



NOTICE OF PUBLIC MEETING

**The Adel City Council will meet in regular session in the council chambers at Adel City Hall,
301 S. 10th Street, Adel, Iowa, on Monday, August 28, 2017, at 6:00 PM**

AGENDA

PUBLIC HEARING

1. Proposed Authorization of a Loan Agreement and the Issuance of Not to Exceed \$1,800,00 Storm Water Revenue Capital Loan Notes

COMMENTS FROM THE PUBLIC

CONSENT AGENDA

- a) Consider Approval of Beggars' Night for Tuesday, October 31 from 6:00 p.m. to 8:00 p.m.

DEPARTMENT HEAD REPORT

Update on Wireless Proposals for City Water Tower

NEW BUSINESS

- a) Discussion / Possible Action on Budget Committee's Discussions and Next Steps regarding Modifications to the Residential Tax Abatement Program
- b) Consider Approval of Ordinance No. 322, Revisions to Subdivision Regulations – First Reading
- c) Consider Approval of Resolution No. 17-49, Instituting Proceedings to Take Additional Action for the Authorization of a Loan Agreement and the Issuance of Not to Exceed \$1,800,000 Storm Water Revenue Capital Loan Notes
- d) Consider Approval of Agreement with McClure Engineering for Adel Storm Water Utility Improvements – Phase 1 as Required by USDA-RD
- e) Consider Approval of Legal Services Agreement with Ahlers & Cooney for Adel Storm Water Utility Improvements – Phase 1 as Required by USDA-RD

OTHER BUSINESS

8/24/2017 7:43:52 PM



NOTICE OF PUBLIC MEETING

The Adel City Council will meet in regular session in the council chambers at Adel City Hall, 301 S. 10th Street, Adel, Iowa, on Monday, August 28, 2017, at 6:00 PM

AGENDA

PUBLIC HEARING

1. Proposed Authorization of a Loan Agreement and the Issuance of Not to Exceed \$1,800,00 Storm Water Revenue Capital Loan Notes

This public hearing, which is part of the proceedings for the upcoming storm water projects, was set at the July 24 council meeting. As of Thursday, August 24, no written or oral comments have been received.

COMMENTS FROM THE PUBLIC

CONSENT AGENDA

- a) Consider Approval of Beggars' Night for Tuesday, October 31 from 6:00 p.m. to 8:00 p.m.

DEPARTMENT HEAD REPORT

Update on Wireless Proposals for City Water Tower

At its June 13 meeting, the Adel City Council directed City staff and McClure Engineering, the City's engineering firm, to work toward an agreement with two entities interested in providing wireless services from the City's south water tower. McClure has been reviewing the separate proposals from Minburn Communications and Todd Chapman as well as existing agreements that the City has with three other wireless providers operating on the City's north and south water towers.

McClure has determined that a structural analysis will not be necessary given the details of the two proposals. City staff will continue to work with McClure on its review of the proposals and the existing agreements. In particular, McClure has advised that the parameters of any new agreements, including the lease terms and liability of removing equipment from the water tower, be carefully considered in comparison with existing agreements.

NEW BUSINESS

- a) Discussion / Possible Action on Budget Committee's Discussions and Next Steps regarding Modifications to the Residential Tax Abatement Program

The City's Budget Committee, which was tasked with discussing modification proposals to the City's residential tax abatement program, will report to the full council on the two meetings the committee held this month. The committee has discussed several proposals and suggested that the full council determine the next steps in the process. If the council coalesces around a particular proposal, City staff will work with Attorney Nathan Overberg at Ahlers & Cooney to draft proceedings.

b) Consider Approval of Ordinance No. 322, Revisions to Subdivision Regulations – First Reading

After consultation with Mayor James F. Peters, this item has been placed back on the agenda for a first reading. The public hearing for this ordinance was held on August 8. The council packet includes responses from MSA Professional Services, the City’s consulting firm on this project, to written comments from the public hearing.

City Attorney John Reich has recommended that section 166.28.1 (i.e., “Granular Paving Adjacent to Subdivision”) be written as “may” instead of “shall” and that references to specific street types (e.g., arterial, collector) be struck. Reich stated that both changes provide the City with flexibility. Regarding the escrow time, MSA has suggested that five or ten years seems to be typical.

MSA has noted that no proposed revisions in the ordinance are out of the ordinary across the Des Moines metro. City staff is recommending approval of the first reading.

c) Consider Approval of Resolution No. 17-49, Instituting Proceedings to Take Additional Action for the Authorization of a Loan Agreement and the Issuance of Not to Exceed \$1,800,000 Storm Water Revenue Capital Loan Notes

The public hearing for this item was held earlier in the meeting. This resolution will take additional action for the loan portion of the upcoming storm water projects. Additional resolutions and action items for the projects will be taken at future council meetings. City staff is recommending approval.

d) Consider Approval of Agreement with McClure Engineering for Adel Storm Water Utility Improvements – Phase 1 as Required by USDA-RD

Based on USDA-RD requirements, McClure Engineering has provided an agreement for its services on the City’s upcoming storm water projects. While the City previously approved McClure’s work through the design and bidding phases, this agreement also covers the construction phase and is in the format required by USDA-RD. A representative from McClure will be on hand to answer any questions. City staff is recommending approval.

e) Consider Approval of Legal Services Agreement with Ahlers & Cooney for Adel Storm Water Utility Improvements – Phase 1 as Required by USDA-RD

This agreement with Ahlers & Cooney is required by USDA-RD for the City’s upcoming storm water projects. City staff is recommending approval.

OTHER BUSINESS

8/24/2017 8:19:52 PM

NOTICE OF MEETING OF THE CITY COUNCIL OF THE
CITY OF ADEL, IOWA ON THE MATTER OF THE
PROPOSED AUTHORIZATION OF A LOAN AGREEMENT
AND THE ISSUANCE OF NOT TO EXCEED \$1,800,000
STORM WATER REVENUE CAPITAL LOAN NOTES, AND
THE PUBLIC HEARING ON THE AUTHORIZATION AND
ISSUANCE THEREOF

PUBLIC NOTICE is hereby given that the Council of the City of Adel, Iowa, will hold a public hearing on the 28th day of August, 2017, at 6:00 P.M., in the Council Chambers, City Hall, 301 S. 10th Street, Adel, Iowa, at which meeting the Council proposes to take additional action for the authorization of a Loan Agreement and the issuance of not to exceed \$1,800,000 Storm Water Revenue Capital Loan Notes, at a rate not exceeding 9%, to evidence the obligations of the City under said Loan Agreement, in order to provide funds to pay the costs of improvements and extensions to the Municipal Storm Water Utility, including the construction of improvements along Lynn Drive, S. 14th Street, S. 11th Street, Horse "n" Buggy Lane and Pleasant Street, and refunding any outstanding Project Notes with accrued interest thereon issued in payment for such project. The Notes will not constitute general obligations or be payable in any manner by taxation, but will be payable from and secured by the Net Revenues of the Storm Water Utility. Pursuant to Sections 161.09(2) and 161.09(3) of Chapter 161 of the Code of Ordinances of the City of Adel, Storm Water Utility charges are imposed upon and collected from the owners or occupants of all lots, parcels of real estate, and buildings within the corporate limits of the city that discharge storm water or surface or subsurface waters, directly or indirectly, to the City storm water drainage system, as follows: (1) Undeveloped properties: Zero dollars (\$0.00) per month; (2) Developed properties with impervious coverage less than two (2) times the average impervious coverage, or 6,000 square feet: (i) from July 1, 2017 through June 30, 2018, three dollars and twenty cents (\$3.20) per month; (ii) from July 1, 2018 through June 30, 2019, three dollars and forty cents (\$3.40) per month; and (iii) from July 1, 2019 through June 30, 2020, three dollars and sixty cents (\$3.60) per month; and (3) Developed properties with impervious coverage equal to or greater than two (2) times the average impervious coverage, or 6,000 square feet: (i) from July 1, 2017 through June 30, 2018, three dollars and twenty cents (\$3.20) per month per equivalent service unit (ESU) of impervious surface; (ii) from July 1, 2018 through June 30, 2019, three dollars and forty cents (\$3.40) per month per equivalent service unit (ESU) of impervious surface; and (iii) from July 1, 2019 through June 30, 2020, three dollars and sixty cents (\$3.60) per month per equivalent service unit (ESU) of impervious surface. The average impervious coverage of a detached dwelling unit property in the City of Adel has been determined by the City to be 3,000 square feet of impervious surface area. In addition, pursuant to Section 161.19 of Chapter 161 of the Code of Ordinances of the City of Adel, every person, firm, or corporation whose premises are directly or indirectly served by a connection to the City Storm Water Utility System shall pay a community storm water initiative surcharge in the amount of three dollars (\$3.00) per month beginning July 1, 2017, and six dollars (\$6.00) per month beginning July 1, 2018.

At any time before the date of the meeting, a petition, asking that the question of issuing such Notes be submitted to the legal voters of the City, may be filed with the Clerk of the City, in the manner provided by Section 362.4 of the Code of Iowa, pursuant to the provisions of Section 384.84A of the Code of Iowa.

At the above meeting the Council shall receive oral or written objections from any resident or property owner of the City, to the above action. After all objections have been received and considered, the Council will at this meeting or at any adjournment thereof, take additional action for the authorization of said Loan Agreement and the issuance of Note or will abandon the proposal to issue the Notes.

This Notice is given by order of the Council of Adel, Iowa, as provided by Sections 384.24A and 384.84A of the Code of Iowa, as amended.

Dated this 24th day of July, 2017.

Brittany Sandquist
Deputy City Clerk of Adel, Iowa



More ideas. Better solutions.®

Memo

To: City of Adel
From: MSA Project Team
Subject: Notes on the Subdivision Draft
Date: May 31, 2017

Please find the attached Adel Subdivision Ordinance Draft. The text highlighted in yellow are suggested added text that is not currently in the existing subdivision ordinance. The text that is crossed out, is in the current ordinance but is suggested to be removed going forward. There were several items that came up during the Subdivision Ordinance Update process that were discussed and addressed but not included in the subdivision ordinance because it is not the right place for these items. These items include the following:

Fees

The fees need to be separate from the subdivision ordinance in a schedule of fees with a check list to follow in order to move on to the next phase of a development. These fees should be discussed with the city engineer to ensure costs are covered and it should be reviewed each year and adjusted as needed by City Resolution.

Trees

This is a separate City Ordinance but the discussion was to ban street trees going forward and to require two trees of a diverse species on any new residential development.

Overflow Easements on Built Lots

The final checklist should include shooting the four corners of the lot prior to a certificate of occupancy.

Maintenance

The maintenance code should enforce any property mowing etc. issues that could come up on a lot that is not currently built out. Maintenance agreements should enforce the new plantings and proper erosion control and should follow SUDAS standards for steep slopes.

Offices in Illinois, Iowa, Minnesota, and Wisconsin

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CHAPTER 166

SUBDIVISION REGULATIONS

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GENERAL PROVISIONS AND DEFINITIONS

166.1 PURPOSE. The purpose of this chapter is to provide rules, regulations and standards to guide land subdivision in the City and in the area within two (2) miles of the City limits in order to promote the public health, safety, convenience and general welfare of the City. This chapter shall be administered to ensure the orderly growth and development, the conservation, protection and proper use of land and adequate provision for circulation, utilities and services. To ensure the fulfillment of the purposes of this chapter the City, pursuant to Section 354.9 of the Code of Iowa, does hereby exercise its right of review and approval of all land subdivisions within an area of two (2) miles of the City's corporate limits.

166.2 DEFINITIONS. For purposes of these regulations, certain terms or words used herein shall be interpreted as follows:

1. "Alley" means a minor way, dedicated to the public use, which is used primarily for vehicular access to the back or the side of properties otherwise abutting on a street.
2. "Block" means a piece or parcel of land entirely surrounded by public highways, streets, streams, railroad right-of-way, parks, etc., or a combination thereof.
3. "Building line" means a line on a plat generally parallel to the street right-of-way, indicating the limit beyond which buildings or structures may not be erected.
4. "City Engineer" means the City official responsible for the design, supervision and maintenance of all public works of the City or a duly authorized consulting engineer retained by the City.
5. "Cul-de-sac" means a minor street having one end open to traffic and being permanently terminated by a vehicular turn-around.
6. "Days" refers to calendar days.

7. “Developer” means the owner, or agent under legal authority of the owner, or owners who undertake to cause a parcel of land to be designed, constructed, and recorded as a subdivision. This term may be used interchangeably with the term “subdivider.”
8. “Easement” means a grant by the property owner to the public, a corporation, or persons, of the use of a parcel of land for a specific purpose.
9. “Final plat” means a drawing to engineering accuracy and containing the items specified by these regulations indicating the layout of lots, blocks and public ways in a completed and improved subdivision along with legal papers required for recording.
10. “General plan” means the plan or series of plans for the future development of the City and approved, as may be required, as the guide for future development. Such plan may alternatively be called by such descriptive terms as a master plan, a comprehensive plan, or a development plan.
11. “Improvements” means changes and additions to land necessary to prepare it for building sites, and including street paving and curbing, grading, monuments, drainage ways, sewers, fire hydrants, water mains, sidewalks, pedestrian ways, and other public works and appurtenances.
12. “Lot” means a portion of a subdivision, or other parcel of land, intended as a unit for transfer or for development.
13. “Pedestrian way” means a right-of-way dedicated to public use, which cuts across a block to facilitate pedestrian access to adjoining streets or properties.
14. “Planning Commission” means the Planning and Zoning Commission of Adel.
15. “Plat” means a map drawn to scale from an accurate survey and including items set forth herein along with all certificates and statements required herein and by statute, for the purpose of recording as a subdivision of land. Without modifying adjectives it refers to land subdivision documents which have been officially recorded. In appropriate context a plat may refer to the land represented by a recorded plat and may be synonymous with the word “subdivision.” It may also be used as a verb referring to the act of preparing a plat.
16. “Preliminary plat” means a drawing with supporting documents which represents a proposal upon which a final plat is to be based. A preliminary plat is not intended as a document to be filed of record.
17. “Replat” or “resubdivision” means a plat representing land which has previously been included in a recorded plat.
18. “Street” means a right-of-way, dedicated to public use, which affords a primary means of access to the abutting property.
19. “Street, arterial” means a street of considerable continuity connecting various sections of the City, or a street primarily designated for heavy traffic.
20. “Street, collector” means a street which carries traffic from a local or residential street to an arterial street.
21. “Street, local or residential” means a street which is used primarily for access to the abutting properties.

22. "Street, service" means a local or residential street or frontage road which is approximately parallel to and adjacent to or part of an arterial street and provides access to the abutting properties and protection from through traffic.
23. "Subdivider" means the person or firm causing a plat to be prepared.
24. "Subdivision" means a parcel of land which has been platted; the act of preparing a plat.

All other terms used in these regulations shall have their normal meaning, except that terms common to engineering and surveying shall be used in their professional sense.

166.3 APPLICATION OF SUBDIVISION REGULATIONS; AREA. Any plat hereafter made or any subdivision or any part thereof lying within the limits of the City or in unincorporated territory within an area extending two (2) miles beyond the City limits shall be prepared, presented for approval, approved and presented for recording as herein prescribed. These regulations are enacted under the authority of Section 354.9 of the Code of Iowa and provide authorized additions to the provisions of Chapter 354 of the Code of Iowa.

166.4 APPLICATION OF SUBDIVISION REGULATIONS; LAND DIVISIONS. The regulations contained herein apply to the subdivision of a lot, tract or parcel of land into three (3) or more lots, tracts or other division of land for the purpose of sale, transfer or of building development, whether immediate or in the future, including the resubdivision or replatting of land or lots. These regulations shall apply to each situation where there is a dedication of a street, alley, easement or land for other public uses. The above provisions shall not be construed to limit the acceptance of deeds to right-of-way or land for other purposes by the Council or other agency of government when such acceptance is in the public interest and not for the purpose of circumventing these regulations.

166.5 AGRICULTURAL LAND EXEMPTION. The division of land for agricultural use into parcels, all of which are ten (10) acres or more in area and have four hundred (400) feet or more of street or road frontage and which do not involve the creation of any new street or road, easement or other dedication, shall be exempt from the requirements of these regulations, provided however, that the provisions of applicable statutes and regulations are complied with.

166.6 DIVISION OF PLATTED LOTS. The division or consolidation of existing platted lots or parts of existing platted lots by description for the purpose of sale or development shall not be considered a subdivision within the scope of these regulations. However, any existing platted lot containing in excess of fifteen thousand (15,000) square feet which is to be divided into three (3) or more parcels intended as primary building sites or when such division involves a dedication to public use, such division shall fall within the jurisdiction of these regulations. The division and sale of a minor portion of any parcel of land for the purpose of adding land to an adjoining building site, when said adjoining parcel of land constitutes more than fifty percent (50%) of the newly created building site, shall not be counted as a division in determining the jurisdiction of these regulations.

166.7 APPROVALS NECESSARY. No plat or subdivision falling within the jurisdiction of these regulations shall be recorded or presented for recording under the provisions of Chapter 354 of the Code of Iowa until all provisions and approvals set forth herein have been met or obtained.

166.8 BUILDING PERMITS AND UTILITY CONNECTIONS PROHIBITED. No officer, employee, or agent of the City shall issue any building permit, make any water or sewer connection, or issue any permit for any water or sewer connection for any building or buildings constructed or proposed to be constructed on land divided contrary to the provisions of these regulations. No officer, agent or employee of the City shall perform or cause to be performed any construction or maintenance upon any street or public way purported to be dedicated as a public street or public way by virtue of being shown on a plat, unless such plat shall have been approved as provided by these regulations. The previously noted prohibitions shall not apply to any plat or dedication legally filed of record before the enactment of these regulations by the City.

166.9 IMPROVEMENTS TO BE COMPLETED. No final plat shall be approved for recording unless street and utility improvements necessary to serve the intended occupants of the subdivision have been completed in a satisfactory manner, as set forth herein, or other assurances are executed, as provided herein, that such improvements will be completed. The standards and details of design contained in sections 166.28 through 166.30 are intended only as minimum requirements and the subdivider should use standards consistent with the site conditions to assure an economical, pleasant, and durable neighborhood. All subdivisions shall conform to the comprehensive plan approved by the Commission and adopted by the Council.

PLATTING PROCEDURES

166.10 PLANNING CONFERENCE. Any owner, developer or agent wishing to subdivide a parcel of land shall contact the City and arrange for a planning conference with the City Administrator and Public Works Director. This conference shall be for the purpose of determining the general requirements to be met in developing the subdivision. If the subdivision does not involve new streets or utilities, the planning conference may be waived.

166.11 FINDINGS OF THE PLANNING CONFERENCE. The proceedings of the planning conference shall be informal and no records need to be kept. It shall be the responsibility of the subdivider to determine the areas of agreement among the conferees and the problems which must be explored further through individual conferences with departments charged with administering the provision of utilities, streets, drainage and other public facilities. During the conference the general features to be required in the subdivision will be determined. All agreements arrived at by the conferees shall be subject to ratification by the Planning Commission as a whole.

166.12 PRELIMINARY PLAT. After the subdivider has determined the general features to be required in the subdivision, the subdivider may proceed to cause a preliminary plat to be prepared. An application in writing for tentative approval of the preliminary plat, together with six (6) 24 x 36-inch prints and two (2) 11 x 17-inch prints thereof, shall be filed with the Planning Commission at least two (2) weeks before the meeting of the Planning Commission at which the preliminary plat is to be acted upon, along with the subdivision fee in accordance with the fee chart most recently approved by the Council.

166.13 FORM OF THE PRELIMINARY PLAT. The preliminary plat shall be drawn to a scale of one hundred (100) feet to an inch, or larger scale as may be approved by the Planning Commission, and shall show the following information:

1. The proposed name of the subdivision.
2. North point, scale and date.
3. The names and addresses of the subdivider and of the engineer or surveyor.
4. The tract designation and other description according to the real estate records of the City or County Auditor and Recorder, also the designation of the proposed uses of land within the subdivision.
5. The boundary lines (accurate in scale) of the tract to be subdivided.
6. Contours with intervals of five (5) feet or less, referred to official City datum.
7. The names of adjacent subdivisions or the names of record owners of adjoining parcels of unsubdivided land.
8. The location, widths, and names of all existing or platted streets or other public ways within or adjacent to the tract, existing permanent buildings, railroad rights-of-way, and other important features, such as section lines, political subdivision or corporation lines, and school district boundaries.
9. Existing sewers, water mains, culverts, or other underground structures, within the tract and immediately adjacent thereto with pipe sizes, grades, and locations indicated.

10. All parcels of land intended to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision, together with the purpose of conditions or limitations of such reservation, if any.
11. The layout, names, and widths of proposed streets, alleys and easements.
12. A plan of proposed water distribution system, sanitary sewers and storm sewers showing pipe sizes and the location of valves, fire hydrants, and fittings.
13. The layout, numbers, and scaled dimensions of proposed lots.
14. Indication of any portion of the subdivision for which a final plat is to be proposed when the subdivision is to be developed in stages.
15. The layout of proposed sidewalks.
16. The proposed zoning classification(s) for the subdivision as well as the existing zoning classifications of surrounding properties.

166.14 REVIEW AND APPROVAL OF PRELIMINARY PLAT. Upon receipt of the preliminary plat, the City shall cause copies thereof to be distributed to the representatives of any utility entities not under control of the Public Works Director. The recommendations of the utility companies shall be reported to the Planning Commission. The Planning Commission shall approve or disapprove a preliminary plat within sixty (60) calendar days of receipt unless a longer time is agreed upon with the subdivider. Upon approval or disapproval by the Planning Commission, the preliminary plat and the Planning Commission's recommendation shall be transmitted to the Council.

166.15 COUNCIL APPROVAL OF THE PRELIMINARY PLAT. The Council shall approve or disapprove the preliminary plat not later than the fourth regular meeting following the receipt of the report from the Planning Commission. The Council may give notice and hold public hearings.

166.16 EFFECT OF APPROVAL OF THE PRELIMINARY PLAT. Approval of the preliminary plat as set forth herein shall constitute authority to proceed with construction of the subdivision and preparation of the final plat subject to approval of detailed plans and specifications for improvements as set forth herein. The subdivision shall be constructed and the final plat prepared in conformity with the approved preliminary plat. Material deviation from such approved preliminary plat shall require resubmission for approval. Approval of a preliminary plat shall not constitute authority to sell lots, record the plat, advertise the future or conditional sale of lots based on the preliminary plat, or authority to construct permanent buildings in reliance upon the preliminary plat layout.

166.17 LARGE DEVELOPMENT STAGING PROCEDURE. In order to discourage premature subdivision and uneconomic improvements, the following procedure is provided for large development schemes:

1. When a developer or group of developers has in its control an area of land which such developer or group wishes to plat, the size of which is so large that the majority of the lots would take more than a year to sell, the developer may cause to be prepared a preliminary plat for the entire area.
2. On such preliminary plat, successive development divisions may be designated.

3. Upon approval of the preliminary plat, the developer may cause a final plat to be prepared for one or more development divisions, provided the order of development allows for logical provision of streets and utilities.
4. Each development division shall be considered as a final plat, and provisions of these regulations shall apply individually to each development division presented as a separate filing for record.

166.18 FEES. ~~Before delivering the preliminary plat to the office of the Planning Commission for approval, the subdivider shall pay to the Clerk a plat processing fee which shall not be refundable. The amount of the fee shall be set from time to time by resolution of the Council. The Clerk shall receipt stamp proof of the payment of said fee upon the face of each copy of the preliminary plat. Said fee shall not be considered payment for supervision of construction.~~

1. Before a preliminary plat, final plat or plat of survey shall be considered by the Commission, the applicant or agent shall deposit with the Clerk a fee according to a schedule adopted from time to time by resolution of the Council. The appropriate fees shall be deposited following Council action on the preliminary plat, final plat or plat of survey. In the event that said fees are insufficient to reimburse the City for engineering charges incurred by the City in the examination and review of the preliminary plat, final plat or plat of survey, the subdivider shall be responsible for any additional fees incurred by the City for such engineering charges.

2. In addition to the plat filing fees, the subdivider shall be responsible for just and reasonable costs incurred by the City during the course of construction of the improvements for inspection, testing, or other work deemed necessary by the City to assure proper construction in accordance with the approved construction drawings and applicable standards and ordinances.

3. The City shall annually, by resolution, determine the hourly rate which it shall pay for professional engineering services which shall be deemed to be the maximum rate which may be imposed upon any subdivider during such annual period.

166.19 APPROVAL OF IMPROVEMENT PLANS. After approval by the Council of the preliminary plat, the subdivider may proceed to prepare and submit plans, profiles and specifications for improvements to the Public Works Director for approval. Such plans, profiles and specifications shall conform to design standards and standard specifications of the City and shall be in essential conformity with the approved preliminary plat. The Public Works Director shall give his or her approval in writing and no field changes shall be made without the approval of the Council.

166.20 INSPECTION DURING CONSTRUCTION. The City shall cause inspections to occur during construction, the cost of which will be borne by the subdivider. The subdivider will coordinate inspections with the City Engineer. A complete set of as-built plans indicating locations of water, sewer and storm sewer hookups will be provided to the City.

166.21 FINAL PLAT FILING. Within two (2) years of the approval by the Council of the preliminary plat, the subdivider shall file a final plat of the area covered by said preliminary plat in the office of the Planning Commission. Sufficient copies shall be submitted to facilitate review and approvals. If a final plat is not filed within two (2) years of the aforesaid approval of the preliminary plat, the latter shall be subject to review, revision or cancellation of approval by the Council.

166.22 FORM OF FINAL PLAT. The scale shall be one (1) inch equals one hundred (100) feet or larger. In the event that the entire plat cannot be drawn on one sheet, it shall be submitted in two or more sheets of the specified dimensions along with an index sheet of the same dimensions showing the entire development in simplified form at a smaller scale. The

original shall be submitted for checking and signature and shall become a permanent public record upon recording. Duplicate originals may be submitted for signatures and may become the property of the subdivider. The final plat shall portray the following information:

1. Name of subdivision, points of the compass, scale of the plat, name of subdivider, date and name, address and seal of the surveyor. Location of boundary lines, in relation to section, quarter section, all of which comprise a legal description of the property. All locations shall be tied to a Land Survey corner which has the approval of the County Engineer.
2. The lines of all streets and alleys and other lands to be dedicated with their widths and names shall conform to existing street name patterns and shall also portray the lines of the sidewalks on said streets.

3. All lot lines and dimensions and numbering of lots and blocks according to a uniform system. Statutory systems shall be complied with if applicable.
4. Indication of building lines with dimensions if such lines are desired.
5. Easements for any right-of-way provided for public use, drainage, services or utilities, showing dimensions and purpose.
6. All dimensions, both linear and angular, necessary for locating the lines of lots, tracts, or parcels of land, streets, alleys, easements and the boundaries of the subdivision. The linear dimensions are to be expressed in feet and decimals of feet. The plat shall show all curve data necessary to reconstruct on the ground all curvilinear boundaries and lines and radii of all rounded corners.
7. Closure. The perimeter and blocks of the plat shall close to an allowable unadjusted error of one in five thousand. Latitudes and departure computations shall be submitted. All lines in the plat shall meet this standard of accuracy.
8. The description, location and elevation of all bench marks.
9. The description and location of all permanent monuments set in the subdivision.
10. Names in dotted lettering of adjacent plats with location of adjoining streets shown by dashed lines.
11. Legal description of the lands being subdivided.
12. Certificate of dedication signed and acknowledged by all parties having any title interest in the land subdivided and consenting to the preparation and recordation of the plat as submitted.
13. Engineer's certificate and seal.
14. Certificates of approval in legally correct form and places for the signatures of the following: notary public acknowledging dedication, the Chairperson of the Planning Commission, the Mayor and City Clerk. Other certificates as may be required by law may be recorded as separate instruments accompanying the plat.

Fees for signage are due upon filing of the final plat in accordance with the fee chart most recently approved by the Council.

166.23 ACTION BY THE PLANNING COMMISSION. The Planning Commission shall consider the final plat at the regular meeting during the month following the month of filing and shall either approve or disapprove the plat. If the Planning Commission finds that the final plat has been prepared in compliance with these regulations and in substantial compliance with the preliminary plat, such plat shall be approved. In the event of disapproval, specific points of variance with the aforesaid requirements shall be spread upon the record of this Planning Commission and a copy shall be transmitted to the subdivider. The Planning Commission may approve final plats at a special meeting called in accordance with the rules and regulations of the Planning Commission. Upon approval or disapproval, the Planning Commission shall within ten (10) days transmit to the Council the final plat along with the report of the Planning Commission.

166.24 COUNCIL ACTION. The Council shall consider the final plat along with the report of the Planning Commission not later than the second regular meeting following the date of filing with the Clerk. If the Council finds that the plat has been prepared in compliance with the preliminary plat, such final plat shall be approved. In the event of disapproval, the record shall show the specific points on which the final plat varies from these regulations or the

preliminary plat. The Council may give notice of and hold any public hearings.

166.25 BONDING INCOMPLETE IMPROVEMENTS. In lieu of final completion of the improvements required herein before approval of the final plat, the subdivider shall post a performance bond approved by the City Attorney. Such bond shall insure to the City that improvements will be completed by the subdivider within one (1) year after approval by the Council. The bond amount shall be not less than the estimated cost of completing the improvements and inspections as specified by these regulations, other ordinances, resolutions or regulations of the City, and by the plans and specifications as approved for the preliminary plat. If the improvements are not completed within the specified time, the Council may use the bond or any necessary portion thereof to complete said improvements. Failure of the Council to take action on the bond immediately shall not bar the Council from taking appropriate action within a reasonable time.

2. Letters of Credit. The owner or developer may submit a letter of credit in lieu of a performance bond for sidewalk and erosion control improvements. Said letter of credit shall be from any approved bank or savings and loan in a form approved by the City Attorney, which letter, among other things, shall comply with the following requirements:

A. Shall run in favor, of the City;

B. Be in an amount determined by the City Administrator and approved by the Mayor and City Council to be sufficient to complete the improvements and installations in compliance with the regulations set forth in this chapter;

C. Be issued by any approved bank or savings and loan association within the County;

D. Specify that, in the event the owner or developer fails to complete the required improvements and installations within one year of the date of the approval of the plat, the bank or other assuring institution, shall pay to the City, upon demand, a sum sufficient to complete said improvements, or the face amount thereof, whichever amount shall be the lesser.

166.26 MAINTENANCE BOND. Before approval of the final plat, the subdivider shall post a maintenance bond for an amount to be approved by the Public Works Director and the Council. Said maintenance bond shall cover a period of four (4) years from the project completion date as determined by the Public Works Director. The maintenance bond shall be conditioned on the subdivider's maintaining all improvements in good repair.

(Ord. 239 – Jan. 08 Supp.)

166.27 FILING OF RECORD. After the final plat has been approved and all signatures required herein have been affixed, the subdivider will deliver the plat and all necessary papers to the County Recorder as provided in Chapter 354 of the Code of Iowa, and the subdivider shall file satisfactory evidence of such recording in the office of the Clerk before the City shall recognize the plat as being in full force and effect. All filing fees shall be paid by the subdivider.

DESIGN STANDARDS

166.28 STREETS.

1. Streets Must Conform with the General Plan. The arrangement, character, extent, width, grade and location of all streets shall conform to the General Plan of the City and to any plans which may be adopted by the Planning Commission or the Council.
2. Continuation of Existing Streets. New streets shall normally continue as an extension of existing streets unless good planning indicates a different solution. Street patterns shall take into consideration access needed to develop adjoining properties and shall conform to topography so as to provide the best building sites. Sketches of a proposed street system for adjoining property may be required if it is owned or under the control of the subdivider. Street names shall take the name of existing streets on the same general alignment. New street names shall be approved by the Planning Commission and not be so similar to existing names as to cause confusion.
3. Traffic Circulation. When possible, local or residential streets shall be planned so as to discourage through traffic and to conveniently channel traffic onto the collector and arterial streets.
4. Dead-end Streets Prohibited. Dead-end streets are prohibited, except that where the General Plan indicates a street is to continue past the subdivider's property, a temporary dead end may be allowed until such time as the street is continued.
5. Cul-de-sacs. Cul-de-sacs will be permitted where topography and other conditions justify their use. They may be up to 600 feet in length, as approved by the Planning Commission and Council. If necessary, a landscape plan shall be submitted for cul-de-sac islands, the maintenance of which shall be the responsibility of the adjacent owners.
6. Half Streets. Half streets are prohibited.
7. Angle of Intersection. Streets shall be laid out so as to intersect as nearly as possible at right angles, except where topography and other conditions justify variations. The minimum angle of intersection of streets shall be seventy-five (75) degrees.
8. Street Jogs. Street jogs with centerline off-sets of less than one hundred fifty (150) feet shall be avoided.
9. **Granular Paving Adjacent to Subdivision.**

(5) A developer may be required to extend or expand existing off-site public infrastructure as necessary to fully improve a proposed subdivision, or the City Council may, at its sole discretion, require a proposed subdivision to be delayed until such extension or expansion can be funded and construction by the city or other governmental entity.

(3) Costs; responsibilities. Developers shall be fully responsible for the entire costs of improving all collector and local streets within a subdivision, and for the costs of paving a width of not less than 15.5 feet of roadway along all arterial street frontages by providing a cash escrow to be held in a city account or by posting surety therefore, and turn lanes that serve or will serve the subdivision whether located within the subdivision or on an arterial street.

10. Street Grades. Street grades shall conform with the overall drainage pattern of the locality of the subdivision and shall fall within the minima and maxima as follows: arterial street – 6%; local or residential and collector streets – 10%. No street grade shall be less than 0.5%.

11. Vertical Sight Distances. Change of grade shall conform to current standards of the City for the type of street in question, provided that in no case shall there be constructed a sight distance of less than one hundred (100) feet, measured four (4) feet above pavement surface at the ends of the tangent.

12. Horizontal Sight Distances. A tangent at least one hundred (100) feet long shall be introduced between reverse horizontal curves on collector and arterial streets. When connecting street lines deflect from each other at any one point by more than ten (10) degrees, they shall be connected by a curve with a radius adequate to insure a sight distance of not less than one hundred (100) feet for collector streets and of such greater radii as the Planning Commission shall determine for arterial streets and in other special cases.

13. Pedestrian Ways. Pedestrian ways may be required by the Planning Commission so as to allow cross access for pedestrians in very long blocks. In general, blocks of eight hundred (800) feet or more in length should have a pedestrian way near the center of the block.

14. Standard Right-of-way Widths. For all streets, alleys and other thoroughfares hereafter dedicated and accepted, the minimum right-of-way widths shall not be less than the minimum dimensions for each classification of public way as follows:

A. Arterial Streets – Seventy (70) feet or as set forth in the General Plan or other plan adopted by the Planning Commission or the Council.

B. Collector Streets – Sixty (60) feet.

~~C. Local or Residential Streets – Sixty (60) feet. except when adjacent to a railroad or arterial street with limitation of access, then the width may, if appropriate to the circumstances, be fifty (50) feet.~~

D. Cul-de-sac – sixty (60) feet with a ~~110-foot~~ 130' diameter turn-around at the closed end. Cul-de-sacs are subject to approval by City on project-by-project basis; provide areas designated for snow removal storage from cul-de-sac.

E. Alleys – twenty (20) feet.

F. Pedestrian Ways – ten (10) feet.

For details of grades and pavement widths, see provisions under the heading of Improvements. Reserve strips controlling access to streets shall be allowed under conditions adequate to protect future public interests.

166.29 BLOCKS.

1. Block Length. Intersecting streets determining block lengths shall be provided at such intervals as to serve cross traffic adequately and to meet existing streets and customary subdivision practice in the immediate area. Blocks shorter than four hundred fifty (450) feet and longer than one thousand two hundred (1,200) feet in residential districts should be avoided. Blocks longer than six hundred (600) feet should be avoided in business districts.

2. Block Width. The width of a block shall be sufficient to allow for two (2) tiers of lots with alley or utility easement if required. Blocks intended for business or

industrial use shall be of such width as may be best suited for the contemplated use of the property, taking into consideration the probable arrangement of parking and truck loading and maneuvering upon the property.

3. Very Large Lots and Blocks. When a tract is subdivided into larger than normal lots or parcels, such lots or parcels shall be so arranged as to permit the logical location and opening of future streets and appropriate resubdivision with provision for adequate utility connections for such resubdivision. Easements for the future openings and extension of such streets may, at the direction of the Planning Commission, be made a requirement of the plat.

166.30 LOTS.

1. Minimum Lot Dimensions. Lot sizes shall meet or exceed the requirement of the Zoning Regulations as to lot size and shall as near as practical meet or exceed the typical lot size for existing building sites in the immediate vicinity. Each lot shall be a buildable site after taking into account all yard spaces required by the Zoning Regulations. Excessive lot depth in relation to width shall be avoided. In general, the ratio of width to depth should be one to one and one-half (1:1.5).

2. Corner Lots Wider. Corner lots in residential areas shall be enough wider than inside lots so as to allow an appropriate setback from both streets.

3. Side Lines Perpendicular. Side lines of lots shall be approximately at right angles to straight street lines and radial to curved street lines.

4. Double Frontage. Lots with street frontage at both front and rear shall be avoided except when backing on an arterial street.

5. Street Frontage. Each lot shall have frontage on a street. An alley shall not suffice as a sole means of access.

6. Reversed Frontages and Key Lots. Reversed frontages at cross street intersections shall be avoided except where it will match existing development. Key lots, being those inside lots fronting on side streets, shall be avoided except where they are matching existing development and other lots are excessively deep. Key lots shall be prohibited where they disrupt utility or drainage easements. Reverse frontage and normal corner lots when adjacent to a key lot shall have additional width to allow full front yard setbacks on both streets. Homes on streets with several reversed frontage lots shall be required to face the same direction.

7. Outlots shall be prohibited.

166.31 EASEMENTS.

1. Utility Easements. Utility easements shall be twenty (20) feet wide, falling half on adjoining lots along rear lot lines. They shall be planned for easy and continuous access for maintenance, shall be continuous through the block and shall connect as nearly in line as possible with adjoining easements. To facilitate the use of easements, rear lot lines in curvilinear platting shall form straight lines for as long a distance as feasible. Side lot easements may be ten (10) feet wide. Where topography dictates, the full width of an easement may fall on one lot.

2. Drainage Easements. Drainage easements for storm sewers or open channels may be required where storm drainage cannot be practically carried under streets or on other rights-of-way. Open channel drainage easements may be required where there is evidence that the natural drainage for a large area traverses the subdivision. Drainage easements shall be sufficient in width so that motorized equipment may be used in their maintenance.

166.32 IMPROVEMENTS. Every subdivision shall contain normal improvements before

acceptance or have such improvements assured by the posting of a bond or other device as set forth herein. Improvements shall include:

1. Monuments. Permanent monuments shall be set at each corner at the perimeter of the subdivision and at the corner of each block within the subdivision and at the corner of each lot. All monuments shall be metallic, at least thirty (30) inches long, and installed with an inert cap indicating the Iowa registration number of the land surveyor.

2. ~~Compaction. When any building is filled to a depth in excess of five (5) feet, said fill shall be laid down in six (6) inch layers and each layer shall be given six (6) passes with a sheepsfoot roller with optimum moisture present. As an alternative, compaction equal to the bearing strength of the natural ground shall be met by Proctor test or other test which may be approved by the Public Works Director or duly authorized representative.~~

3. Storm Drainage. Storm drainage shall be provided with sufficient capacity to handle all surface water traversing the subdivision. The design of waterways, pipes, culverts and catch basins shall ~~shall~~ ~~may~~ conform with standard practice, specific plans and standard specifications of the City. All storm drainage piping shall be cleaned, inspected, and tested per standard specifications of the City prior to acceptance.

4. Sanitary Sewers. Sanitary sewers shall be installed for service to each lot according to standard specifications of the City and shall meet the Iowa Department of Natural Resources regulations. The City may require over-sizing of the system to allow greater capacity for future use, and in said event, there shall ~~shall~~ ~~may~~ be an arrangement or an agreement whereby the developer will be reimbursed in a satisfactory manner. Where public water supply and sanitary sewers are reasonably available, the Subdivider shall connect to these systems. Where the public systems are not available, the Subdivider shall indicate the type of water supply and sewage treatment proposed to be provided. The subdivider shall include dry sewers where public sewer system is not available unless this requirement is waived by the City Council. All sewer piping shall be cleaned, inspected, and tested per standard specifications of the City prior to acceptance.

5. Water Supply. Water supply shall be completed to each lot in accordance with the design standards and standard specifications of the City. Fire hydrants shall be installed in a pattern approved by the City. All public water supply plans and specifications shall meet the Iowa Department of Natural Resources and City regulations. The City may require over-sizing of the system to allow greater capacity for future use, and in said event, there shall be an arrangement or an agreement whereby the developer will be reimbursed in a satisfactory manner.

6. Grading. Grading shall be completed to official grade on all streets for the full width of the right-of-way, and fills shall be compacted sufficiently to assure adequate support for permanent paving, as set forth by City specifications.

7. Paving. Paving of a permanent type shall be completed on all streets in accordance with the standard specifications of the City and in conformity with any official street plans which may be adopted by the Planning Commission or by the Council.

A. Minimum pavement thickness shall be six (6) inches reinforced or seven (7) inches of non-reinforced Portland cement concrete.

B. Six (6) inches of granular material to be approved by the Public Works Director shall be placed under all new roads.

C. An appropriate amount of ballast shall also be used when deemed necessary by the Public Works Director.

D. A minimum of ~~six-inch (6")~~ ~~five-inch (5")~~ subdrains on both sides of the street to drain water from the street and provide an outlet for sump pumps shall be installed and connected to proper storm sewer drains. In some cases, a separate "mini" storm sewer system may be required.

E. ~~Six-inch (6") concrete driveways.~~ ~~Five-inch (5") concrete driveways.~~

- F. Curb and gutter – 6” x 30” (standard vertical) or roll back 6” radius.

Typical cross sections of streets will be provided by the Public Works Director. Standard installations for sanitary sewer, storm drainage and water supply shall be installed before paving, even though such facilities cannot be connected with the City system at the time of approval of the plat.

8. Minimum Paving Widths. For all streets and other thoroughfares, the minimum paving widths shall not be less than the minimum dimensions for each classification of public way as follows and **consistent with the Major Streets Plan**:

- A. Arterial Streets* – Thirty-one (31) foot paving back to back of curb.
- B. Collector Streets – **Thirty-one (31)** ~~Twenty-eight (28)~~ foot paving back to back of curb.
- C. Local or Residential Street – **Twenty-nine (29)** ~~Twenty-six (26)~~ foot paving back to back of curb.
- D. Cul-de-sac Turn-around – **Ninety (90)** ~~Eighty (80)~~ foot paving back to back of curb.

***Greater widths may be required. Each situation will be reviewed on a case by case basis.**

9. Utilities. All utility services shall be made available to each lot in such a manner as will eliminate the necessity for disturbing the street paving, curbs, gutter, and drainage structures when connections are made. All utilities shall be placed underground and in accordance with standard specifications of the City.

10. Inspections and Testing. An appropriate number of inspections and tests determined by the City Engineer shall be provided for by the subdivider so as to meet the requirements of the engineer. All test results shall be submitted to the City and a letter certifying that all improvements have been completed according to the City with be provided by the City Engineer. All inspection and testing costs will be borne by the subdivider.

11. Final Plans. Upon completion of construction of any such utilities or improvements, one (1) set of reproducible tracings of complete as-built final plans, dated, signed and certified by the engineer in charge, shall be filed with the Clerk showing all features as actually installed, including materials, size, location depth or elevation, numbers, ends of lines, connections, wyes, valves, storm sewer drains, inlets and all other pertinent information. There shall be no connections made to such utilities serving the subdivision until the foregoing has been complied with.

12. Sidewalks. **The subdivider shall provide for the installation of sidewalks along all newly created lots, including sidewalks on adjacent existing streets. Sidewalks shall be built according to the standards and specifications of the City. The subdivider shall indicate in the application for approval of a preliminary or final plat those sidewalks that will be constructed at the time of installation of public improvements, and those that the subdivider would like the Council to defer until a later date. If the Council agrees to defer construction of the sidewalks, sidewalks shall be constructed at the time a principal structure is built upon the adjacent lot or lots or within five (5) years of plat approval, whichever is earlier. Notwithstanding the above, the Council may require the sidewalk's construction at the time adjacent roadway construction takes place or at any other time as noted in the final plat approval. At the time sidewalk construction is required as provided above, such construction shall be completed at the sole cost and expense of the person or entity that owns the property or lot at the time of construction. Construction of a sidewalk in accordance with standard specifications of the City adopted by the Council is required. The sidewalks shall be installed when the lot is developed.**

- a) **Sidewalks shall be five (5) feet wide and located within the right-of-way with the outer edge one (1) foot from the right-of-way line.**
- b) **Sidewalks will be installed by developer on streets adjoining the subdivision and having double frontage lots prior to final plat approval. The sidewalks will**

be installed on street side that adjoins the subdivision unless waived by the City Council.

c) Sidewalks will be indicated on the final plat.

13. Driveway Approaches. Driveways shall be hard surface (asphalt or concrete) from the traveled portion of the street to the property line and shall be installed when the lot is developed.

14. Developers shall provide for the perpetual maintenance of any and all subdivision improvements that are not dedicated to the city or other governmental entity, by establishing an owner's association or other person, whether an individual or individuals, in a manner and form that is acceptable to the city. Such improvements may include but are not limited to storm water detention and infiltration basins; buffer yards, landscaping, fencing or walls, and other screening; subdivision signs, directional signs, traffic signs and pavement markings; and on-site lighting.

MODIFICATIONS AND ENFORCEMENT

166.33 MODIFICATION OF REQUIREMENTS. The strict application of the terms of these regulations may be modified by three-fourths ($\frac{3}{4}$) vote of the Council upon the recommendation of the Planning Commission in the event that it is found that any specific provision is impractical in its application to a specific parcel of land because of characteristics peculiar to said parcel and the intent of these regulations will not be compromised.

166.34 ENFORCEMENT. The Public Works Director shall be responsible for the enforcement of these regulations. All employees and officials of the City shall report in writing to the Public Works Director any violation or suspected violation of these regulations.

166.35 DEVELOPMENT APPLICATION PARK LAND DEDICATION.

1. This Park Land Dedication section is effective for any plat that has not received final approval prior to adoption.
2. For purposes of this section the term "development application" shall mean any presentation or filing with the City for residential development purposes of any subdivision of land over which the City has subdivision review and approval authority, or the filing or presentation of any site plan, PUD, PUD specific plan, permitted conditional use plan or development, subdivision master plan or area development plan, over which the City has approval authority or a declaration of horizontal property (condominium) regime pursuant to Iowa Code Chapter 499B.
3. All persons making a development application shall dedicate to the City, within the land covered by the development application, land for park and recreational purposes sufficient to meet the requirements of this section.
4. In each tract of land covered by a development application, there shall be reserved and dedicated to public use ten (10) acres of land for park purposes for each one thousand (1,000) people, based upon the projected population of the completed development application as calculated in accordance with this section. Such dedication shall be prorated to the amount indicated by the projected population to the nearest one thousand (1,000) square feet of land to be dedicated, but in any event, no dedication of land for park use shall contain a total for park usage of less than ten thousand (10,000) square feet of land so dedicated. For purposes of this section, property subject to a horizontal property condominium regime under Iowa Code Chapter 499B shall be treated as single-family detached.
5. For purposes of this section, population in the completed area covered by the development application will be determined by multiplying the number of housing units projected in the area covered by the development application for each use category times the anticipated average per unit as given below. The quantity calculated for each residential type shall be added together and the sum shall be the projected population for purposes of the development application. For the purposes of this section, the following population estimates per residential type will be used:
 - A. Single-family detached: 2.90 people.
 - B. Single-family attached: 2.59 people.
 - C. Multi-family unit: 1.82 people.

6. The City may require that all land dedicated under this section be configured or located to optimize aggregations of land and thus may require that the dedicated land be adjacent to the land affected by other development applications or to otherwise maximize usefulness of the land in accordance with the City's Comprehensive Plan **and Parks & Trails Master Plan**.
7. This section shall not apply to any development application which does not include residential development, provided, however, to the extent any development application includes residential uses then dedication of park land shall be required to the extent determined in accordance with this section.
8. For purposes of this section the water area of ponds, streams, retention basins, detention basins and other bodies of water, or the land area of buffer park easements and site plan open space requirements, shall not be included in determining any area dedicated for park purposes.
9. The dedication of land for park purposes shall include dedication of a corridor or point of connection for public pedestrian access, the areas of which shall be included in determining compliance with this section.
10. The required land dedication under this section shall be reduced when the person making the development application provides public access by easement to recreational facilities, playgrounds, unobstructed open spaces, ball fields, soccer fields, tennis courts, basketball courts, volleyball courts, picnic shelters, recreational trails and other similar non-duplicated recreational facilities which have been (or will be) constructed and maintained by the applicant. There shall not be any credit for swimming pools, clubhouses, and other similar facilities. In order to determine the credit the City shall ascertain the fair market value of the land required to be dedicated under this section and from such value subtract the cost of the recreational facilities constructed by the applicant and provided under this section. The person making the development application shall then only be required to dedicate land equal in value to the remainder.
11. As an alternative to dedication under this section, any person filing a development application may provide jointly with other persons for the dedication of land in an amount at least equal to the amount required under this section, at a location which is not part of the land for which approval is sought, provided such alternative is within the same neighborhood park area as the land for which a development application has been made, that the alternative jointly provided will provide for a park with a total land area of at least five (5) acres, consistent with the Comprehensive Plan and that such alternative dedication of land is or has actually been dedicated to the City and has been accepted by the City for use in accordance with the Comprehensive Plan **and Parks & Trails Master Plan**.
12. Where application of the formula set forth in subsection 4 of this section results in a dedication requirement of less than ten thousand (10,000) square feet the person making or filing the development application may elect to dedicate ten thousand (10,000) square feet of land or fulfill their obligation by participating in an option provided by subsection 10 of this section, but such alternative participation shall be based upon the actual calculation under subsection 4 of this section and not upon the equivalent of ten thousand (10,000) square feet of land.
13. Subsections 10 and 11 of this section notwithstanding, any entity required to comply with this section may present an alternate plan which meets the purposes of this section as a means of complying herewith. It will be the burden of the entity presenting such plan to establish that such plan meets the purposes of this section.

Any such plan shall be first reviewed by the Plan and Zoning Commission. Any alternate proposal must directly and proportionately benefit the development. A plan may include a payment in lieu of land dedication equal to the fair market value of the land to be dedicated. Such payment may be used only for park and recreation facility purposes consistent with the Comprehensive Plan.

14. This section shall not apply to any development application containing three (3) or fewer single-family residential units. A person making or filing a development application shall not divide land into separate plats in order to seek a waiver under this provision. Where a development application is made for multiple contiguous tracts within any two (2) years the City may treat all the development applications as one for purposes of this section.

15. No declaration of a condominium regime and under Iowa Code Chapter 499B, nor any conversion of an apartment to a condominium under Iowa Code Section 499B.3 shall be completed before the person or entity filing the declaration shall have complied with the land dedication requirements of this chapter.

16. If any subsection or provision of this section is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of any other provisions of this section which can be given effect without the invalid portion or portions and to this end each subsection and provision of this section is severable.

17. Any person making or filing a development application or any person, entity, or developer affected by any decision made by any department acting under this chapter, may appeal to the City Council by filing notice of appeal with the City Clerk and a filing fee of one hundred dollars (\$100.00) payable to the City of Adel to be credited to the general fund of the City. Such appeal shall be taken within ten (10) days from the decision of the department acting under this chapter and shall set out in detail the reasons and grounds for the appeal. The City Clerk shall forthwith transmit to the City Council all papers constituting the record upon which the action appeal is taken. An appeal stays all proceedings in furtherance of the appeal.

18. The City Council shall upon the filing of an appeal fix a reasonable time for a hearing, giving public notice thereof as well as due notice to the parties in interest. All interested persons may offer oral or written testimony at the public hearing on the appeal. A vote of three (3) members of the City Council may affirm, modify, or reverse any decision of any department acting under this chapter.

19. Any person, entity, or developer aggrieved by any appeal decision of the City Council may within thirty (30) days from the date of the City Council rendering a decision, appeal therefrom to the district court of Dallas County, Iowa, in accordance with the rules of civil procedure, division XIV, entitled "certiorari."

(Sec. 166.35 – Ord. 297 –Jan. 14 Supp.)

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166.28 Streets

1. Granular Paving Adjacent to Subdivision.

A. A developer may be required to extend or expand existing off-site public infrastructure as necessary to fully improve a proposed subdivision, or the City Council may, at its sole discretion, require a proposed subdivision to be delayed until such extension or expansion can be funded and construction by the city or other governmental entity.

B. Costs; responsibilities. Developers shall be fully responsible for the entire costs of improving all collector and local streets within a subdivision, and for the costs of paving a width of not less than 15.5 feet of roadway along all arterial street frontages by providing a cash escrow to be held in a city account or by posting surety therefore, and turn lanes that serve or will serve the subdivision whether located within the subdivision or on an arterial street.

There needs to a time limitation on escrow account or surety.

Discussion item for City Council and City Attorney.

14. Standard Right-of-way Widths. For all streets, alleys and other thoroughfares hereafter dedicated and accepted, the minimum right-of-way widths shall not be less than the minimum dimensions for each classification of public way as follows:

A. Arterial Streets – Seventy (70) feet or as set forth in the General Plan or other plan adopted by the Planning Commission or the Council.

B. Collector Streets – Sixty (60) feet.

~~C. Local or Residential Streets – Sixty (60) feet. except when adjacent to a railroad or arterial street with limitation of access, then the width may, if appropriate to the circumstances, be fifty (50) feet.~~

D. Cul-de-sac – sixty (60) feet with a ~~110-foot~~ 130' diameter turn-around at the closed end. Cul-de-sacs are subject to approval by City on project-by-project basis; provide areas designated for snow removal storage from cul-de-sac.

The 130' is excessive. A 130' diameter cul-de-sac with 90' diameter pavement will have 20' from back of curb to ROW. Typical for a dead street, the distance between back of curb to ROW is 17' (assuming 60' ROW and 26' back to back). Request Right-of-way width requirement be adjusted to maintain typical distance from back of curb to ROW for a uniform green space.

Diameter varies throughout communities from 104' diameter in Bondurant, to 130' in Dallas Center. Staff wanted it to increase from 110' diameter previously to allow for greater ease in snow removal.

E. Alleys – twenty (20) feet.

F. Pedestrian Ways – ten (10) feet.

166.32 IMPROVEMENTS. Every subdivision shall contain normal improvements before acceptance or have such improvements assured by the posting of a bond or other device as set forth herein. Improvements shall include:

7. Paving. Paving of a permanent type shall be completed on all streets in accordance with the standard specifications of the City and in conformity with any official street plans which may be adopted by the Planning Commission or by the Council.

A. Minimum pavement thickness shall be six (6) inches reinforced or seven (7) inches of non-reinforced Portland cement concrete.

B. Six (6) inches of granular material to be approved by the Public Works Director shall be placed under all new roads.

The six (6) inches of granular material should only be required if recommended by a geotechnical engineering report or geotechnical engineering report is not provided. City of Waukee allows public streets to be constructed on 12" of compacted natural subgrade. City of Urbandale does not list a requirement. The City current uses this approach even though the Subdivision ordinance is not listed as such. We recommend updating now to eliminate in confusion in the future.

This varies across communities. Requiring a geotechnical report is a good practice. Having granular material under roadways works two-fold, one it provides support to the pavement, and two, it helps to drain the pavement base and move water away from underneath the roadway. This increases the life of the pavement and overall roadway. This was not added and we suggest leaving it as is.

C. An appropriate amount of ballast shall also be used when deemed necessary by the Public Works Director.

D. A minimum of ~~six-inch (6")~~ **five-inch (5")** subdrains on both sides of the street to drain water from the street and provide an outlet for sump pumps shall be installed and connected to proper storm sewer drains. In some cases, a separate "mini" storm sewer system may be required.

Subdrains should only be required if granular subbase is required.

If granular subbase is required subdrains shall be required as well.

E. ~~Six-inch (6") concrete driveways.~~ **Five-inch (5") concrete driveways.**

F. Curb and gutter – 6" x 30" (standard vertical) or roll back 6" radius.

Typical cross sections of streets will be provided by the Public Works Director. Standard installations for sanitary sewer, storm drainage and water supply shall be installed before paving, even though such facilities cannot be connected with the City system at the time of approval of the plat.

8. Minimum Paving Widths. For all streets and other thoroughfares, the minimum paving widths shall not be less than the minimum dimensions for each classification of public way as follows and **consistent with the Major Streets Plan**:

A. Arterial Streets* – Thirty-one (31) foot paving back to back of curb.

B. Collector Streets – **Thirty-one (31)** ~~Twenty-eight (28)~~ foot paving back to back of curb.

C. Local or Residential Street – **Twenty-nine (29)** ~~Twenty-six (26)~~ foot paving back to back of curb.

City of Waukee allows for 26 foot streets for cul-de-sacs. City of Urbandale allows 26 foot streets for all local streets. The 29 foot local street does not allow for any

additional benefit over a 26 foot street. SUDAS preferred width is 26 foot for local streets. Only 1 lane of parking with 1 lane of traffic can operate on a 29 foot street. The additional width will likely lead to higher speeds as well as future maintenance of an additional 3 feet by the City. Request to be listed at minimum of twenty-six (26) foot with asterisk of greater widths may be required.

SUDAS recommends 26' width on low volume local roads with parking on one side where two lanes of travel are not required.

It was the intention of City staff to increase this 26' minimum by the 3 feet to allow for additional room for vehicles to flow and potentially allow for two free flowing lanes of travel when there is 1 lane of parking. SUDAS recommends the minimum for two free flowing lanes of travel with one lane of parking to be 31' in width.

Waukee and Ankeny require 31' in width, Dallas Center requires 31' unless council approves 26' width.

D. Cul-de-sac Turn-around – **Ninety (90)** ~~Eighty (80)~~ foot paving back to back of curb.

***Greater widths may be required. Each situation will be reviewed on a case by case basis.**

This should probably be applicable to Collector and Local Streets as well.

Agreed if City would like to review each roadway on a case by case basis.

12. Sidewalks. The subdivider shall provide for the installation of sidewalks along all newly created lots, including sidewalks on adjacent existing streets. Sidewalks shall be built according to the standards and specifications of the City. The subdivider shall indicate in the application for approval of a preliminary or final plat those sidewalks that will be constructed at the time of installation of public improvements, and those that the subdivider would like the Council to defer until a later date. If the Council agrees to defer construction of the sidewalks, sidewalks shall be constructed at the time a principal structure is built upon the adjacent lot or lots or **within five (5) years of plat approval**, whichever is earlier. Notwithstanding the above, the Council may require the sidewalk's construction at the time adjacent roadway construction takes place or at any other time as noted in the final plat approval. At the time sidewalk construction is required as provided above, such construction shall be completed at the sole cost and expense of the person or entity that owns the property or lot at the time of construction. **Construction of a sidewalk in accordance with standard specifications of the City adopted by the Council is required. The sidewalks shall be installed when the lot is developed.**

Most Cities (including Waukee) do not require sidewalk bonds except adjacent to public lots (parks), association outlots, and double frontage lots. Any sidewalks constructed prior to home/building construction will likely need to be replaced due to being damage during construction.

Agreed that sidewalks constructed prior to home/building construction will potentially need to be replaced due to being damaged during construction. However, the City should have something in place to enforce the construction on sidewalks if empty lots sit undeveloped for years on end.

- a) Public sidewalks with a minimum width of five feet shall be constructed from portland cement concrete ("PCC") along the frontages of all public streets and along not less than one side of all common private access drives, unless alternative routing such as a rear

lot walkway or open space trail system is approved by the City Council in lieu thereof. Pedestrian and bicycle trail systems shall have a minimum width of eight feet when located within a park or open space corridor, and ten feet when located within or in proximity to a street right-of-way, and shall be constructed of PCC unless an alternative material is approved by the City Engineer. Base preparation and all other construction specifications shall be fully compliant with SUDAS standards as adopted and amended by the city.

b) Sidewalks will be installed by developer on streets adjoining the subdivision and having double frontage lots prior to final plat approval. The sidewalks will be installed on street side that adjoins the subdivision unless waived by the City Council.

c) Sidewalks will be indicated on the final plat.

This item needs to be removed. State ordinance does not allow for any engineering items or improvements to be shown on the Final Plat per 2017 ruling. Copy of ruling can be provided if need be.

Agreed, this should be removed. Per March 2017, Land Surveyors Board Decision. No engineering items shall be shown on plats. We were unaware of this recent decision by the Land Surveyors Board. The document is attached.

We also feel that sidewalks should also be removed from Section 166.22 Section 2.



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Steven M. Nadel
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July 27, 2017

Mr. Anthony Brown
City Administrator
City of Adel
P.O. Box 248 - 301 S. 10th Street
Adel, IA 50003

Re: The City of Adel, State of Iowa
Not to Exceed \$1,800,000 Storm Water Revenue Capital Loan Notes (USDA #2)

Dear Mr. Brown:

We enclose suggested proceedings to be acted upon by the Council on the date fixed for the hearing on the authorization to enter into a loan agreement and the issuance of the above mentioned notes, pursuant to the provisions of Code Sections 384.24A and 384.84A. A certificate to attest the proceedings is also enclosed.

At any time before the date of the hearing, a petition may be filed with the City Clerk requesting that the authorization to enter into a loan agreement and the issuance of the Notes be submitted to an election. To qualify, a petition must be signed by eligible electors equal to at least three percent of registered voters of the City. If a petition is filed prior to the date of the hearing, the Council must call an election or abandon the proposal to issue the Notes. The proceedings assume no petitions have been filed. Please notify us immediately upon receipt of a petition.

The proceedings are prepared to show as a first step the receipt of any oral or written objections from any resident or property owner to the proposed action of the Council to enter into a loan agreement and issue the notes. A summary of objections received or made, if any, should be attached to the proceedings. After all objections have been received and considered if the Council decides not to abandon the proposal to issue the notes, a form of resolution follows that should be introduced and adopted, entitled "Resolution Instituting Proceedings to Take Additional Action for the Issuance of Not to Exceed \$1,800,000 Storm Water Revenue Capital Loan Notes."

July 27, 2017

Page 2

Action Must Be Taken At The Hearing.

The Council is required by statute to adopt the resolution instituting proceedings to enter into a loan agreement and issue the notes at the hearing or an adjournment thereof. If necessary to adjourn, the minutes are written to accommodate that action.

In the event the Council decides to abandon the proposal, then the form of resolution included in the proceedings should not be adopted. We would suggest that, in this event, a motion merely be adopted to the effect that such proposal is abandoned.

Section 384.83 of the Code of Iowa, provides that any resident or property owner of the City may appeal the decision to take additional action to issue the notes, to the District Court of a county in which any part of the city is located, within 15 days after such additional action is taken, but that the additional action is final and conclusive unless the court finds that the Council exceeded its authority.

In the event an appeal is filed by any resident or property owner, please see that we are notified immediately; and, as soon as available, a copy of the notice of appeal should be furnished our office for review.

Also enclosed is an extra copy of the proceedings to be filled in as the original and certified back to this office. If you have any questions pertaining to the proceedings enclosed or this letter, please do not hesitate to either write or call.

Very truly yours,

AHLERS & COONEY, P.C.

By



Steven M. Nadel

SMN:kls

Enclosure

cc: Jon Burmeister, Public Financial Advisors, LLC
Jocelyn Doerfler, Public Financial Advisors, LLC

01364346-1110113-073

ORIGINAL

ITEMS TO INCLUDE ON AGENDA

CITY OF ADEL, IOWA

Not to Exceed \$1,800,000 Storm Water Revenue Capital Loan Notes

- Public hearing on the authorization of a Loan Agreement and the issuance of Notes to evidence the obligation of the City thereunder.
- Resolution instituting proceedings to take additional action.

NOTICE MUST BE GIVEN PURSUANT TO IOWA CODE
CHAPTER 21 AND THE LOCAL RULES OF THE CITY.

August 28, 2017

The City Council of the City of Adel, State of Iowa, met in _____ session, in the Council Chambers, City Hall, 301 S. 10th Street, Adel, Iowa, at _____ o'clock _____M., on the above date. There were present Mayor _____, in the chair, and the following named Council Members:

Absent: _____

* * * * *

The Mayor announced that this was the time and place for the public hearing and meeting on the matter of the authorization of a Loan Agreement and the issuance of not to exceed \$1,800,000 Storm Water Revenue Capital Loan Notes to evidence the obligations of the City under said Loan Agreement, in order to provide funds to pay costs of improvements and extensions to the Municipal Storm Water Utility, including the construction of improvements along Lynn Drive, S. 14th Street, S. 11th Street, Horse "n" Buggy Lane and Pleasant Street, and refunding any outstanding Project Notes with accrued interest thereon issued in payment for such project, and that notice of the proposed action by the Council to institute proceedings for the authorization of the Loan Agreement and the issuance of the Notes had been published pursuant to the provisions of Sections 384.24A and 384.84A of the Code of Iowa, as amended.

The Mayor then asked the City Clerk whether any written objections had been filed by any City resident or property owner to the proposal. The City Clerk advised the Mayor and the Council that no petition requesting an election on the question had been filed prior to the date hereof, and that _____ written objections had been filed. The Mayor then called for oral objections to the proposal and _____ were made. Whereupon, the Mayor declared the time for receiving oral and written objections to be closed.

(Attach here a summary of objections
received or made, if any)

The Council then considered the proposed action and the extent of objections thereto.

Whereupon, Council Member _____ introduced and delivered to the Clerk the Resolution hereinafter set out entitled "RESOLUTION INSTITUTING PROCEEDINGS TO TAKE ADDITIONAL ACTION FOR THE AUTHORIZATION OF A LOAN AGREEMENT AND THE ISSUANCE OF NOT TO EXCEED \$1,800,000 STORM WATER REVENUE CAPITAL LOAN NOTES", and moved:

- that the Resolution be adopted.
- to ADJOURN and defer action on the Resolution and the proposal to institute proceedings for the issuance of notes to the meeting to be held at _____ .M. on the _____ day of _____, 2017, at this place.

Council Member _____ seconded the motion. The roll was called and the vote was,

AYES: _____

NAYS: _____

Whereupon, the Mayor declared the measure duly adopted.

RESOLUTION INSTITUTING PROCEEDINGS TO TAKE
ADDITIONAL ACTION FOR THE AUTHORIZATION OF A
LOAN AGREEMENT AND THE ISSUANCE OF NOT TO
EXCEED \$1,800,000 STORM WATER REVENUE CAPITAL
LOAN NOTES

WHEREAS, pursuant to notice published as required by law, this Council has held a public meeting and hearing upon the proposal to institute proceedings for the authorization of a Loan Agreement and the issuance of not to exceed \$1,800,000 Storm Water Revenue Capital Loan Notes to evidence the obligations of the City under said Loan Agreement, for the purpose of paying costs of improvements and extensions to the Municipal Storm Water Utility, including the construction of improvements along Lynn Drive, S. 14th Street, S. 11th Street, Horse "n" Buggy Lane and Pleasant Street, and refunding any outstanding Project Notes with accrued interest thereon issued in payment for such project. There being no petitions filed and the Council having considered the extent of objections received from residents or property owners as to said proposal the following action is now considered to be in the best interests of the City and residents thereof:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ADEL, IOWA:

Section 1. That this Council does hereby institute proceedings and takes additional action for the authorization and issuance in the manner required by law of not to exceed \$1,800,000 Storm Water Revenue Capital Loan Notes for the foregoing purpose.

Section 2. This Resolution shall serve as a declaration of official intent under Treasury Regulation 1.150-2 and shall be maintained on file as a public record of such intent. It is reasonably expected that storm water utility fund moneys may be advanced from time to time for capital expenditures which are to be paid from the proceeds of the above Notes. The amounts so advanced shall be reimbursed from the proceeds of the Notes not later than eighteen months after the initial payment of the capital expenditures or eighteen months after the property is placed in service. Such advancements shall not exceed the amount authorized in this Resolution unless the same are for preliminary expenditures or unless another declaration of intention is adopted.

Section 3. The Clerk is authorized and directed to proceed on behalf of the City with the negotiation of terms of a Loan Agreement and the issuance of Storm Water Revenue Capital Loan Notes, evidencing the City's obligations to a principal amount of not to exceed \$1,800,000, to select a date for the final approval thereof, to cause to be prepared such sale information as may appear appropriate, to publish and distribute the same on behalf of the City and this Council and otherwise to take all action necessary to permit the completion of a loan on a basis favorable to the City and acceptable to the Council.

PASSED AND APPROVED this 28th day of August, 2017.

Mayor

ATTEST:

City Clerk

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

THIS IS AN AGREEMENT effective as of [] ("Effective Date") between
[The City of Adel, Iowa] ("Owner") and
[McClure Engineering Company – Clive, Iowa] ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
[Adel Storm Water Utility Improvements – Phase 1] ("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows: [Design, Advertise, and Bid Storm Water Utility Improvements on behalf of the Owner. Perform Construction Administration and Resident Project Representative Services during construction. Additional services included under this Agreement: Construction Staking/Surveying, Application and Administrative Services, Additional Meetings, and Record Drawings]

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.
- 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 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

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 (Not Used)*

- ~~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 or reduced in limits by endorsement, 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.

[Note to User: If necessary, modify this provision to identify a specific controlling jurisdiction if other than the state where the Project is located; if multiple states are involved; or to identify controlling jurisdictions other than a state, such as a U.S. territory, commonwealth, or tribal jurisdiction/domestic dependent nation.]

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, 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), including the loss of use resulting therefrom, 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.
- 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.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit. (Not Used)
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement. (Not Used)

[NOTE TO USER: If an exhibit is not to be included in the specific agreement, indicate "not used " after that exhibit in the list above.]

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: [City of Adel, Iowa]

Engineer: [McClure Engineering Company]

By: []
Print name: [Jim Peters]
Title: [Mayor]
Date Signed: []

By: []
Print name: [Derick Anderson, P.E.]
Title: [Vice President - Water]
Date Signed: []

Engineer License or Firm's Certificate No. (if required):
[17980]
State of: [Iowa]

Address for Owner's receipt of notices:
[PO Box 248]
301 S. 10th Street
Adel, IA 50003

Address for Engineer's receipt of notices:
[1360 NW 121st Street]
Clive, IA 50325

Designated Representative (Paragraph 8.03.A):
[]
Title: []
Phone Number: []
E-Mail Address: []

Designated Representative (Paragraph 8.03.A):
[]
Title: []
Phone Number: []
E-Mail Address: []

This is **EXHIBIT A**, consisting of [] 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 – Previously Completed – Not Used*

A. Engineer shall:

1. ~~Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.~~
 - a. ~~If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: [] **[List the specific potential solutions here.]**~~
 - b. ~~If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.~~
 - c. ~~If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [] **[insert specific number]** alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
2. ~~Identify potential solution(s) to meet Owner's Project requirements, as needed.~~
3. ~~Study and evaluate the potential solution(s) to meet Owner's Project requirements.~~
4. ~~Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.~~
5. ~~Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.~~

- ~~6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.~~
- ~~7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.~~
- ~~8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.~~
- ~~9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.~~
- ~~10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."~~
- ~~11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.~~
- ~~12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.~~
- ~~13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.~~
- ~~14. Perform or provide the following other Study and Report Phase tasks or deliverables:
[] ***[List any such tasks or deliverables here.]***~~
- ~~15. Furnish [] review copies of the Report and any other Study and Report Phase deliverables to Owner within [] days of the Effective Date and review it with Owner. Within [] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.~~
- ~~16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish [] copies of the revised Report and~~

Exhibit A – Engineer's Services

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

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~~any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner's comments.~~

~~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*

A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.

8. Obtain and review Owner's instructions 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. Also obtain and review copies of Owner's 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 or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

[Note to User: Some owners prefer to handle the preparation of bidding (procurement) and construction contract documents with little or no involvement by the Engineer (other than with respect to Engineer's preparation or furnishing of the Drawings, Specifications, and other design and technical documents), relying either on Owner's in-house staff and legal counsel for such services, or on third-parties such as a construction manager. When such is the case, the task item above, and related items in the Final Design Phase (Paragraph A1.03 below) and in Exhibit B, Owner's Responsibilities, should be modified to fit the requirements of the specific project.]

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
[None] ***[List any such tasks or deliverables here.]***
 10. Furnish [3] review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within [120] days of authorization to proceed with this phase, and review them with Owner. Within [7] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner [3] copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within [30] days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 Final Design Phase

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of 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. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
9. Perform or provide the following other Final Design Phase tasks or deliverables:
[None] ***[List any such tasks or deliverables here.]***
10. Furnish for review by Owner, its legal counsel, and other advisors, [3] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within [30] days of authorization to proceed with the Final Design Phase, and review them with Owner. Within [7] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.

11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit [3] final copies of such documents to Owner within [30] days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
 - C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
 - D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is [Three (3)]. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.

5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: [None] **[List any such tasks or deliverables here.]**
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or

authority except as expressly set forth in Exhibit D. ***[If Engineer will not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word “DELETED” after the paragraph title, and do not include Exhibit D as part of the Agreement.]***

3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of 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, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer’s judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor’s Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor’s executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer’s exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.

14. *Field Orders*: Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives*: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions*: Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals*: Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "Or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
19. *Inspections and Tests*:
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties

that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents

to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: [Construction Staking / Survey, Additional Meetings] **[List any such tasks or deliverables here.]**
 25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
 26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
 1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the

need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
[None] ***[List any such tasks or deliverables here.]***

- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

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.
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).

Exhibit A – Engineer's Services

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

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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 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 [4] 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. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.

3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. 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.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. 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.
 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: [1.) Give prompt written notice to the Engineer whenever the Owner observes or otherwise becomes aware of any developments that affects the scope or timing of the Engineer's Services, or any defects or non-conformance in the work of any

contractor. 2.) Pay Invoices for Services rendered on time.] ***[List any other Owner responsibilities here.]***

Exhibit C

Payments to Engineer for Services and Reimbursable Expenses

[Notes to User]

Preparing a Project-specific Exhibit C: In Exhibit C, the parties must specify how the Engineer will be compensated for its services. EJDC's E-500 as published contains a lengthy Exhibit C, comprised of numerous options for detailing the Engineer's compensation. In preparing a Project-specific professional services agreement, retain only the few pages from Exhibit C that will apply to the agreement that is being prepared, and discard the rest. At the end of the agreement preparation process, Exhibit C should typically be approximately five to eight pages long.

Exhibit C Compensation Packets: EJDC breaks the Engineer's compensation into three categories: (1) compensation for Basic Services, as defined in Exhibit A (but not including services of a Resident Project Representative, if any); (2) compensation for the services of a Resident Project Representative, if any; and (3) compensation for any Additional Services, as defined in Exhibit A. There are typically several possible ways of paying for services; Exhibit C includes "Compensation Packets" for the various methods. Each Compensation Packet contains the terms and conditions that apply to the specific means of compensation, and when appropriate incorporates appendices for hourly rates and reimbursable expenses.

1. The six Compensation Packets included in E-500's Exhibit C for Basic Services are:

- Lump Sum (Compensation Packet BC-1) – Method Used
- Standard Hourly Rates (Compensation Packet BC-2)
- Percentage of Construction Costs (Compensation Packet BC-3)
- Direct Labor Costs Times a Factor (Compensation Packet BC-4)
- Direct Labor Costs Plus Overhead Plus a Fixed Fee (Compensation Packet BC-5)
- Salary Costs Times a Factor (Compensation Packet BC-6)

During the drafting process the user should **select one** of these six Compensation Packets and **discard (delete) the remaining five**.

2. The choices for compensating a Resident Project Representative are similar, with five RPR Compensation Packets available:

- Lump Sum (Compensation Packet RPR-1) Method Used
- Standard Hourly Rates (Compensation Packet RPR-2)
- Percentage of Construction Costs (Compensation Packet RPR-3)
- Direct Labor Costs Times a Factor (Compensation Packet RPR-4)
- Salary Costs Times a Factor (Compensation Packet RPR-5)

During the drafting process the user should **select one** of these five RPR Compensation Packets and **discard (delete) the remaining four**.

3. The choices for compensating the Engineer for Additional Services are narrower:

- Standard Hourly Rates (Compensation Packet AS-1) Method Used
- Direct Labor Costs Times a Factor (Compensation Packet AS-2)
- Salary Costs Times a Factor (Compensation Packet AS-3)

The user should **select one** of these three Additional Services Compensation Packets and **discard (delete) the remaining two**.

Compensation Decision Guide: The Compensation Decision Guide that is included on the following pages presents further guidance on the process of selecting the pages to retain for the specific contract, including appendices for hourly rates and reimbursable expenses, if applicable.

Example: If Basic Services (other than RPR) will be compensated using Lump Sum; RPR services using Direct Labor Times a Factor; and Additional Services using Standard Hourly Rates; then to form Exhibit C use Compensation Packet BC-1; Compensation Packet RPR-4; Compensation Packet AS-1; and Appendices 1 and 2.

1. Compensation for Basic Services as described in Exhibit A, Part I (other than for Resident Project Representative services, which are separately addressed in item 2 immediately below).

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percentage of Construction Costs	Direct Labor Costs Times a Factor	Direct Labor Costs Plus Overhead Plus a Fixed Fee	Salary Costs Times a Factor
Use This Base Compensation Packet	Packet BC-1	Packet BC-2	Packet BC-3	Packet BC-4	Packet BC-5	Packet BC-6
Include This Appendix	Appendix 1 (if applicable)	Appendices 1 and 2	Appendix 1 (if applicable)	Appendix 1	Appendix 1	Appendix 1

2. Compensation for services of Resident Project Representative (as described in Exhibit A, Paragraph A1.05.A.2, and in Exhibit D).

Decision Question: Which method of compensation is to be used?

	Lump Sum	Standard Hourly Rates	Percentage of Construction Costs	Direct Labor Costs Times a Factor	Salary Costs Times a Factor
Use This RPR Compensation Packet	Packet RPR-1	Packet RPR-2	Packet RPR-3	Packet RPR-4	Packet RPR-5
Include This Appendix	Appendix 1 (if applicable)	Appendices 1 and 2	Appendix 1 (if applicable)	Appendix 1	Appendix 1

3. Compensation for Additional Services (as described in Exhibit A, Part 2)

Decision Question: Which method of compensation is to be used?

	Standard Hourly Rates	Direct Labor Costs Times a Factor	Salary Costs Times a Factor
Use This Additional Services Compensation Packet	Packet AS-1	Packet AS-2	Packet AS-3
Include This Appendix	Appendices 1 and 2	Appendix 1	Appendix 1

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

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

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of \$[172,220.00] based on the following estimated distribution of compensation:
 - a. Study and Report Phase \$[] – Cost Already Incurred
 - b. Preliminary Design Phase \$[49,600.00.00]
 - c. Final Design Phase \$[55,200.00]
 - d. Bidding and Negotiating Phase \$[14,600.00]
 - e. Construction Phase \$[52,820.00]
 - f. Post-Construction Phase \$[]
 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
 3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
 4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): [None] **[List any such expenses here, or indicate “None.” If “None” then the reference to Appendix 1 may be deleted.]**
 5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the

billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding [12] months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

**COMPENSATION PACKET RPR-1:
Resident Project Representative – Lump Sum**

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

C2.04 Compensation for Resident Project Representative Basic Services – Lump Sum Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05 of Exhibit A, the Lump Sum amount of \$[34,200]. The Lump Sum includes compensation for the Resident Project Representative's services. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses) related to the Resident Project Representative's Services.
2. *Reimbursable Expenses:* In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following RPR Reimbursable Expenses (see Appendix 1 for rates or charges): [] ***[List any such expenses here, or indicate "None." If "None" then the reference to Appendix 1 may be deleted.]***
3. *Resident Project Representative Schedule:* The Lump Sum amount set forth in Paragraph C2.04.A.1 above is based on part-time RPR services on an eight-hour workday Monday through Friday over a [150] calendar day construction schedule. Modifications to the schedule shall entitle Engineer to an equitable adjustment of compensation for RPR services.

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

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

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

An itemized list of estimated Additional Services (billed at Standard Hourly Rates) is provided below.

A. Construction Surveying / Staking Services	\$15,680.00
B. Additional Meetings	TBD
C. Land Acquisition Coordination	TBD

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of [1.10].
4. The Reimbursable Expenses Schedule will be adjusted annually (as of [01-01-2018]) to reflect equitable changes in the compensation payable to Engineer.

C. *Other Provisions Concerning Payment for Additional Services:*

Exhibit C – Compensation Packet AS-1: Additional Services –
Standard Hourly Rates Method of Payment.

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

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1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [1.10].
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	\$ [0.10]/page
Copies of Drawings	\$ [5.25]/sq. ft.
Mileage (auto)	\$ [.535]/mile
Air Transportation	at cost
CAD Charge	\$ [none]/hour
Laboratory Testing	at cost
Health and Safety Level D	\$ [none]/day
Health and Safety Level C	\$ [none]/day
Meals and Lodging	at cost + 10%

[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project.]

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

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

Administrative	\$[70]/hour
Staff Engineer	[110]/hour
Project Engineer	[140]/hour
Senior Project Engineer	[190]/hour
Project Manager	[170]/hour
Principal	[200]/hour
Senior Principal	[225]/hour
Senior Engineering Technician	[130]/hour
Engineering Technician	[100]/hour
On-Site Representative	[95]/hour
Senior On-Site Representative	[130]/hour
Crew Chief	[130]/hour
Crew Member	[100]/hour
Survey Crew	[220]/hour

[Note to User: The categories above (Billing Classes VIII through I) are traditional hourly rate classes for engineering services, but the classes themselves do not currently have widely accepted or understood meanings or definitions. Many approaches are possible for establishing the hourly rates that will be charged. These include defining the categories (for example, "Billing Class VI—Assistant Project Manager"), or using the engineering firm's own professional classifications. If hourly rates are ascribed to specific individuals, the user should ensure that changes in professional personnel and rates are allowable over the Project's course.]

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

[Note to User: Delete this Exhibit D if Engineer will not be providing Resident Project Representative Services under Paragraph A1.05.A.2.]

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

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

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions.
- B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*

- a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
- D. Resident Project Representative shall not:
- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
 - 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
 - 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 - 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 - 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 - 8. Authorize Owner to occupy the Project in whole or in part.

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

[Notes to User

- 1. Exhibit A, Paragraph A1.05.A.25 of this Agreement indicates that in connection with recommending final payment of the Construction Contractor, the Engineer will also provide a notice to Owner and Contractor of the acceptability of the Work, subject to stated limitations. The form for that purpose, "Notice of Acceptability of Work," is attached on the following pages of this Exhibit E.*

- 2. The Notice of Acceptability of Work should be served in compliance with the requirements for service of notice under the Construction Contract. See Paragraph 18.01, Giving Notice, of EJCDC C-700 (2013), Standard General Conditions of the Construction Contract.]*



NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____

Owner

And To: _____

Contractor

From: _____

Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

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

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

F5.02 *Designing to Construction Cost Limit*

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$[] .
- B. A bidding or negotiating contingency of [] percent will be added to any Construction Cost limit established.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then-established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

This is **EXHIBIT G**, consisting of [] 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: \$[2,000,000]
- d. Excess or Umbrella Liability --
 - 1) Per Occurrence: \$[5,000,000]
 - 2) General Aggregate: \$[5,000,000]
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$[1,000,000]
- f. Professional Liability --
 - 1) Each Claim Made \$[2,000,000]
 - 2) Annual Aggregate \$[2,000,000]
- g. Other (specify): \$[N/A]

2. By Owner:

Exhibit G – Insurance.

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Bodily injury, Each Accident \$[]
 - 2) Bodily injury by Disease, Each Employee \$[]
 - 3) Bodily injury/Disease, Aggregate \$[]
- c. General Liability --
 - 1) General Aggregate: \$[]
 - 2) Each Occurrence (Bodily Injury and Property Damage): \$[]
- d. Excess Umbrella Liability
 - 1) Per Occurrence: \$[]
 - 2) General Aggregate: \$[]
- e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage): \$[]
- f. Other (specify): \$[]

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. []
Engineer
- b. []
Engineer's Consultant
- c. []
Engineer's Consultant
- d. []
[other]

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 [] 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:

[NOTE TO USER: Select one of the two alternatives provided.]

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 ***[here insert name of mediator, or mediation service]***. 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.

[or]

- ~~A. *Arbitration:* All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the ***[insert the name of a specified arbitration service or organization here]*** rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.09.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~
- ~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the ***[specified arbitration service or organization]***. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~
 - ~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$[] (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$[] (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$[] (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~

- ~~3. The rules of any arbitration shall be supplemented to include the following: The award rendered by the arbitrators shall be in writing, and shall include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~
- ~~4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
- ~~5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.09.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~

This is **EXHIBIT I**, consisting of [] 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*

[NOTE TO USER: Select one of the three alternatives listed below for I6.11. A.1]

- ~~1. *Engineer's Liability Limited to Stated Amount, or Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, 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 injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, Engineer's or its Consultants' services, or this Agreement, from any cause or causes whatsoever, 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, shall not exceed the total amount of \$[] or the total compensation received by Engineer under this Agreement, whichever is greater. Higher limits are available for an additional fee.~~

[or]

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, 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 shall not exceed the total compensation received by Engineer under this Agreement.

[or]

- ~~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~~

Exhibit I - Limitations on Liability.

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 \$[_____].

~~[NOTE TO USER: If appropriate and desired, include 16.11.A.2 below as a supplement to Paragraph 6.11, which contains a mutual waiver of damages applicable to the benefit of both Owner and Engineer.]~~

~~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:~~

~~[NOTE TO USER: List here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc.]~~

~~[NOTE TO USER: the above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph 16.11.A.1 above, by providing that "Engineer's total liability for such damages shall not exceed \$_____."]~~

~~[NOTE TO USER: Many professional service agreements contain mutual indemnifications. If the parties elect to provide a mutual counterpart to the indemnification of Owner by Engineer in Paragraph 6.11.A, then supplement~~

~~Paragraph 6.11.B by including the following indemnification of Engineer by Owner as Paragraph 16.11.B.]~~

~~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 J**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Special Provisions

Paragraph(s) [] of the Agreement is/are amended to include the following agreement(s) of the parties:

See Attached

“Revisions to EJCDC E-500” – RUS Bulletin 1780-26 – Exhibit B

RUS Certification – RUS Bulletin 1780-26 – Exhibit C

This is ~~EXHIBIT K~~, consisting of [] 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: _____

By: _____
Print
name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

REVISIONS TO EJCDC E-500

- Amend paragraph 4.01.A by inserting the following text after the first sentence: “Invoices must include a breakdown of services provided.”
- In paragraph 6.04.B replace “shall” with “may”.
- Modify paragraph 7.01.A.25 by striking “, as an Additional Service.”
- Add paragraph 7.01.A.38 to the Agreement as follows:

Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

- Add paragraph 8.05 to the Agreement as follows:

8.05 Federal Requirements

A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency’s applicable requirements. This Agreement shall not be effective unless the Funding Agency’s designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency’s designated representative concurs.

B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

C. Restrictions on Lobbying. Engineer and each Consultant shall comply with “Restrictions on Lobbying” if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared

ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

- Replace paragraph A1.01.A.1.b with "In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency."
- Delete paragraph A1.01.A.1.c.
- Insert the following additional text at the end of Article A1.01.A.8: "The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency."
- Modify paragraph A1.01.A.10 by inserting "and approved by the Agency" after "When mutually agreed."
- Add the following immediately after paragraph A1.01.A.14: "Provide an Environmental Report as defined at 7 CFR 1794 and RUS Bulletin 1794A-602 or other Agency approved format. The Environmental Report must be concurred in by the Agency."
- Replace paragraph A1.01.A.16 with "Revise the Report and any other Study and Report Phase deliverables in response to Owner's and Agency's comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner's and Agency's comments."
- Modify paragraph A1.02.A by inserting "and concurrence by Agency" after the words "acceptance by Owner."
- Modify paragraph A1.02.A.2 by inserting "and Agency" after "authorized by Owner."
- Add the following to the end of paragraph A1.02.A.8: "Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article."
- Add the following immediately after paragraph A1.03.A.9: "The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards."

- Modify paragraph A1.03.A.10 by adding the “and Agency” after the word “counsel.”
- Insert paragraph A1.03.A.12 stating, “Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. Use the Engineer’s Certification of Final Plans and Specifications (Attachment GC-B) for this purpose.”
- Modify paragraph A1.03.B by deleting the period at the end of the paragraph and adding: “and all final design phase deliverables have been accepted by Owner.”
- Add the following to the end of paragraph A1.04.A.2: “Obtain Agency concurrence on any addenda that modify the bidding documents. Obtain prior concurrence where possible.”
- Replace paragraph A1.04.A.6 with the following: “The Engineer shall evaluate and determine the acceptability of “or equals” and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved “or equals” and substitutes. Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.”
- Add the following sentence immediately after paragraph A1.04.A.9: “Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.”
- Paragraph A1.05.A.4: Insert “and chair” after “Participate in” regarding the preconstruction conference.
- Delete “If requested by Owner to do so” from Article A1.05.A.6 regarding the Engineer maintaining a set of Drawings and Specifications.
- Insert paragraph A1.05.A.9.c stating “The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.”
- Add the following text at the end of paragraph A1.05.A.18: “Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations.”
- Insert paragraph A1.05.A.24.a: “Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.”
- Modify paragraph A1.05.A.22 by striking the words “Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent

of Engineer's review of record documents shall be to check that Contractor has submitted all pages."

- Add the following to the end of paragraph A1.05.A.22: "Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner."
- Add the following text after "preparation or review of environmental assessments and impact statements" in A2.01.A.1: "not including preparation of the Environmental Report defined under Basic Services."
- Replace the period at the end of Article A2.01.A.4 with a comma and add the following text to the end of the Article: "but only if the Owner's request is made after completion of the Study and Report Phase."
- Mark paragraph A2.01.A.17 as "[Deleted]."
- Replace paragraph A2.02.A.2 with the following: "Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract."
- Modify Exhibit C, Compensation Packet BC-1, paragraph C2.01.A.2, by adding "and Agency" after "approved in writing by the Owner."
- Modify Exhibit C, Compensation Packet BC-2, paragraph C2.01.A.5, by inserting "and Agency" after "approved in writing by Owner."
- Modify Exhibit C, Compensation Packet BC-2, paragraph C2.01.A.8, by inserting the following text at the end of the paragraph, "Changes will not be effective unless and until concurred in by the Owner and Agency."
- Modify Exhibit C, Compensation Packet BC-1, paragraph C2.01,B by inserting "with concurrence of the Owner and Agency" after "the compensation amount for Engineer's services shall be appropriately adjusted."
- Modify text of Exhibit C, Compensation Packet BC-2, paragraph C2.03.C.2 by inserting "and Agency" after Owner in "Engineer shall give Owner written notice thereof."
- Add paragraph C2.04.A.2 to Exhibit C, Compensation Packet RPR-2, by adding the following text to the end of the paragraph: "If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, "Standard Hourly Rates Schedule," the Standard Hourly Rate for RPR services is \$_____ per hour."

- Modify Exhibit C, Compensation Packet RPR-1, paragraph C2.04.A.3 by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Modify Exhibit C, Compensation Packet RPR-2, paragraph 2.04.B.4, by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Modify Exhibit C, Compensation Guide RPR-2, paragraph 2.04.C.3.B by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”
- Modify Exhibit C, Compensation Packet RPR-2, paragraph C2.04.C.4 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.
- Modify Exhibit C, Compensation Packet AS-1, paragraph C2.05.B.4, by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Modify Exhibit C, Compensation Packet AS-1, paragraph C2.05.C.3 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.
- Add the following to the end of Exhibit D, Article D1.01.A: “Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.”
- Mark paragraph D1.01.C.12.b as [Deleted] regarding Resident Project representative role in Change Orders, Work Change Directives, and Field Orders.
- Add the following to the end of Exhibit F, Article F5.02.D: “Engineers determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition.”

RUS CERTIFICATION PAGE

PROJECT NAME: Adel - Storm Water Utility Improvements - Phase 1

The Engineer and Owner hereby concur in the Funding Agency required revisions to E-500. In addition, Engineer certifies to the following:

All modifications required by RUS Bulletin 1780-26 have been made in accordance the terms of the license agreement, which states in part that the Engineer "must plainly show all changes to the Standard EJCDC Text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

SUMMARY OF ENGINEERING FEES

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services	\$ <u>172,220.00</u>
Resident Project Observation	\$ <u>34,200.00</u>
Additional Services	\$ <u>15,680.00</u>
TOTAL:	\$ <u>222,100.00</u>

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

Engineer Date

Derrick A. Anderson *Vice-President of Water*

Name and Title

Owner Date

Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency Representative Date

Name and Title



This Agreement, made this _____ day of August, 2017, between the City of Adel, Iowa, hereinafter referred to as Owner, and Ahlers & Cooney, P.C., Attorneys at Law, hereinafter referred to as Attorney.

WHEREAS, the Owner intends to construct storm sewer improvements hereinafter called Facility, in Dallas County, Iowa, under the provisions of Chapter 26 of the Code of Iowa.

SECTION A - LEGAL SERVICES

Upon request on an item-by-item basis, Attorney agrees to perform, in cooperation with Bond Counsel, all legal services necessary to the organization, financing, construction and initial operation of the Facility, such services may include, but not limited to, the following:

1. Preparation for and furnishing advice and assistance to the governing body of the owner in connection with (a) the notice for and conduct of meetings; (b) the preparation of minutes of these meetings; (c) review of architectural/engineering agreement and issuance of opinion regarding legal sufficiency; (d) the preparation and enactment of such resolutions as may be necessary in connection with the authorization, financing, construction and initial operation of the Facility; (e) the preparation of such affidavits, publication notices, ballots, reports, certifications, and other instruments and advice as may be needed; (f) assisting a recognized bond counsel firm with experience with public body financing in preparation and completion of such bonds or other obligations as may be necessary to finance the Facility; (g) the completion and execution of documents for obtaining a loan and/or grant made by the United States of America, acting through Rural Development, United States Department of Agriculture, hereinafter referred to as Rural Development; (h) entering into construction contracts; (i) preparation and adoption of rules and regulations ordinances and rate schedules; (j) such other action as may be necessary in connection with the financing, construction, and initial operation of the Facility.
2. Review of construction contracts, bid-letting procedure, and surety and contractual bonds in connection therewith and issuance of opinion regarding legal sufficiency.
3. Preparation, negotiation, or review of contracts with other public bodies, or entities necessary to provide such services to allow the Facility to operate.

4. Preparation where necessary, and examination of deeds, easements and other rights-of-way documents and other easement instruments; render title opinions and record instruments as necessary to provide continuous rights-of-way for the Facility.

The title examination will include searches of all relevant land title and other records, so as to express an opinion as to the title of the property and steps necessary to obtain the appropriate title and security position. The title examination will be on Form RD 1927-9, "Preliminary Title Opinion."

The attorney will determine:

- a) The legal description and all owners of the real property.
 - b) Any exceptions affecting the property and the nature and effect of outstanding interests and exceptions, prior sales of part of the property, judgments or interests to assist in determining which exceptions must be corrected in order for borrowers to obtain good and marketable title of record and for the Agency to obtain a valid lien on the property.
 - c) Whether there are outstanding Federal, State, or local tax claims (including taxes which may become a lien superior to the previously attaching mortgage lien) or homeowner's association assessment liens.
 - d) Whether outstanding judgments of record, bankruptcy, insolvency, divorce, or probate proceedings involving any part of the property, whether already owned by the borrower, or to be acquired by assumption or with loan funds, or involving the borrower or the seller exist.
 - e) If wetlands easements or other conservation easements have been placed on the property.
 - f) What measures are required for preparing, obtaining, or approving curative material, conveyances, and security instruments.
5. Obtain necessary permits from the city, county, townships, utility companies, State regulatory agencies, individuals and others with respect to approval of construction and operation of the Facility.
 6. Cooperate with the Architect/Engineer employed by the Owner in connection with preparation of tract sheets, easements, and other necessary title documents, construction contracts, water supply contracts, Department of Environmental Quality permits, health permits, crossing permits and other instruments.
 7. Assist the Owner in obtaining a recognized Bond Counsel experienced with public body financing for preparation and completion of proceedings and bond transcript documents as may be necessary to finance the facility.
 8. Assist the Owner and Bond Counsel in negotiating, placement, and processing interim financing as needed during the project.
 9. Assist Bond Counsel in preparation and completion of proceedings and bond transcript documents including opinions of counsel as required by the OWNER and Rural Development.

10. Maintain, at the Attorney's expense, such ordinary and customary insurance as will protect the Attorney and the Owner from claims which may arise from the negligent performance of the Attorney.

SECTION B - COMPENSATION

The Attorney should review the scope of the planned Facility and extent of Section A - Legal Services with the Owner, Architect/Engineer and Rural Development prior to negotiating the compensation for basic services.

The Owner agrees to compensate the Attorney for basic professional services not including normal bond counsel services at an hourly rate between \$190-\$300 depending on the rate of the individual attorney performing the work with a maximum not to exceed amount of \$ 10,000.

Fees under this Agreement will be invoiced and due monthly.

Additional bond counsel fees and expenses for sale of anticipatory warrants or for issuance of other conventional revenue, general obligation, or special assessment bonds in conjunction with the Rural Development financing, may be negotiated between the Owner and Bond Counsel.

If condemnation proceedings are necessary, the Attorney will be entitled to additional compensation not to exceed the hourly rate for the area. Other extraordinary services to be rendered not described in this Agreement, as it relates to the completion of this Facility, will be arranged for separately between the Owner and the Attorney, with the approval of Rural Development, prior to services being accomplished.

The Attorney is entitled to out-of-pocket expenses for filing of easements, deeds, or other necessary documents and for mileage, meals, room accommodations, if necessary, and normal long distance calls when itemized and submitted to the governing body.

SECTION C - OTHER PROVISIONS

This Agreement shall not become effective until approved by Rural Development. Such approval shall be evidenced by the signature of a duly authorized representative of Rural Development in the space provided at the end of this Agreement. The approval so evidenced by Rural Development shall in no way commit Rural Development to render financial assistance to the Municipality, but in the event assistance is provided, the approval shall signify that the provisions of this Agreement are consistent with the requirements of Rural Development.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement on the respective dates indicated below.

AHLERS & COONEY, P.C.

By  _____

Name Conner Wasson _____

Date 8-23-17 _____

Owner _____

Signature _____

Title _____

Date _____

CONCURRENCE:
RURAL DEVELOPMENT

By _____

Title _____

Date _____

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