by Longanecker, seconded by Crooks, to approve the consent agenda, except for Item # 18, Council would like more information on this item.

Motion was approved, 5-0.

Item number eighteen, an Amendment to provide a continuation and modification to the Community Lakes Assistance Program Memorandum of Understanding between the City of Edgerton and The Kansas Department of Wildlife, Parks and Tourism was discussed by the Mayor and City Council. After discussion and questions about the Lake Program with the Kansas Department of Wildlife, Parks and Tourism the item was brought to a vote.

Motion by Longanecker, seconded by Brown, to approve the Assistance Program with a ten-year term.

Motion was approved, 5-0.

20. PUBLIC COMMENTS

None

21. DECLARATION

None

22. PRESENTATION BY PROJECT GRADUATION

Gardner Edgerton High Schools, Project Graduation, President Tammy Hohn Waterman, was present to discuss and answer any questions about project graduation. They are requesting a donation this year as they have in the past for the same amount as in previous years. The donations are used for venue rental, prizes, food and etc.

Motion by Crooks, seconded by Crist, to donate \$1000.00 to GEHS Project Graduation.

Motion was approved, 5-0.

23. PRESENTATION BY KWIKOM

Zachery D. Peres with Kwikom Communications was present to give an introduction about Kwikom Communications to the Mayor and City Council. Mr. Peres stated they cover approximately 9,000 square miles and 20-30 municipalities. Kwikom Communications is based out of Iola, Kansas. Mayor Roberts asked that the contract be studied and our current tower maintenance company contract be studied. The Mayor told Mr. Peres "Great Job with our Citizens."

BUSINESS REQUIRING ACTION

WATER AND SEWER UTILITY RATE STUDY

24. WATER AND SEWER UTILITY RATE STUDY REPORT AS PREPARED BY RAFTELIS FINANCIAL CONSULTANTS WAS CONSIDERED.

Karen Kindle Finance Director for the City of Edgerton introduced Tom Beckley. Tom works for Raftelis Financial Consultants Inc. and was present to discuss the water and sewer rate study. He stated that the water and sewer rates will increase. A water increase is recommended for 2% per year, from 2018-2023. Raftelis has recommended a 5% increase in the sewer rates for the next three years and then the increase will decrease slowly for the next few years. The rates will be in the December, 2017 Newsletter.

Motion by Crooks, seconded by Brown, to formally accept the rate study from Raftelis Financial Consultants Inc to begin with the March 1st, 2018 bill. The City Attorney will make the proper changes for the fees.

Motion was approved, 5-0.

MAINTENANCE AGREEMENT WITH JOHNSON COUNTY LIBRARY

25. FACILITY USE AND MAINTENANCE AGREEMENT WITH JOHNSON COUNTY LIBRARY FOR EDGERTON LIBRARY WAS CONSIDERED.

Lee Hendricks City Attorney made some changes in the agreement with the Board of Directors for the Johnson County Library for the use of the Bank of Knowledge as a library facility for the citizens of Edgerton. The fees have not changed.

Motion by Longanecker, seconded by Crist, to approve the agreement with the Johnson County Library Board.

Motion was approved, 5-0.

AGREEMENT WITH THE JOHNSON COUNTY SHERIFF'S FOR 2018

26. AGREEMENT WITH THE JOHNSON COUNTY SHERIFF'S DEPARTMENT FOR THE PROVISION OF LAW ENFORCEMENT SERVICES FOR FISCAL YEAR 2018 AND AUTHORIZES THE MAYOR TO EXECUTE THE AGREEMENT WAS CONSIDERED.

The City of Edgerton contracts with the Johnson County Sheriff's Office to provide law enforcement services to the citizens of Edgerton. The services, as described in the agreement for 2018, are identical to previous years. However, the annual cost of the contract increased by 7.57%. The approved 2018 includes the amount contracted for the law enforcement services for the Johnson County Sheriff's Office.

Motion by Crooks, seconded by Longanecker, to approve the Agreement with the Johnson County Sheriff's Department for 2018.

Motion was approved, 5-0.

MAINTENANCE AGREEMENT WITH EDGERTON HISTORIC SOCIETY

27. A FACILITY USE AND MAINTENANCE AGREEMENT WITH EDGERTON HISTORIC SOCIETY FOR EDGERTON COMMUNITY MUSEUM WAS CONSIDERED.

In 2017, the agreement added a few minor changes from previous agreements and the agreement for 2018 is the same as 2017. The fee is the same as it has always been. The agreement is valid for one year beginning January 1, 2018 through December 31, 2018.

Motion by Crooks, seconded by Crist, to approve the maintenance agreement with Edgerton Historic Society.

Motion was approved, 5-0.

CONTRACT WITH WEATHER OR NOT, INC.

28. APPROVAL OF CONTRACT WITH WEATHER OR NOT, INC. TO PROVIDE WEATHER FORECASTING SERVICES WAS CONSIDERED.

Trey Whitaker, Public Works Superintendent, presented to Mayor and City Council information about the contract with WEATHER OR NOT, INC. He stated that it simply takes out the guess work. The Public Works uses WEATHER OR NOT every day to plan projects. The Mayor stated that during Frontier Days, Weather Or Not, was used and it was amazing how accurate they are.

Motion by Longanecker, seconded by Crooks, to approve the contract with WEATHER OR NOT, INC.

Motion was approved, 5-0.

AGREEMENT TO PROVIDE PLANNING CONSULTANT SERVICES

29. AN AGREEMENT WITH RON WILLIAMSON TO PROVIDE PLANNING CONSULTANT SERVICES WAS CONSIDERED.

Scott Peterson, Assistant City Administrator, was present to discuss Ron Williamson's consultant services for the City of Edgerton. Mr. Peterson stated that Mr. Williamson started in Wichita in 1965 as a Planning Advisor then started his own business. Mayor agreed that we need to get this going as soon as possible.

Motion by Crooks, seconded by Longanecker, to approve a contract with Ron Williamson.

Motion was approved, 5-0.

PUBLIC HEARING – INDUSTRIAL REVENUE BOND, RESOLUTION NO 12-14-17C

30. PUBLIC HEARING REGARDING RESOLUTION NO. 12-14-17C CONSENTING TO THE PARTIAL ASSIGNMENT OF A RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY, LLC TO COLDPOINT LOGISTICS REAL ESTATE, LLC, OR ITS SUCCESSORS IN INTEREST WAS CONSIDERED.

Beth Linn, City Administrator, introduced Scott Anderson, Bond Counsel for the City of Edgerton, to present the background information regarding Resolution No 12-14-17C. The City of Edgerton has received an application for industrial revenue bonds and property tax abatement from ColdPoint Logistics Real Estate, LLC. ColdPoint wants to construct an approximately 173, 770 square foot expansion to an existing warehouse and cold-storage distribution facility. In order for the City of Edgerton to issue industrial revenue bonds and grant property tax abatement the City must first hold a public hearing and consider the cost-benefit report. Jeff White, Columbia Capital, presented the cost benefit analysis report.

Mayor Roberts opened the Public Hearing at 8:15 pm.

Mike Jensen, 15665 Moonlight Road, is with “cc4rg” (Concerned Citizens 4 Responsible Government member) and was present to make comments about the anhydrous ammonia used in the ColdPoint Buildings.

John Thomas, Vice President of Development with North Point Development, was present to answer any questions and to advise the Mayor and Council about how ColdPoint addresses the comments about the anhydrous ammonia. ColdPoint does not self regulate, they follow strict guidelines, they have a leak detection system on the computer and numerous other safety precautions.

Motion by Crooks, seconded by Longanecker, to close the Public Hearing.

Motion was approved, 5-0.

Public Hearing was closed at 8:28 pm.

RESOLUTION NO 12-14-17C PARTIAL ASSIGNMENT OF INDUSTRIAL REVENUE BONDS TO COLD POINT LOGISTICS

31. RESOLUTION NO 12-14-17C CONSENTING TO THE PARTIAL ASSIGNMENT OF A RESOLUTION OF INTENT FROM EDGERTON LAND HOLDING COMPANY, LLC TO COLDPOINT LOGISTICS REAL ESTATE, LLC, OR ITS SUCCESSORS IN INTEREST WAS CONSIDERED.

The Public Hearing was held and the cost benefit report was presented. There were no questions and no comments by the public or the Mayor and City Council.

Motion by Crooks, seconded by Brown, to approve Resolution No 12-14-17C.

Motion was approved, 5-0.

ORDINANCE NO. 1069 AUTHORIZING INDUSTRIAL REVENUE BONDS TO COLBY SERIES 17, LLC
32. ORDINANCE NO. 1069 AUTHORIZING BOND DOCUMENTS AND THE ISSUANCE OF THE CITY'S
INDUSTRIAL REVENUE BONDS (COLBY SERIES 17, LLC PROJECT) FOR THE PURPOSE OF FINANCING
A RETAIL BUILDING WAS CONSIDERED.

Scott Anderson, Bond Counsel for the City of Edgerton, was present to discuss and answer any questions about authorizing bond documents and the issuance of Industrial Revenue Bonds. These bonds are for the purpose of financing a retail building. The building will be for a Dollar General Store.

Motion by Brown, seconded by Crist, to approve Ordinance No. 1069.

Motion was approved, 5-0.

33. REPORT BY THE CITY ADMINISTRATOR

*Need approval for the permanent water line easement with Unified School District No. 231.

Motion by Crooks, seconded by Brown, to approve the Waterline Easement with the Unified School District No. 231.

Motion was approved, 5-0.

*Karen Kindle presented information about the automated meter reading project. Mike Mabrey, Utility Superintendent, and Nikki Walford, Account Clerk and Utility Clerk presented a power point presentation about the automated meter reading project. Mayor Roberts asked about a replacement schedule, moving forward. The replacement schedule is set for ten years or one million gallons. The battery life is supposed to be twenty years.

Motion by Longanecker, seconded by Crooks, to approve and accept the Final Acceptance of the Automated Meter Reading Project.

Motion was approved, 5-0.

*Beth Linn City Administrator introduced Katy Crow as the Development Services Director.

*Next item is to ratify the flood vehicle claim list from the flood, the list contains a new road grader. A new road grader has been purchased with insurance money (no loan).

Motion by Longanecker, seconded by Brown, to ratify the list of purchases that have been purchased.

Motion was approved, 5-0.

Mayor gave thanks to all staff, to throw in this much extra work on top of all of their regular duties, is "A lot of extra work."

Council member Crooks was in the Holiday spirit and made a motion to give city staff Friday the 22nd of December off as a holiday.

Motion by Crooks, seconded by Crist, to approve the extra holiday for the city staff.

Motion was approved, 5-0

Staff in attendance offered a big "THANK YOU"

34. REPORT BY THE MAYOR

Mayor Roberts did a recap of the year with a few items such as all the large buildings and warehouses in the Logistics Park Kansas City. There was some talk about the flood and how much time and work, city staff dedicated to this natural disaster, the overlay project that was completed this year. There were many other projects not mentioned, but several more have been completed.

35. FUTURE MEETING/EVENT REMINDERS:

December 22nd City Offices Closed - addition from current meeting

December 25th City Offices Closed

December 28th 7:00 PM- City Council Meeting

January 1st City Offices Closed

January 9th 7:00 PM Planning Commission Meeting

January 11th 7:00 PM City Council Meeting

January 17th Noon Senior Lunch

January 25th 7:00 PM – City Council Meeting

EXECUTIVE SESSION

36. RECESS INTO EXECUTIVE SESSION PURSUANT TO K.S.A. 75-4319 (b) (2) FOR CONSULTATION WITH AN ATTORNEY DEEMED PRIVILEGED IN THE ATTORNEY-CLIENT RELATIONSHIP TO INCLUDE CITY ATTORNEY, INTERMODAL BOND COUNSEL AND CITY ADMINISTRATOR WAS CONSIDERED.

Motion by Brown, seconded by Crist, to recess into executive session pursuant to K.S.A. 75-4319(b)(2) for contract negotiations for twenty minutes to include City Attorney, Lee Hendricks, City Administrator Beth Linn and Jeff White with Columbia Capital Municipal Advisors.

Motion was approved, 5-0.

Meeting recessed at 9:35 pm.

Motion by Crooks, seconded by Longanecker, to reconvene into regular meeting.

Motion was approved, 5-0.

Meeting reconvened at 9:55 pm.

Motion by Crooks, seconded by Crist, to return to executive session same as above for an additional fifteen minutes.

Motion was approved, 5-0.

Meeting recessed at 9:56 pm.

Motion by Crooks, seconded by Crist, to reconvene into regular meeting, with no action taken.

Motion was approved, 5-0.

Meeting reconvened at 10:11 pm.

37. ADJOURN MOTION: 1st Crooks 2nd Brown Vote 5-0

The meeting adjourned at 10:16 pm.

Janeice L. Rawles
City Clerk

Approved by the Governing Body on

AGENDA ITEM INFORMATION FORM

Agenda Item: Consider Design Agreement and Scope of Services With HDR For 207th Street Grade Separation Project

Department: Administration

Background/Description of Item: In June of 2017, the City of Edgerton issued a Request for Qualifications (RFQ) seeking qualifications from Design Teams for the design of a grade separation and bridge construction over the BNSF Railway crossing at the intersection of 207th Street and Co-Op Road. In contrast to the Waverly Road Grade Separation project, the 207th Grade Separation project will utilize a traditional design-bid-build process. This process allows the City ample time for analysis of alternate alignments, utility relocation and right-of-way acquisition.

RFQ submittals were due in July, 2017. The City received four submittals. The selection committee comprised of the City Administrator, Assistant City Administrator, City Engineer, Public Works Superintendent, and Johnson County Liaison interviewed all of the teams. Interviews were conducted August 9th and 10th. The selection committee recommends the selection of the HDR-RIC team as the most qualified team for the project.

SCOPE OF SERVICES

Please find enclosed with the packet a draft Agreement and Scope of Services for the project. Below is a summary of the scope of services included in this Agreement for Preliminary Engineering Study. The exact location of the proposed grade separation, and associated improvements, will be determined through the completion of this Preliminary Engineering Study (PES). This scope of services is for the study phase of the project and will take the project through the PES and the selection of the preferred alternative. A design phase scope of services will be developed at or near the conclusion of the study phase to continue the design services.

- **Data collection (\$24,910):** Develop design criteria including any requirement for KDOT as the project has been awarded construction funding through MARC STP program. Identification and location of existing utilities.
- **Alternative analysis and cost estimating (\$73,617):** Will evaluate up to 2 alignments including concept alignments and profiles for 207th street and its connections to Co-op Road; establish the improvement footprint; determine type, size, and location of the proposed bridge; and evaluate the impacts from drainage, right-of-way, and utilities. Will develop planning level engineer's estimate for each of the alternatives, inclusive of estimated utility relocation and ROW acquisition costs. Independent construction cost will compare the project cost and schedule impact for scenarios with and without federal funds.
- **Public Engagement (\$18,670):** Includes one public meeting (1) and one public officials' work sessions (1) for presentation of concept alignments and obtain feedback. Comments provided to City Council at work session for selection of a preferred concept to carry forward into the design phase.
- **Environmental Review (\$8,001):** Document high level background environmental information that would be beneficial in the development of alternatives for environmental constraints. Field review will be conducted to evaluate the general alignment areas to verify desktop review and make any new observations of potential environmental constraints that would be of value in development of concepts.
- **Project management (\$20,057):** Management of this project from notice to proceed through completion of the study phase.

The HDR team includes two subconsultants Renaissance Infrastructure Consulting and TFK Consulting. Both have experience with the City of Edgerton from the Waverly Road Grade Separation project.

COMPLETION TIME

The Draft Scope of Services includes the following timeline. Staff agrees generally the amount of time for each item. The dates will shift approximately two weeks should City Council approve the Agreement on January 11th.

- Jan 4, 2018: Notice to Proceed
- Jan 4 – Jan 29, 2018: Data Gathering
- Jan 29 – Mar 26, 2018: Concept Development
- Feb 26, 2018: Public Meeting
- April 23, 2018: Final PES Report

Following the acceptance of the Final PES report, staff would anticipate bringing forward the Design Agreement to complete the construction documents and administer the bid process. This project has an expected construction date of 2020.

BUDGET

The 207th Grade Separation project is an approved project on the LPKC List of Infrastructure Projects. The LPKC Agreement allocates approximately \$2,000,000 in funding for design of 207th Street in 2017. The remaining \$13,000,000 is allocated for construction related costs (construction, right-of-way acquisition, utility relocation, etc.). Total project budget is \$15,000,000. This project is funded completely from the Public Infrastructure Fund with no funding allocated from the General Fund. The City applied for two grants for construction from Johnson County CARS and Mid America Regional Council (MARC) STP funds. Both applications were successful. City Council will have the opportunity to consider those grants at time of construction.

This proposed Agreement for Preliminary Engineering Study with the HDR-RIC team is written to not exceed a total of \$145,254 to be funded from the Public Infrastructure Fund.

City Attorney has reviewed and approved the enclosed agreement. The insurance representative for the City of Edgerton is still reviewing this document.

Enclosures: Draft Agreement with HDR-RIC
Draft Scope of Services

Related Ordinance(s) or Statute(s):

Recommendation: Approve Design Agreement and Scope of Services With HDR For 207th Street Grade Separation Project in the amount of \$145,254.00 for the Preliminary Design Scope pending approval from City's Insurance Representative

Funding Source: Public Infrastructure Fund

Prepared by: Scott Peterson, Assistant City Administrator
Date: January 11, 2018

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between
City of Edgerton, Kansas _____ (“Owner”) and
HDR Engineering, Inc. _____ (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
207th Street Grade Separation _____ (“Project”).
Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:
The design of a grade separation over the BNSF Railroad Near the existing at-grade railroad crossing on 207th
Street in Edgerton, Kansas.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer’s services;
 - 2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01. After a disputed item has been settled, Engineer shall include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Reserved*

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties,

express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks

whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. Payments Upon Termination:

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement. One or more waivers by either party of any provision, term, condition or covenant shall not be constructed as a waiver of a subsequent breach of the same by the other party.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.

- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. – Not Used
- E. Exhibit E, Notice of Acceptability of Work. – Not Used
- F. Exhibit F, Reserved.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions. – Not Used
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

Engineer:

By: _____
Print name: _____
Title: _____
Date Signed: _____

By: _____
Print name: _____
Title: _____
Date Signed: _____

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Title: _____
Phone Number: _____
E-Mail Address: _____

Title: _____
Phone Number: _____
E-Mail Address: _____

This is **EXHIBIT A**, consisting of [8] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase (Preliminary Engineering Study)

The general scope of services is for the addition of a grade separation over the BNSF Railroad near the existing at-grade railroad crossing on 207th Street in Edgerton Kansas. The exact location of the proposed grade separation, and associated improvements, will be determined through the completion of a Preliminary Engineering Study (PES), inclusive of the following components:

- A) Alternative Analysis
- B) Cost Estimating
- C) Public Engagement

This scope of services is for the study phase of the project and will take the project through the PES and the selection of the preferred alternative. A design phase scope of services will be developed at or near the conclusion of the study phase to continue our design services.

A. Engineer shall:

1. Data collection

- a. HDR will collaborate with the City and County to develop a design criteria and schedule for the PES. The design criteria shall conform to the requirements outlined in the KDOT's Local Public Authority (LPA) Project Development Manual (December 2014), as the project has been awarded Federal STP Funds through Mid-America Regional Council. Johnson County, City, and APWA design criteria will be incorporated where allowable.
- b. Information available through Johnson County's Automated Information Mapping System (AIMS) will be the basis for the PES. Topographic survey, boundary survey, right-of-way survey, etc. will be obtain during the design phase and are excluded from the study phase. It is assumed that all available information available through AIMS will be provided by the City or County at no cost to HDR.
- c. HDR will coordinate with existing utilities to obtain record facility maps and easement information. Ownership and Encumbrance (O&E) reports are included in the scope of service to determine if utility easements are present beyond those reported by utilities. This information will be used to refine the estimated utility relocation costs.

2. Traffic analysis

Exhibit A – Engineer's Services

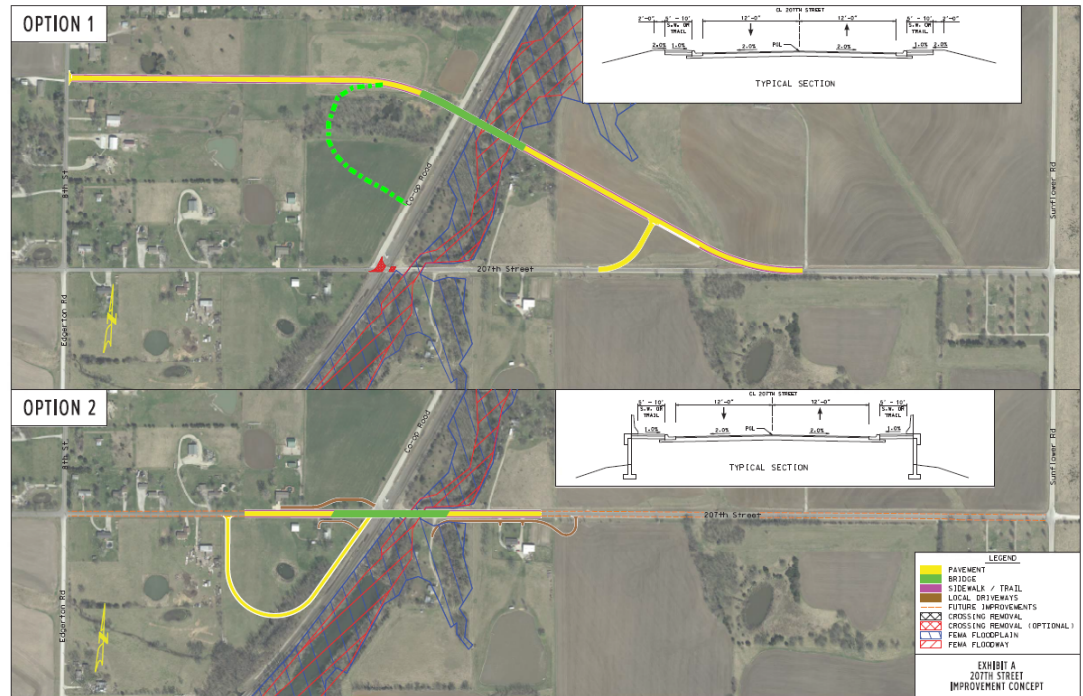
EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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Traffic analysis is excluded from the scope of work.

3. Alternative analysis and cost estimating

- a. HDR will evaluate up to 2 alignments with the PES. It is assumed that the 2 alternatives will be similar in length and general location to the ones shown below:



- b. For each alternative, it is anticipated that 207th will not be extended to 8th street/Edgerton Road. HDR will develop concept alignments and profiles for 207th street that connects to Co-op Road, establish the improvement footprint, determine type, size, and location (TS&L) of the proposed bridge, and evaluate the impacts from drainage, right-of-way, and utilities. Geotechnical investigation is excluded from this phase, but HDR will review available geology information in the area to preliminarily assess bridge foundation and pavement sections.
- c. HDR will develop planning level engineer's estimate for each of the alternatives, inclusive of estimated utility relocation and ROW acquisition costs. An independent construction cost estimate will be developed by a 3rd party who is well-versed in heavy highway and street construction.
- d. HDR will generate typical section and plan view exhibits (1 each) for each alternative. These exhibits will be used for public meetings and will be included in the concept report. The concept study report will summarize the design concepts, design criteria, cost estimate, ROW and utility impacts. Furthermore, it will also include text to compare the project cost and schedule impact for scenarios with and without federal funds.

4. Public Engagement

- a. Public Engagement will include one public meeting (1) and one public officials' work sessions (1). HDR will present concept alignments at the public meeting and obtain feedback from the attendees. The comments from the public meeting will be incorporated into the concepts to arrive at a preferred concept to carry forward into the design phase.
- b. It is assumed that all meetings will be held at the City Hall. HDR will prepare roll plot exhibits, handouts, comment forms, name tags etc. for each public and Officials' meeting. These exhibits will be the basis for the individual stakeholder/property owner meeting.
- c. HDR will collaborate with the City early on to develop the "Brand" / "Message" for this project. HDR will prepare meeting notification letters in the form of utility stuffer to be sent out by the City in advance of the each public meetings.
- d. Individual meetings with stakeholders are excluded from the scope work, but can be added should a need is identified during the PES.

5. Environmental Review

- a. The purpose of this task is to gather and document high level background environmental information that would be beneficial in the development of alternatives for environmental constraints. This would generally entail locating existing information such as National Wetland Inventory maps, NHD stream flow lines, FEMA floodplain maps, Section 7 threatened and endangered species lists/habitat requirements, hazardous or toxic waste records, land use plans, parkland sites, initial cultural resource agency coordination for Section 106 review, and review of various local, state and federal permitting requirements. Information available in GIS will be used to create mapping with conceptual alignments. This information will be reviewed and provided to the project team.
- b. A one day field review will be conducted to evaluate the general alignment areas to verify desktop review and make any new observations of potential environmental constraints that would be of value in development of concepts.
- c. The results of the desktop and field review will be condensed into a high level background environmental review document that evaluates potential constraints that inform design decisions early on. A draft and final Environmental Review document will be developed.
- d. Below are assumptions related to this task:
 - 1) No detailed field data collection such as wetland and stream delineations is provided; therefore, may limit the capability of HDR to provide definitive permitting needs.
 - 2) Best professional judgment will be used in the evaluation of environmental constraints using best available existing data.

- 3) No environmental alternatives analysis services are provided to compare, contrast, nor evaluate in individual detail, what the least damaging alternative are.
- 4) No environmental permitting services such as Corps of Engineers/KDHE 404/401 permitting or stormwater construction permitting are provided.
- 5) No Phase 1 Environmental Site Assessment due diligence services is provided.
- 6) No NEPA Categorical Exclusion (CE) or Environmental Assessment (EA) services are provided.

6. Project management

This scope of services includes management of this project from notice to proceed through completion of the study phase. This includes attending four monthly meetings with City personnel to provide an update on the progress of the project and to present the final recommendations. This scope of services includes contract administration, project monitoring, invoicing and maintaining coordination through internal team meetings for the duration of this project.

- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Preliminary Design Phase - to be added at a later date via amendment with Owner's Concurrence*

A1.03 *Final Design Phase - to be added at a later date via amendment with Owner's Concurrence*

A1.04 *Bidding or Negotiating Phase - to be added at a later date via amendment with Owner's Concurrence*

A1.05 *Construction Phase - to be added at a later date via amendment with Owner's Concurrence*

A1.06 *Post-Construction Phase - to be added at a later date via amendment with Owner's Concurrence*

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.

3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.

Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.

24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives, Change Proposals and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of [3] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Zoning, deed, and other land use restrictions.

2. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 3. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 4. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests, including but not limited to the review of Contract Documents supplied by Engineer.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: [None]

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

ARTICLE 2 – OWNER’S RESPONSIBILITIES

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, and attachment 1 included in Exhibit C, except for services of Engineer's Resident Project Representative, if any, as follows:

- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding [5] months from the receipt of a Written

Notice to Proceed (NTP). If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted. A representative schedule of service, with an assumed NTP date, is shown below:

- January 4, 2018 NTP
- Jan 4 – Jan 29, 2018 Data Gathering
- Jan 29 – March 26, 2018 Concept Development
- Feb 26, 2018 Public Meeting
- April 23, 2018 Final PES Report

Attachment 1

Appendix A - Fee Estimate (2 Alternatives)

City of Edgerton
207th Street over BNSF RR
Hour and Fee Estimate - HDR Engineering, Inc.

11/14/2017

		Hours																	Dollars														
		Principal	Proj Mgr	QC	Sr. Rdwy Eng	Rdwy Eng	Sr. Structural Eng	Structural Eng	Sr. Water Eng	Sr. Env Sci	Sr Traffic Eng	Traffic Eng	Traffic EIT	P.I. Mngr	GIS	Cad Tech	Acct	RIC Principal	SR RIC Engineer	RIC Engineer	RIC EIT	RIC Design Tech	RIC Tech	RIC PLS	TFK Consulting	Total Hrs	Budget +OH +Fixed Fee)	(Labor HDR Expenses	RIC Expenses	TFK Expense	Total Task Budget		
Billing Rate		264.00	234.00	234.00	156.00	111.00	177.00	102.00	243.00	165.00	240.00	153.00	90.00	195.00	126.00	81.00	99.00	180.00	155.00	120.00	90.00	85.00	54.00	125.00	150.00								
Preliminary Engineering Study																																	
A	Data Collection	Develop Draft design criteria for the project and prepare Draft design memorandum. Includes roadway design criteria and bridge design parameters including design and load rating vehicles, clearances, and future overlay allowances.																									6		\$1,200	\$0		\$1,200	
		Develop project concept design, preliminary, and final design schedule. Schedule to include: Concept phase and completion, Surveys and data collection complete, Preliminary plans complete, Preliminary Plans to utilities, Field check plans complete, Legal descriptions to City, public meetings, Agency permits submitted, Office Check plans submitted for review, PS&E submitted, and Project ready to bid. Submit copy to City and provide digital updates at scheduled progress meetings if necessary.																									4		\$936	\$0		\$936	
		Download, organize, and process Johnson County AIMS GIS data layers into CAD including aerial imagery, topography, property lines and ROW, contours and elevations, existing utilities, and flood plain information. AIMS will be the basis of existing information for the concept study phase. It is assumed that City and County will provide the data at no charge																									30		\$3,114	\$0		\$3,114	
		Develop DTM surface from AIMS LiDAR/contour information. AIMS GIS will be the basis for the conceptual geometry and grading limits/cross section production.																									9		\$1,256	\$0		\$1,256	
		Contact utilities and obtain record facility maps within study limits.																									54		\$5,208	\$0		\$5,208	
		Obtain and show City supplied existing record drawings/plans, existing plat information, and new/approved future site development plans (if any) in the existing topography and boundary drawings.																									51		\$5,208	\$0		\$5,208	
		Perform O&E research to identify existing utility easements. (25 parcels)																									58		\$5,988	\$0	\$2,000		\$7,988
		Subtotal																									0	212		\$22,910	\$0	\$2,000	\$0
B	Traffic	Traffic analysis excluded from scope of work																									0		\$0	\$0		\$0	
																											0		\$0	\$0		\$0	
		Subtotal																									0	0		\$0	\$0	\$0	\$0

Attachment 1

Appendix A - Fee Estimate (2 Alternatives)

City of Edgerton
207th Street over BNSF RR
Hour and Fee Estimate - HDR Engineering, Inc.

11/14/2017

		Hours																	Dollars														
		Principal	Proj Mgr	QC	Sr. Rdwy Eng	Rdwy Eng	Sr. Structural Eng	Structural Eng	Sr. Water Eng	Sr. Env Sci	Sr Traffic Eng	Traffic Eng	Traffic EIT	P.I. Mngr	GIS	Cad Tech	Acct	RIC Principal	SR RIC Engineer	RIC Engineer	RIC EIT	RIC Design Tech	RIC Tech	RIC PLS	TFK Consulting	Total Hrs	Budget (Labor +OH +Fixed Fee)	HDR Expenses	RIC Expenses	TFK Expense	Total Task Budget		
Billing Rate		264.00	234.00	234.00	156.00	111.00	177.00	102.00	243.00	165.00	240.00	153.00	90.00	195.00	126.00	81.00	99.00	180.00	155.00	120.00	90.00	85.00	54.00	125.00	150.00								
Preliminary Engineering Study																																	
C	Roadway																							0		\$0	\$0		\$0				
																								0		\$0	\$0		\$0				
																								4		\$612	\$0		\$612				
		Evaluate 207th Street Horizontal Alignment																						15		\$2,214	\$0		\$2,214				
		Evaluate CO-OP Road Alignment																						15		\$2,214	\$0		\$2,214				
		Evaluate Critical Driveway Alignments and Access																	1				2	4	4		11		\$1,190	\$0		\$1,190	
		Establish Vertical Alignments 207th St, CO-OP Road, Critical Driveways																	1				1	4	8		14		\$1,980	\$0		\$1,980	
		Develop 3D model and establishing conceptual limits of improvements																						13		\$1,746	\$0		\$1,746				
		Conceptual Enclosed Drainage Design																	2				4			7		\$1,024	\$0		\$1,024		
		Evaluate utility impacts																	2				8	0		11		\$1,264	\$0		\$1,264		
		Evaluate ROW impacts																	2				8	0	4		15		\$1,764	\$0		\$1,764	
		Exhibits																						0		\$0	\$0		\$0				
		Typical sections																						7		\$702	\$0		\$702				
		Prepare plan view roll plot for each alternative. Includes limits of street, street drainage, bridge, slope limits.																	2					4	10	10		26		\$3,012	\$0		\$3,012
		Conceptual engineer's cost estimate																						0		\$0	\$0		\$0				
		Roadway																	2					4	8		14		\$1,980	\$0		\$1,980	
		Drainage																						2	4		6		\$580	\$0		\$580	
		Utility Relocation																						2	4		6		\$580	\$0		\$580	
		ROW																						2	4		6		\$580	\$0		\$580	
		Prepare PES report for the Roadway components associated with the alternate. The report will include elements referenced above																	1				1	4	0		27		\$4,433	\$0		\$4,433	
		On Alignment Alternative (Option 2)																						0		\$0	\$0		\$0				
		Establish roadway typical sections, based on 2-lane section with Curb & Gutter and Enclosed Drainage																	2					4	4		11		\$1,244	\$0		\$1,244	
		Evaluate 207th Street Horizontal Alignment																	2					4	4		11		\$1,244	\$0		\$1,244	
		Evaluate CO-OP Road Alignment																	2					4	4		11		\$1,244	\$0		\$1,244	
		Evaluate Critical Driveway Alignments and Access																	1				2	4	4		12		\$1,424	\$0		\$1,424	
		Establish Vertical Alignments 207th St, CO-OP Road, Critical Driveways																	2					4	4		11		\$1,244	\$0		\$1,244	
		Develop 3D model and establishing conceptual limits of improvements																	2				16	8		27		\$3,144	\$0		\$3,144		
		Conceptual Enclosed Drainage Design																	2				4			7		\$1,024	\$0		\$1,024		
		Evaluate utility impacts																	2				8	0		11		\$1,264	\$0		\$1,264		
		Evaluate ROW impacts																	2				8	0	4		15		\$1,764	\$0		\$1,764	
		Exhibits																						0		\$0	\$0		\$0				
		Typical sections																	2					16	8		27		\$2,336	\$0		\$2,336	
		Prepare plan view roll plot for each alternative. Includes limits of street, street drainage, bridge, slope limits.																	2					16	8		27		\$2,336	\$0		\$2,336	
		Conceptual engineer's cost estimate																						0		\$0	\$0		\$0				
		Roadway																	8					0		9		\$1,194	\$0		\$1,194		
		Drainage																	4					0		5		\$714	\$0		\$714		
		Utility Relocation																	4					0		5		\$714	\$0		\$714		
		ROW																	4					0		5		\$714	\$0		\$714		
		Prepare PES report for the Roadway components associated with the alternate. The report will include elements referenced above																	1				4	12	8		25		\$2,920	\$0		\$2,920	
																								0		\$0	\$0		\$0				
		Evaluate trail connectivity (preferred alternative only)																	1				6	0		9		\$1,578	\$0		\$1,578		
		Independent 3rd party Estimate and Meetings																						41		\$6,618	\$0		\$6,618				
		Constructability Review & Meetings																						21		\$3,618	\$0		\$3,618				
																						0		\$0	\$0		\$0						
Subtotal		0	42	5	30	62	0	0	0	0	0	0	0	0	0	14	0	5	41	66	56	84	16	8	62	491	\$62,213	\$0	\$0	\$0	\$62,213		

Attachment 1

Appendix A - Fee Estimate (2 Alternatives)

City of Edgerton
207th Street over BNSF RR
Hour and Fee Estimate - HDR Engineering, Inc.

11/14/2017

			Hours																Dollars														
																			SR			RIC	RIC	RIC	RIC	TFK Consulting	Total Hrs						
			Principal	Proj Mgr	QC	Sr. Rdwy Eng	Rdwy Eng	Sr. Structural Eng	Structural Eng	Sr. Water Eng	Sr. Env Sci	Sr Traffic Eng	Traffic Eng	Traffic EIT	P.I. Mngr	GIS	Cad Tech	Acct	RIC Principal	RIC Engineer	RIC Engineer	RIC EIT	RIC Design Tech	RIC Tech	RIC PLS			Budget +OH +Fixed Fee)	(Labor HDR Expenses	RIC Expenses	TFK Expense	Total Task Budget	
Billing Rate		264.00	234.00	234.00	156.00	111.00	177.00	102.00	243.00	165.00	240.00	153.00	90.00	195.00	126.00	81.00	99.00	180.00	155.00	120.00	90.00	85.00	54.00	125.00	150.00								
Preliminary Engineering Study																																	
D	Bridge and H&H	Develop conceptual bridge layout including span lengths, abutment locations, and structure types for each of the 4 scenarios. BNSF vertical and horizontal clearance requirements will be met and layout will be coordinated with the conceptual level review of floodplain/floodway mapping and model of the adjacent stream east of the Railroad. H&H analysis and model of the proposed structures are excluded.			2				8		12																34		\$4,080	\$0		\$4,080	
		Review profiles and develop conceptual wall layouts for each of the 4 scenarios.							3		4																11		\$1,263	\$0		\$1,263	
		Develop concept level cost estimates for the four bridge options along with preliminary wall costs using per sq foot unit costs		1					2		4																7		\$996	\$0		\$996	
		Retrieve and review current regulatory floodplain and floodway models for the stream from HDR archived files or from FEMA Engineering Library														4											4		\$972	\$0		\$972	
		Review available aerial photography and topographic mapping, current FEMA Flood Insurance Studies and floodplain mapping including associated survey and GIS shape files of floodplain and floodway provided by City or other services.														8											8		\$1,944	\$0		\$1,944	
		Preliminary Engineering Study write ups for the Bridge and H&H portions of the report		1		1				4		4																10		\$2,148	\$0		\$2,148
																											0		\$0	\$0		\$0	
Subtotal		0	2	3	0	0	17	20	16	0	0	0	0	0	0	16	0	0	0	0	0	0	0	0	0	0	74	\$11,403	\$0	\$0	\$0	\$11,403	
E	Public Engagement	A. Prepare for one public information meetings to explain the project to property owners and key stakeholders and to receive public comments at a time and place arranged for by the City. The meetings will be at the project initiation phase (prior to options being developed) and also following the development of options and a final preferred option recommendation.		4		4							30													38		\$7,410	\$0		\$7,410		
		B. Prepare color exhibits/presentation boards showing the existing conditions and the proposed project improvements/options. Prepare meeting notification letters for distribution by City, name tags, sign in sheets, comment forms, 1 exhibit roll drawing and 1 typical section board per alternative, directional signs. Following the meeting organize and compile transcripts of all comment forms and verbal comments given to the design team during the meeting.		2		4	0		0					20		10											36		\$5,802	\$500		\$6,302	
		C. During the public meeting - have persons available to explain the proposed work and to answer questions. Assumes 3 HDR and 1 RIC Staff for 4 hours at one meetings, inclusive of public officials meetings		4		4								4					4								16		\$2,960	\$200		\$3,160	
		D. Council Work Sessions. Assume 1 work sessions with 3 people		3				3											3								9		\$1,698	\$100		\$1,798	
		Subtotal		0	13	0	12	0	3	0	0	0	0	0	54	0	10	0	0	7	0	0	0	0	0	0	0	99	\$17,870	\$800	\$0	\$0	\$18,670
F	Env. Review	Gather and document high level background environmental information that would be beneficial in the development of alternatives for environmental constraints.		1						9						6										16		\$2,205	\$0		\$2,205		
		Field review to confirm conditions only; does not include delineation of wetland/streams, does not include protected species survey, historic resources survey, etc. Does not include agency coordination or permitting								6																6		\$990	\$0		\$990		
		Memorandum of high level desktop/literature/field review and permitting requirements		1		2					18				9												30		\$4,806	\$0		\$4,806	
		Subtotal		0	2	2	0	0	0	0	33	0	0	0	0	9	6	0	0	0	0	0	0	0	0	0	0	52	\$8,001	\$0	\$0	\$0	\$8,001

Attachment 1

Appendix A - Fee Estimate (2 Alternatives)

City of Edgerton
207th Street over BNSF RR
Hour and Fee Estimate - HDR Engineering, Inc.

11/14/2017

		Hours																				Dollars										
																		SR				RIC	RIC	RIC	RIC	TFK	Total Hrs					
		Principal	Proj Mgr	QC	Sr. Rdwy Eng	Rdwy Eng	Sr. Structural Eng	Structural Eng	Sr. Water Eng	Sr. Env Sci	Sr Traffic Eng	Traffic Eng	Traffic EIT	P.I. Mngr	GIS	Cad Tech	Acct	RIC Principal	RIC Engineer	RIC Engineer	EIT	Design Tech	Tech	PLS	Consulting	Budget +OH +Fixed Fee		(Labor HDR Expenses	RIC Expenses	TFK Expense	Total Task Budget	
Billing Rate	264.00	234.00	234.00	156.00	111.00	177.00	102.00	243.00	165.00	240.00	153.00	90.00	195.00	126.00	81.00	99.00	180.00	155.00	120.00	90.00	85.00	54.00	125.00	150.00								
Preliminary Engineering Study																																
G	Project management and Administration	Kickoff Meeting	2		2		2											2	2					10	\$1,684	\$0			\$1,684			
		Progress Meeting with City, up to 5 people for 4 meetings over 4 months (monthly for 4 months)	6		6		6					3						6						27	\$4,917	\$0			\$4,917			
		Internal Team Meeting (bi-weekly meetings for 4 months)	8		4		4			4			4					4	0					28	\$5,264	\$0			\$5,264			
		Project Management (4 months))	2	8													8							18	\$3,192	\$2,500	\$2,500		\$8,192			
		Subtotal	2	24	0	12	0	12	0	0	4	0	0	0	7	0	0	8	0	12	2	0	0	0	0	83	\$15,057	\$2,500	\$2,500	\$0	\$20,057	
		Total	2	96	10	57	62	33	20	17	37	0	0	0	61	9	46	8	7	80	72	112	184	16	20	62	1011	\$137,454	\$3,300	\$4,500	\$0	\$145,254

Labor Costs			
Category	Hours		Rate
Principal	2	264	528
Proj Mgr	96	234	22,464
QC	10	234	2,340
Sr. Rdwy Eng	57	156	8,892
Rdwy Eng	62	111	6,882
Sr. Structural Eng	33	177	5,841
Structural Eng	20	102	2,040
Sr. Water Eng	17	243	4,131
Sr. Env Sci	37	165	6,105
Sr Traffic Eng	-	240	-
Traffic Eng	-	153	-
TrafficEIT	-	90	-
P.I.Mngr	61	195	11,895
GIS	9	126	1,134
Cad Tech	46	81	3,726
Acct	8	99	792
RIC Principal	7	180	1,260
SRRIC Engineer	80	155	12,400
RIC Engineer	72	120	8,640
RIC EIT	112	90	10,080
RICDesignTech	184	85	15,640
RICTech	16	54	864
RICPLS	20	125	2,500
TFK Consulting	62	150	9,300
Total	1,011		137,454

Estimated Fee (Lump Sum)	
HDR - Labor, Overhead, Profit	\$ 76,770
HDR - Dir Design Expenses (Dir Costs)	\$ 3,300
HDR	80,070

Subconsultants	
RIC - Labor, Overhead, Profit	\$ 51,384
RIC - Dir Design Expenses (Dir Costs)	\$ 4,500
TFK - Labor, Overhead, Profit	\$ 9,300
TFK Consulting - Dir Design Expenses (Dir Costs)	\$ -
Total Subconsultants	- 65,184

Estimated Direct Costs	
Reproduction services	3000
Telephone/Fax	0
Mapping, photos, etc.	2000
Postage & Shipping	0
Travel	2,800
Total Direct Costs	7,800

Fee Estimate	
HDR	80,070
Subconsultants (RIC - Labor, Overhead, Profit)	55,884
Subconsultants (RIC - Dir Design Expenses (Dir Costs))	9,300
Total	145,254

This is **EXHIBIT F**, consisting of [1] pages,
referred to in and part of the **Agreement
between Owner and Engineer for Professional
Services** dated [].

Reserved

Exhibit F – Reserved.

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and American Society of Civil Engineers. All rights reserved.

Page 1

This is **EXHIBIT G**, consisting of [2] pages,
referred to in and part of the **Agreement
between Owner and Engineer for Professional
Services** dated [].

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 Insurance

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- | | |
|--|--------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Bodily injury, each accident: | \$1,000,000 |
| 2) Bodily injury by disease, each employee: | \$1,000,000 |
| 3) Bodily injury/disease, aggregate: | \$1,000,000 |
| c. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | \$1,000,000 |
| 2) General Aggregate: | \$1,000,000 |
| d. Excess or Umbrella Liability -- | |
| 1) Per Occurrence: | \$1,000,000 |
| 2) General Aggregate: | \$1,000,000 |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | |
| | \$1,000,000 |
| f. Professional Liability -- | |
| 1) Each Claim Made | \$1,000,000 |
| 2) Annual Aggregate | \$1,000,000 |
| | \$[] |

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

- a. [HDR Engineering, Inc.]
 Engineer

 - b. [Renaissance Infrastructure Consulting]
 Engineer's Consultant

 - c. [Terracon]
 Engineer's Consultant

 - d. [TFK Consulting]
 [Engineer's Consultant]
- 2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.

 - 3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

This is **EXHIBIT H**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 Dispute Resolution

- A. *Mediation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by the American Arbitration Association. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of [2] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$1,000,000.

-
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to: loss of profits or revenue; loss of use or

opportunity; loss of good will; cost of substitute facilities, goods, or services; and/or cost of capital; fines or penalties.

- B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of [2] pages,
referred to in and part of the **Agreement
between Owner and Engineer for Professional
Services** dated [].

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- _____ Additional Services to be performed by Engineer
- _____ Modifications to services of Engineer
- _____ Modifications to responsibilities of Owner
- _____ Modifications of payment to Engineer
- _____ Modifications to time(s) for rendering services
- _____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

***Here describe the modifications, in as much specificity and detail as needed. Use an
attachment if necessary.***

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By: _____
Print
name: _____

Title: _____

Date Signed: _____

By: _____
Print
name: _____

Title: _____

Date Signed: _____

SCOPE OF SERVICES

The project is for the addition of a grade separation over the BNSF Railroad near the existing at-grade railroad crossing on 207th Street in Edgerton Kansas. The exact location of the proposed grade separation, and associated improvements, will be determined through the completion of a Preliminary Engineering Study (PES), inclusive of the following components:

- A) Alternative Analysis
- B) Cost Estimating
- C) Public Engagement

This scope of services is for the study phase of the project and will take the project through the PES and the selection of the preferred alternative. A design phase scope of services will be developed at or near the conclusion of the study phase to continue our design services.

1) Preliminary Engineering Study Phase

The PES phase is divided into 5 primary tasks listed below. See Appendix A for detail breakdown of task and estimated level of effort:

a. Data collection (\$24,910)

HDR will collaborate with the City and County to develop a design criteria and schedule for the PES. The design criteria shall conform to the requirements outlined in the KDOT's Local Public Authority (LPA) Project Development Manual (December 2014), as the project has been awarded Federal STP Funds through Mid-America Regional Council. Johnson County, City, and APWA design criteria will be incorporated where allowable.

Information available through Johnson County's Automated Information Mapping System (AIMS) will be the basis for the PES. Topographic survey, boundary survey, right-of-way survey, etc. will be obtain during the design phase and are excluded from the study phase. It is assumed that all available information available through AIMS will be provided by the City or County at no cost to HDR.

HDR will coordinate with existing utilities to obtain record facility maps and easement information. Ownership and Encumbrance (O&E) reports are included in the scope of service to determine if utility easements are present beyond those reported by utilities. This information will be used to refine the estimated utility relocation costs.

b. Alternative analysis and cost estimating (\$73,617)

HDR will evaluate up to 2 alignments with the PES. For each alternative, HDR will develop concept alignments and profiles for 207th street and its connections to Co-op Road, establish the improvement footprint, determine type, size, and location (TS&L) of the proposed bridge, and evaluate the impacts from drainage, right-of-way, and utilities. Geotechnical investigation is excluded from this phase, but HDR will review available geology information in the area to preliminarily assess bridge foundation and pavement sections.

HDR will develop planning level engineer's estimate for each of the alternatives, inclusive of estimated utility relocation and ROW acquisition costs. An independent construction cost estimate will be developed by a 3rd party who is well-versed in heavy highway and street construction.

HDR will generate typical section and plan view exhibits (1 each) for each alternative. These exhibits will be used for public meetings and will be included in the concept report. The concept study report will summarize the design concepts, design criteria, cost estimate, ROW and utility impacts. Furthermore, it will also include text to compare the project cost and schedule impact for scenarios with and without federal funds.

d. Public Engagement (\$18,670)

Public Engagement will include one public meeting (1) and one public officials' work sessions (1). HDR will present concept alignments at the public meeting and obtain feedback from the attendees. The comments from the public meeting will be considered in preparing to bring to City Council work session for selection of a preferred concept to carry forward into the design phase.

It is assumed that all meetings will be held at the City Hall. HDR will prepare roll plot exhibits, handouts, comment forms, name tags etc. for each public and Officials' meeting. These exhibits will be the basis for the individual stakeholder/property owner meeting.

HDR will collaborate with the City early on to develop the "Brand" / "Message" for this project. HDR will prepare meeting notification letters in the form of utility stuffer to be sent out by the City in advance of the each public meetings.

Individual meetings with stakeholders are excluded from the scope work, but can be added should a need is identified during the PES.

e. Environmental Review (\$8,001)

The purpose of this task is to gather and document high level background environmental information that would be beneficial in the development of alternatives for environmental constraints. This would generally entail locating existing information such as National Wetland Inventory maps, NHD stream flow lines, FEMA floodplain maps, Section 7 threatened and endangered species lists/habitat requirements, hazardous or toxic waste records, land use plans, parkland sites, initial cultural resource agency coordination for Section 106 review, and review of various local, state and federal permitting requirements. Information available in GIS will be used to create mapping with conceptual alignments. This information will be reviewed and provided to the project team.

A one day field review will be conducted to evaluate the general alignment areas to verify desktop review and make any new observations of potential environmental constraints that would be of value in development of concepts.

The results of the desktop and field review will be condensed into a high level background environmental review document that evaluates potential constraints that inform design decisions early on. A draft and final Environmental Review document will be developed.

Below are assumptions related to this task:

- No detailed field data collection such as wetland and stream delineations is provided; therefore, may limit the capability of HDR to provide definitive permitting needs.
- Best professional judgment will be used in the evaluation of environmental constraints using best available existing data.
- No environmental alternatives analysis services are provided to compare, contrast, nor evaluate in individual detail, what the least damaging alternative are.
- No environmental permitting services such as Corps of Engineers/KDHE 404/401 permitting or stormwater construction permitting are provided.
- No Phase 1 Environmental Site Assessment due diligence services is provided.
- No NEPA Categorical Exclusion (CE) or Environmental Assessment (EA) services are provided.

f. Project management (\$20,057)

This scope of services includes management of this project from notice to proceed through completion of the study phase. This includes attending four monthly meetings with City personnel to provide an update on the progress of the project and to present the final recommendations. This scope of services includes contract administration, project monitoring, invoicing and maintaining coordination through internal team meetings for the duration of this project.

2) Sub-Consultant

The tasks from the study phase will be performed by a team of professionals from two sub-consultants: Renaissance Infrastructure Consulting, and TFK Consulting.

3) Completion Time

The Consulting Engineer hereby agrees to complete the above scope of work per the schedule outlined below. This schedule assumes timely reviews, input, and data-provision by City Staff:

- | | |
|---------------------------|---------------------|
| • January 4, 2018 | NTP |
| • Jan 4 – Jan 29, 2018 | Data Gathering |
| • Jan 29 – March 26, 2018 | Concept Development |
| • Feb 26, 2018 | Public Meeting |
| • April 23, 2018 | Final PES Report |