

The Board of Supervisors met on 12/19/23 at 10:00 a.m. in the Story County Administration Building. Latifah Faisal, Linda Murken, and Lisa Heddens, with Faisal presiding. (all audio of meetings available at storycountyiowa.gov; any resolution is effective upon signature and can be inspected M-F, 8-4:30, at 900 6th Street, Nevada, Iowa)

ADOPTION OF AGENDA: Faisal made a correction to Consent Agenda item #4, removing an extra zero. Murken moved, Heddens seconded adopting the agenda with noted change. Motion carried unanimously (MCU) on a roll call vote.

RETIREMENT RECOGNITION FOR TAMMIE LEHMAN - 24 YEARS OF SERVICE: Ted Rasmuson, Treasurer, reported on Lehman's service and thanked her. Faisal offered Lehman thanks and appreciation on behalf of the Board.

CENTRAL IOWA RETIRED SENIOR VOLUNTEER PROGRAM (RSVP) ANNUAL REPORT: Kalen Peterson, Director, spoke about her impending retirement; Laura Severson, Office Coordinator, will transition to the Director position when Peterson retires. Peterson highlighted programs, and volunteers. She reported on RSVP's space in the new Heartland Senior Services building which will open in the spring.

MINUTES: 12/12/23 Minutes– Heddens moved, Murken seconded approving the 12/12/23 Minutes as presented. Roll call vote. (MCU)

PERSONNEL ACTIONS: 1) promotion, effective 12/31/23, in a) Attorney's Office for David Fountain @ \$3,542.55/bw. Murken moved, Heddens seconded approving the Personnel Actions as presented. Roll call vote. (MCU)

CLAIMS: 12/21/23 Claims of \$1,248,129.06 (run date 12/15/23, 39 pages, on file in the Auditor's Office) and authorize the Auditor to issue checks in payments of these claims and payment requests from CIDTF (\$2,732.34), BooST SR (\$265,158.93), BooST EC (\$59,405.52), Emergency Management (\$2,797.53), E911 (\$904.32), County Assessor (\$3,475.91), City Assessor (\$47,785.29), and Central Iowa Community Services (\$446,787.25). Heddens moved, Murken seconded approving claims as presented. Roll call vote. (MCU)

Murken moved, Heddens seconded approving the Consent Agenda.

1. Fees for Combined Systems Technology, Inc. (CST) for UPS support and maintenance, effective 1/1/24-12/31/24, for \$4,495.56
2. Acceptance of Bid and Award of Contract for the Hickory Grove Wastewater Conveyance System to Keller Excavating Inc, for \$794,520.00
3. Contract with Roseland, Mackey, Harris (RMH) Architects for design and engineering services for the Story County Sheriff Office Range House, effective 12/4/23-12/4/25, for \$87,800.00
4. Amendment to Owner Engineer Agreement with Garden & Associates for construction observation and administration services for the Hickory Grove Park Wastewater Conveyance System for \$45,900.00

Roll call vote. (MCU)

SECOND CONSIDERATION OF ORDINANCE NO. 313, AMENDING CERTAIN BOUNDARIES OF THE OFFICIAL ZONING MAP OF STORY COUNTY, IOWA - UNDERWOOD REZONING: Andrea Wagner, County Planner, recapped the proposed rezoning; no public comments have been received. Staff requests the Board waive third consideration. Faisal opened the public hearing at 10:16 a.m., and, hearing none, she closed the public hearing at 10:16 a.m. Heddens moved, Murken seconded approving Ordinance No. 313, Amending Certain Boundaries of the Official Zoning Map of Story County, on Second Consideration and Waiving Third Consideration. Roll call vote. (MCU)

FY25 ANALYSIS OF SOCIAL SERVICES EVALUATION TEAM (ASSET) BUDGET REQUESTS: Sandra King, Director of External Operations and County Services, reported on procedure and past allocations, and provided detail on the funding request from ASSET. Discussion took place. King provided additional history. The Board discussed the financial implications of HF718. Additional discussion took place. Murken moved, Heddens seconded approving a 6% increase in General Basic, an increase of \$394.00 in Local Option; a decrease of \$31,250.00 in Public Health; an increase of 5% increase for administrative services. Roll call vote. (MCU)

LIAISON ASSIGNMENTS, COMMITTEE MEETINGS UPDATES, AND ANNOUNCEMENTS FROM THE SUPERVISORS: All Board members reported on upcoming items.

Heddens moved, Murken seconded to adjourn at 10:36 a.m. Roll call vote. (MCU)

Story County Board of Supervisors
Tentative Agenda
Administration Building, 900 6th St., Nevada, IA
12/19/23

1. SPECIAL NOTE TO THE PUBLIC: This Meeting Is Also Being Offered Via Zoom. While Joining Via Zoom, If You Have A Question And/Or Comment, You May Raise Your Hand To Speak During Public Forum Or Use The Chat Feature And The Chair Will Ask The Zoom Moderator To Review All Comments During Public Forum.

Members of the public can participate by using the information below:

To join the zoom meeting by computer, tablet, smartphone :

Join from a PC, Mac, iPad, iPhone or Android device:

Please click the link below to join the webinar:

[HTTPS://US02WEB.ZOOM.US/J/83219534107?](https://us02web.zoom.us/j/83219534107?pwd=D3LWULZZMFV5S00RRJAXWGTfZDZWDZ09)

[PWD=D3LWULZZMFV5S00RRJAXWGTfZDZWDZ09](https://us02web.zoom.us/j/83219534107?pwd=D3LWULZZMFV5S00RRJAXWGTfZDZWDZ09)

Passcode: 740703

Or Telephone:

Webinar ID: 832 1953 4107

Passcode: 934031

Dial (for higher quality, dial a number based on your current location):

+1 312 626 6799 US (Chicago)

2. CALL TO ORDER: 10:00 A.M.
3. PLEDGE OF ALLEGIANCE:
4. ADOPTION OF AGENDA:
5. PUBLIC COMMENT #1:
This comment period is for the public to address topics on today's agenda

6. Retirement Recognition For Tammie Lehman - 24 Years Of Service

Department Submitting Human Resources

7. AGENCY REPORTS:

- I. Central Iowa RSVP Annual Report - Kalen Peterson, Director

Department Submitting Auditor

Documents:

ANNUAL REPORT.PDF

8. CONSIDERATION OF MINUTES:

I. 12/12/23 Minutes

Department Submitting Auditor

9. CONSIDERATION OF PERSONNEL ACTIONS:

I. Action Forms

1) promotion, effective 12/31/23, in a) Attorney's Office for David Fountain @ \$3,542.55/bw;

Department Submitting Auditor

10. CONSIDERATION OF CLAIMS:

I. 12/21/23 Claims

Department Submitting Auditor

Documents:

CLAIMS 122123.PDF

11. CONSENT AGENDA:

(All items listed under the consent agenda will be enacted by one motion. There will be no separate discussion of these items unless a request is made prior to the time the Board votes on the motion.)

I. Consideration Of Fees Between Story County And CST For UPS Support And Maintenance, Effective 1/1/24 - 12/31/24 For \$4,495.56

Department Submitting Information Technology

Documents:

CST UPS QUOTE.PDF

II. Consideration Of Acceptance Of Bid And Award Of Contract For The Hickory Grove Wastewater Conveyance System To Keller Excavating Inc, For \$794,520.00

Department Submitting Conservation

Documents:

HGP WW KELLER CONTRACT.PDF

III. Consideration Of Contract Between Story County And RMH Architects For Design And Engineering Services For Story County Sheriff Office Range House, 12/4/23 - 12/4/25 For \$87,800 (Budgeted)

Department Submitting Facilities Management

Documents:

RMH FINAL CONTRACT RANGE HOUSE.PDF

IV. Consideration Of Amendment To Owner Engineer Agreement With Garden & Associates For Construction Observation And Administration Services For The Hickory Grove Park Wastewater Conveyance System For \$45,9000.00

Department Submitting Conservation

Documents:

HGP WW GARDEN AMENDMENT 1.PDF

V. Consideration Of Revised Story County Employee Handbook Effective January 1, 2024

Department Submitting Human Resources

Documents:

EMPLOYEE HANDBOOK REVISED2024.PDF
EMPLOYEE HANDBOOK REVISION 2024.PDF

12. PUBLIC HEARING ITEMS:

I. Second Consideration Of Ordinance #313, Amending Certain Boundaries Of The Official Zoning Map Of Story County, Iowa-Underwood Rezoning-Andrea Wagner

Department Submitting Planning & Development

Documents:

DEC 19 STAFF MEMO.PDF
ORDINANCE 313.PDF
REZONING EXHIBIT.PDF
APPLICANT NARRATIVE.PDF
DEC 12 STAFF REPORT.PDF

13. ADDITIONAL ITEMS:

I. Discussion And Consideration Of FY25 ASSET Budget Requests - Sandra King

Department Submitting Board of Supervisors

Documents:

FY25 ASSET BUDGET REQUESTS DECEMBER 2023.PDF
ASSET AGENCY BUDGET REQUESTS FY25 DEC 2023.PDF

14. DEPARTMENTAL REPORTS:

15. OTHER REPORTS:

16. UPCOMING AGENDA ITEMS:

17. PUBLIC COMMENT #2:

Comments from the Public on Items not on this Agenda. The Board may not take any

Action on the Comments due to the Requirements of the Open Meetings Law, but May Do So In the Future.

18. LIAISON ASSIGNMENTS, COMMITTEE MEETINGS UPDATES, AND ANNOUNCEMENTS FROM THE SUPERVISORS:

19. ADJOURNMENT:

Story County strives to ensure that its programs and activities do not discriminate on the basis of race, color, national origin, sex, age or disability. Persons requiring assistance, auxiliary aids or services, or accommodation because of a disability may contact the county's ADA coordinator at (515) 382-7204.

Story County Board of Supervisors
Agenda
12/19/23

NAME

AGENCY

Andrea Wagner
Jammie Lehman
Arly Balkwin
Kirsten Jensen
Suzanne Kip
Theresa Seiler
Don Markley
Ted Rasmussen

P & T
Treasurer
Treasurer
Treasurer
BOS
Auditor
Aud
Treasurer

final thoughts...

Value of the Volunteer Hours: \$1,015,593
 Based on the Independent Sector for Iowa's dollar value of a volunteer hour

Funding/Budget Information

2022-2023 Funding Sources/General Operating Budget

- Federal Grant (AmeriCorps)
- State of Iowa
- Story County
- City of Ames
- City of Story City
- United Way of Story County
- Marshalltown Area United Way

THANK YOU to our financial supporters!

- Contractual Funding:
 - Story County Emergency Management: *Emergency/Disaster Volunteer Management*
 - Story City Senior Citizens: *Building Rental Management*

- Self-Generated: *Donations, Special Grants, United Way Designs, Newsletter Sponsors, Fundraising Revenues, etc.*

Total 2022-2023 Revenues (Operating Budget): **\$356,058**
 Total 2022-2023 Expenses (Operating Budget): **\$356,559**

2022-2023 Special Grants and Support

- ITN America – \$1,300: "Rides in Sight" grant—Transportation to support rides to eye doctor appointments
- Transportation Program Donations—\$4,626
- Iowa Insurance Division (Fraud Fighter Presentations)—\$450
- Other general donations—\$1,350
- 50th Anniversary Event Sponsors: Bethany Life, Hy-Vee Stores—Ames; Reliance State Bank; State Farm Insurance—Story City; Story City Floral & Garden; Thrivent Financial—Story City

Central Iowa RSVP Endowment

(Part of the Story County Community Foundation Family of Funds)
 2022-2023 Contributions: **\$3,250**
 As of June 30, 2023 contributions and realized gains have brought the balance to: **\$27,340,777**



THANKS to all of our amazing volunteers, past and present, who are the heart and soul of RSVP's 50-year success story!



Office Locations

- STORY COUNTY**
 503 Elm Avenue (Business Office) 110 Crystal Street
 Story City, IA 50248 Ames, IA 50010
 515-733-4917 515-292-8890
 - MARSHALL COUNTY**
 2608 S. 2nd Street (ISU Extension)
 Marshalltown, IA 50158
 641-752-0279
 - WEBSTER COUNTY**
 308 Central Avenue (Eldersbridge)
 Fort Dodge, IA 50501
 515-573-3477
 - HAMILTON COUNTY**
 749 Second Street
 Webster City, IA 50595
 515-837-2525
- www.rsvpvolunteer.org



Serving Story, Marshall, Hamilton, and Webster Counties



Engaging Volunteers Age 55+

Feature Story Celebrating 50 Years!

Together with our sponsoring organization, Story City Senior Citizens, Inc., Central Iowa RSVP hosted an anniversary event, commemorating 50 years serving our communities. A celebration held on June 29 honored the thousands of Story County RSVP volunteers, past and present, who have defined "senior service" and, through their contributions and commitment, have transformed our communities. Since 1973, older adult volunteers serving through RSVP have dedicated millions of hours of service to address needs in food security, education, independent living, public safety, non-profit capacity building, and so much more.

Nationally RSVP began as an outgrowth by private groups and government agencies to create opportunities of engagement, activity, and growth for older Americans. One of the earliest programs, the Community Service Society of New York, began in 1965 on Staten Island. The project involved a small group of volunteers who were dedicated to serving their communities in a variety of ways. It was due to the success of their efforts that led to an amendment to the Older Americans Act creating RSVP as a nationwide program in 1969. RSVP in Iowa began in 1972 with Central Iowa RSVP being one of 20 projects that serve 65 Iowa counties.

RSVP provides a proven and effective infrastructure to attract, screen, and engage volunteers to meet local needs.

Annual summary of accomplishments and impact 2022-2023

ADDITIONAL SERVICES

- Emergency Services**
 Contracting with Story County Emergency Management, partnering with the Story County Sheriff's Office and Story County Public Health (MGHHS), RSVP coordinates the management of volunteers mobilized in natural disasters, public health and/or public safety emergencies.
- Transportation Services**
Primary Purpose: Provide Story County's older adults with safe and reliable transportation to and from medical appointments and other essential services.

OUR MISSION
 Enhances the lives of adults age 55 and older by connecting them with rewarding volunteer opportunities that meet community needs.

OUR VISION
 To be the premiere volunteer management resource for mobilizing adults age 55 and older

Testimonial

When I retired 9 years ago, I was 75 and I was going to do as I had worked full-time since I graduated from high school. I saw a notice that RSVP was looking for volunteers to provide transportation to seniors and this was a great opportunity to do just that on a one-to-one basis. The more I volunteered, the better I felt. I also signed up to be a pen pal to a fifth grade student, which has been awesome. Volunteering helps so many people and has been a wonderful experience for me. There are so many opportunities to share your talents so I encourage anyone over 55 to check out RSVP and volunteer as often as you like. The reward is in the thanks you receive from every person you help.
 Diana Schwendinger, Ames RSVP Volunteer

CENTRAL IOWA RSVF SIGNATURE PROGRAM ACCOMPLISHMENTS

RSVP Signature Programs are those assignments that are either coordinated exclusively by RSVP or one that RSVP plays a significant role in direct partnership with another organization or organization.

EDUCATIONAL SERVICES — Helping youth succeed academically



Working to re-engage volunteers in education-based assignments in 22-23, the number of students served increased by 35% over the previous year, restoring many previously suspended (due to COVID-19) school-based assignments and developing new partnerships. RSVP Pen Pal volunteers also continued to write and send cards and letters of encouragement to isolated residents of several care facilities and to hospice patients. This assignment continued to grow and has become an important way for RSVP volunteers to serve in a way that helps reduce the impact of isolation among some of our most vulnerable citizens.

RSVP Literacy Partners

(Pen Pals and Reading Buddies)

A total of 367 RSVP volunteers (4,551 hours) were matched one-on-one or in small groups with 626 elementary/middle school students as pen pals or reading tutors. Volunteers helped students learn important letter writing skills and developed a relationship through the mail with a caring adult from another generation (pen pals). They also helped students improve reading skills by serving as Reading Buddies and Tutors. Partners: Schools - Gilbert, Roland-Story, South Hamilton, SE Webster-Grand, St. Edmund's (Fort Dodge), St. Thomas Aquinas (Webster City), Stratford, Webster City, West Marshall, and Raising Readers in Story County.



HEALTHY FUTURES — Helping citizens stay healthy and maintain control of their well-being

RSVP Volunteer Driver Program

RSVP VOLUNTEER DRIVER
36 Story County RSVP volunteer drivers (1,389 hours) served 68 Story County residents, providing safe and reliable transportation to and from essential services, with priority given to older adults needing rides to medical appointments. Volunteers used their own vehicles to provide 704 round trips and drove 21,092 miles. (In a survey conducted in June, 2023, over 97% of client respondents indicated that having this service is an important factor in helping maintain their independence and overall health/well-being).



Thank you and congratulations to all of our Transportation Program drivers and grocery delivery volunteers, recipients of a 2023 Governor's Group Volunteer award! You are fantastic!

RSVP BASE

Fitness Program

Balance, Agility, Strength, and Endurance

A total of 23 RSVP volunteers in Webster and Hamilton Counties (1,228 hours) facilitated this free fitness program at 16 locations for 307 seniors. BASE focuses on increasing healthy exercise habits that positively impact the well-being of the participants. Partners: Webster City Parks & Recreation Dept, Mt. Airland Clinic Physical Therapy Dept, Leah Falz Fitness.

DISASTER SERVICES, PUBLIC HEALTH & SAFETY — Keeping our communities safe and prepared

Volunteer Management for Emergencies serving Story County

In a natural disaster, public health or safety emergency, RSVP volunteers staff a volunteer reception center, facilitating the intake and management of community volunteers willing to help in a local disaster or emergency. RSVP volunteers are also prepared to fill several roles in the implementation of public health clinics and a tip hotline in the event of a missing and/or abducted child/person. Partners: Story County Emergency Management (EMM), Story County Public Health (MCH/HHIS) and Story County Sheriff's Office. There were no activations during this fiscal year but drills and trainings were held to keep volunteers prepared to respond. (15 volunteers—78 hours)

Fraud Fighters: RSVP Volunteers Working to Take a Bite Out of Crime

One in three Americans ages 65 and older are scammed, losing over \$36 billion annually to financial exploitation, criminal fraud and caregiver abuse. In partnership with the Iowa Insurance Division, trained RSVP volunteers are serving as "Fraud Fighters", conducting presentations to educate community members (primarily targeting seniors and retirees) and provide prevention tips to avoid common frauds and scams. A total of 7 presentations were conducted in 2022-2023 by 6 RSVP volunteers sharing important fraud prevention information to 224 individuals.



FOOD SECURITY — Helping others have reliable access to enough affordable, nutritious food



Central Iowa RSVP volunteers are doing their part to address the needs of those struggling with food insecurity. RSVP volunteers made a difference in addressing hunger by helping at local food pantries, providing home delivered meals, helping deliver commodity food boxes to families and individuals in need, maintaining community gardens (with produce donated to local shelters and food pantries), and providing assistance at hot meal programs and fresh markets. Working with 11 local partners, 124 RSVP volunteers served 4,181 hours addressing food insecurity in 2022-2023.



GROWING! RSVP/Hearthland Senior Services Grocery Delivery Program

In 2021, Central Iowa RSVP began a new program addressing hunger through a partnership established with Heartland Senior Services (HSS). Working together with HSS Outreach staff, the RSVP grocery delivery service utilizing RSVP volunteers to pick up and deliver groceries to vulnerable Story County seniors. Clients are registered and screened by HSS while delivery volunteers are recruited and vetted by RSVP. In 2022-2023, 29 RSVP volunteers served 361 hours and drove 5,146 miles to deliver food and staples from local grocery stores to 14 Story County residents, making 274 grocery deliveries. In addition, RSVP enlists the skills of a dedicated volunteer who provides weekly ordering assistance to individuals who have challenges with online ordering.



CAPACITY BUILDING — Providing diverse volunteer recruitment and placement support that supplements or enhances the existing services of 56 public, non-profit, and health care agencies (not reflected in other sections of this report).

OTHER COMMUNITY PRIORITIES

- ENVIRONMENTAL STEWARDSHIP**—(Conservation centers, trail maintenance, city/community garden spaces, Reiman Gardens)
- OTHER EDUCATION**—(Library services, museums, art, pre-school assistance, extension, other school-based activities)
- HOUSING/FINANCIAL**—(Rep. payees, agencies needing housing and financial needs, shelters)
- MEDICAL**—(Serving at local medical/senior care facilities, blood drives, substance abuse prevention/support, hospice)
- OTHER PUBLIC, NON-PROFIT SUPPORT**—(Thrift store help, dental, special events/projects, senior service agencies)

264 volunteers served 11,117 hours providing capacity building services to area non-profits



"I was recently hospitalized for three weeks. I can't tell you how weak I became during this time. I am so very thankful that I was doing the BASE program before this all happened! I truly believe that having been involved in BASE has helped tremendously in my recovery. I'm getting stronger every day. The PT gave me exercises to do every day that are basically the same as we do in class, with a few variations. I highly recommend the BASE program to everyone!" - Memory Ties, Athens Woods BASE Exercise Class Leader

BASE Outcomes: 85% reported improved overall health as a result of BASE; Over 72% reported somewhat or a lot of improved balance; 82% reported either somewhat or a lot of improved range of motion.



QUOTE

2165 NW 108th Street, Suite D, Des Moines, IA 50325
t. 515-270-5300 f. 515-254-0500

Number AAAQ24340

Date Dec 12, 2023

Sold To

Story County Information Technology
Barbara Steinback
900 6th St.
Nevada, IA 50201
United States

Phone (515) 382-7302
Fax (515) 382-7349

Ship To

Story County Information Technology
Barbara Steinback
900 6th St.
Nevada, IA 50201
United States

Phone (515) 382-7302
Fax (515) 382-7349

Here is the quote you requested.

Line	Qty	Description	Unit Price	Ext. Price
1	1	Site#: 1151116, STORY COUNTY HUMAN SERVICES BLDG IT 126 S KELLOG, AMES IA 50010 Tag# 2035912 SN# AS5B0RCWGNNX198 1 Annual PM ESSENTIAL (01/01/2024 -12/31/2024)	\$2,247.78	\$2,247.78
2	1	Site#: 1151138, STORY COUNTY ADMIN BLDG IT 900 6th ST NEVADA, IA 50201 Tag# 2035898 SN# AS5B0RCWGNNX066 1 Annual PM ESSENTIAL (01/01/2024 -12/31/2024)	\$2,247.78	\$2,247.78
			SubTotal	\$4,495.56
			Tax	\$0.00
			Shipping	\$0.00
			Total	\$4,495.56

This is not an invoice. Do not pay.

Please contact me if I can be of further assistance.

APPROVED **DENIED**

Board Member Initials: _____

Meeting Date: 12/19/23

Follow-up action: _____

PRICES SUBJECT TO CHANGE - PRICES BASED UPON TOTAL PURCHASE - ALL DELIVERY, TRAINING OR CONSULTING SERVICES TO BE BILLED AT PUBLISHED RATES FOR EACH ACTIVITY INVOLVED - GENERALLY ALL HARDWARE COMPUTER COMPONENTS PROPOSED ABOVE ARE COVERED BY A LIMITED MANUFACTURER'S WARRANTY, COVERING PARTS AND FOR HARDWARE ONLY - WE SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR WITH REGARD TO ANY LICENSED PRODUCTS. WE SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, GOODWILL, DATA, INTERRUPTION OF BUSINESS, NOR FOR INCIDENTAL OR CONSEQUENTIAL MERCHANTABILITY OR FITNESS OF PURPOSE, DAMAGES RELATED TO THIS AGREEMENT. MINIMUM 25% RESTOCKING FEE WITH ORIGINAL PACKAGING.

Proprietary and Confidential



Story County Conservation Board - McFarland Park 56461 180th St. - Ames, Iowa 50010-9451
Phone (515) 232-2516 - Fax (515) 232-6989 - Email: conservation@storycounty.com
www.storycountyconservation.org

Memorandum

To: Story County Board of Supervisors
From: Michael D. Cox, Director
Date: December 19, 2023
Re: Consideration of Acceptance of Bid and Award of Contract for the Hickory Grove Wastewater Conveyance System to Keller Excavating Inc, for \$794,520.00.

The attached Notice of Award effectuates award of a bid and subsequent contract to Keller Excavating Inc. from Boone, Iowa for construction of the wastewater conveyance system from Hickory Grove Park to the City of Colo wastewater treatment facility. Nine bids were received and Keller Excavating was the low responsible, responsive bidder.

The contract amount, together with engineering services, exceeds the available ARPA funding by approximately \$30,000. These additional funds will come from the Conservation Reserve Fund.

Staff urges your approval and authorization for the Conservation Director to sign the contract on behalf of the Board of Supervisors.

Approval

Date

12/19/23

Disapproval

Date



GARDEN & ASSOCIATES, LTD.

1701 3rd Avenue East, Suite 1 • P.O. Box 451 • Oskaloosa, IA 52577

Phone: 641.672.2526 • Fax: 641.672.2091

December 12, 2023

Story County Board of Supervisors
900 6th Street
Nevada, IA 50201

Re: Wastewater Conveyance System
Hickory Grove Park
Story County, Iowa
2023
G&A 3122332

Bids for the referenced project were received on December 12, 2023. As shown on the attached bid tabulation, a total of nine (9) bids were received. The low bid was received from Keller Excavating, Inc. from Boone, Iowa, in the amount of \$794,520.00.

We have reviewed the bids and based on our review of the bids received, we recommend award of the contract to Keller Excavating, Inc. Also enclosed are the original bids and a copy of the bid tabulation for the project for your files.

Also enclosed are three (3) copies of the Notice of Award. Should the Board award the project, please sign all three (3) copies of the award, keep one (1) copy for your records, and return the remaining copies to Garden & Associates.

If you have any questions, please don't hesitate to contact me.

Sincerely,
GARDEN & ASSOCIATES, LTD.

Matthew J. Walker, P.E.

Encs: Bid Tabulation
Original Bids
Notice of Award

MJW/ng

ENGINEERS AND SURVEYORS
OSKALOOSA, IOWA CRESTON, IOWA

NOTICE OF AWARD

Date of Issuance: December 19, 2023
Owner: Story County Board of Supervisors Owner's Project No.:
Engineer: Garden & Associates, LTD Engineer's Project No.: 3122332
Project: Wastewater Conveyance System, Hickory Grove Park, Story County, IA 2023
Contract Name: Wastewater Conveyance System, Hickory Grove Park, Story County, IA 2023
Bidder: Keller Excavating, Inc.
Bidder's Address: 1133 155th Street, Boone, IA 50036

You are notified that Owner has accepted your Bid dated **December 12, 2023** for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Wastewater Conveyance System, Hickory Grove Park, Story County, IA - 2023

The Contract Price of the awarded Contract is **Seven Hundred Ninety-Four Thousand Five Hundred Twenty Dollars (\$794,520.00)**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

Three (3) unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **three (3)** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): **Award is contingent upon issuance of Iowa DNR Construction Permit**

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days ~~after you comply with the above conditions~~ **from the date of approval and execution by the Owner**, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **Story County Board of Supervisors**

By (signature): 

Name (printed): Latifah Taisal

Title: BOB Chair

Copy: Engineer



AIA® Document B105® – 2017

Standard Short Form of Agreement Between Owner and Architect

AGREEMENT made as of the 4th day of December in the year 2023
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Story County Board of Supervisors
900 Sixth Street
Nevada, IA 50201

and the Architect:
(Name, legal status, address and other information)

Roseland, Mackey, Harris Architects, PC
1615 Golden Aspen Drive
Suite 110
Ames, IA 50010

for the following Project:
(Name, location and detailed description)

Story County Range House

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

User Notes:

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the Project as described in this Agreement. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services include the following consulting services, if any:

Mech/Elec/Plumb Engineering Design and Construction Observation
Structural Engineering Design and Construction Observation
Cost Estimating

During the Design Phase, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design, which shall be set forth in drawings and other documents appropriate for the Project. Upon the Owner's approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining bids or proposals, and in awarding contracts for construction.

During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect's authority and responsibility during construction is described in AIA Document A105™-2017, Standard Short Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A105-2017, those modifications shall not affect the Architect's services under this Agreement, unless the Owner and Architect amend this Agreement.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

ARTICLE 3 USE OF DOCUMENTS

Drawings, specifications and other documents prepared by the Architect are the Architect's Instruments of Service, and are for the Owner's use solely with respect to constructing the Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the construction of the Project, provided that the Owner substantially performs its obligations under this Agreement, the Architect grants to the Owner a license to use the Architect's Instruments of Service as a reference for maintaining, altering and adding to the Project. The Owner agrees to indemnify the Architect from all costs and expenses related to claims arising from the Owner's use of the Instruments of Service without retaining the Architect. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with

the terms of this Agreement. Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105–2017, Standard Short Form of Agreement Between Owner and Contractor. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

Design & Bidding Phase

▪ Architectural	\$ 30,000
▪ Structural Engineer	\$ 6,000
▪ MEP Engineer	\$ 20,000
▪ Civil Engineer	\$ 10,000
▪ Cost Consultant	\$ 7,500

Design Services Total \$ 73,500

Construction Services

▪ Architectural	\$ 6,500
▪ Structural Engineer	\$ 1,500
▪ MEP Engineer	\$ 4,500
▪ Civil Engineer	\$ 1,800

Const Admin Services Total \$ 14,300

The Owner shall pay the Architect an initial payment of zero (\$ 0.00) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus zero percent (0 %).

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest from the date payment is due at the rate of one and one half percent (1.5 %) per month , or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide additional services not included in Article 1 for additional compensation. Such additional services may include, but not be limited to, providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the Project scope, quality or budget, or due to Owner-requested changes in the approved design; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; providing services necessitated by the Contractor's failure to perform; and the extension of the Architect's Article 1 services beyond twenty-four (24) months of the date of this Agreement through no fault of the Architect.

ARTICLE 7 OTHER PROVISIONS

(Insert descriptions of other services and modifications to the terms of this Agreement.)

Init.

AIA Document B105 – 2017. Copyright © 1993, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 09:13:50 ET on 12/12/2023 under Order No.2114493934 which expires on 12/11/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(912685677)

This Agreement entered into as of the day and year first written above.



OWNER (Signature)

Latifah Faisal Boschak
(Printed name and title)



ARCHITECT (Signature)

Jeffrey S. Harris, AIA

(Printed name, title, and license number, if required)

Init.

AIA Document B105 – 2017. Copyright © 1993, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 09:13:50 ET on 12/12/2023 under Order No.2114493934 which expires on 12/11/2024, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(912685677)



Story County Conservation Board - McFarland Park 56461 180th St. - Ames, Iowa 50010-9451
Phone (515) 232-2516 - Fax (515) 232-6989 - Email: conservation@storycounty.com
www.storycountyconservation.org

Memorandum

To: Story County Board of Supervisors
From: Michael D. Cox, Director
Date: December 19, 2023
Re: Consideration of Amendment to Owner Engineer Agreement with Garden & Associates for \$45,900.00 for Construction Observation and Administration Services for the Hickory Grove Park Wastewater Conveyance System.

The attached contract amendment with Garden & Associates secures services for construction observation and administration for the Hickory Grove Park wastewater conveyance system.

Staff urges your approval.

Approval

Date

12/19/23

Disapproval

Date

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT
BETWEEN OWNER (STORY COUNTY, IOWA) AND ENGINEER (GARDEN &
ASSOCIATES, LTD)
FOR PROFESSIONAL SERVICES FOR
WASTEWATER CONVEYANCE SYSTEM -
HICKORY GROVE PARK
STORY COUNTY CONSERVATION - 2023**

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

Copyright © 2014:

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

The copyright for this EJCDC document is owned jointly by the three sponsoring organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

NOTE: EJCDC publications may be purchased at www.ejcdc.org, or from any of the sponsoring organizations above.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – SERVICES OF ENGINEER	1
1.01 Scope	1
ARTICLE 2 – OWNER’S RESPONSIBILITIES.....	1
2.01 General	1
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES.....	2
3.01 Commencement.....	2
3.02 Time for Completion	2
ARTICLE 4 – INVOICES AND PAYMENTS	2
4.01 Invoices	2
4.02 Payments	3
ARTICLE 5 – OPINIONS OF COST	3
5.01 Opinions of Probable Construction Cost	3
5.02 Designing to Construction Cost Limit	3
5.03 Opinions of Total Project Costs.....	4
ARTICLE 6 – GENERAL CONSIDERATIONS.....	4
6.01 Standards of Performance	4
6.02 Design Without Construction Phase Services	6
6.03 Use of Documents	6
6.04 Electronic Transmittals.....	7
6.05 Insurance	7
6.06 Suspension and Termination	8
6.07 Controlling Law.....	9
6.08 Successors, Assigns, and Beneficiaries	9
6.09 Dispute Resolution	10
6.10 Environmental Condition of Site.....	10
6.11 Indemnification and Mutual Waiver	11
6.12 Records Retention.....	12
6.13 Miscellaneous Provisions	12
ARTICLE 7 – DEFINITIONS.....	12
7.01 Defined Terms	12
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS	16
8.01 Exhibits Included:	16
8.02 Total Agreement:	17
8.03 Designated Representatives:	17
8.04 Engineer's Certifications:	17

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

THIS IS AN AGREEMENT effective as of April 18, 2023 ("Effective Date") between
Story County, Iowa ("Owner") and
Garden & Associates, LTD. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Wastewater Conveyance System – Hickory Grove Park, to be financed using American Rescue Plan Act (ARPA) funds and by Owner; Owner intends to construct a lift station at Hickory Grove Park that will pump wastewater to the City of Colo Wastewater Treatment Facility (WWTF), including: duplex lift station rated at approximately 80 gallons per minute, located on the northwest side of the lake and connected to the existing sanitary sewer collection system; approximately 3.5 miles of 4 inch force main in public right-of-way to the Colo WWTF, including a flow monitoring structure near the WWTF; and miscellaneous associated work; project excludes abandonment of the existing wastewater lagoon and expansion of the existing wastewater collection system at Hickory Grove Park ("Project").

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

Engineer's services under this Agreement are generally identified as follows:

Services during Preliminary Design Phase, Final Design Phase, and Bidding Phase, Construction Phase, and part-time Resident Project Representative, associated with completion of the Project.

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. **Engineer shall not be responsible for discovering deficiencies in the technical accuracy of 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 **prior to the effective date of this Agreement**, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;

- b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

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

6.03 *Use of Documents*

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

6.04 *Electronic Transmittals*

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

6.05 *Insurance*

- A. ~~Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.~~
- B. ~~Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.~~
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. ~~Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.~~
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled 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.

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 **Owner shall notify appropriate governmental officials if Owner reasonably concludes that doing so is required by applicable Laws or Regulations;** and (2) Engineer shall may notify 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~~ **three** 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 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. Not Used~~
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

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

8.03 *Designated Representatives*

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

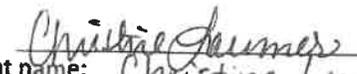
8.04 *Engineer's Certifications*

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

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

Owner:
Story County, Iowa

By: 
Print name: Lillian Fair Soul
Title: Story County Board of Supervisors Chair
Date Signed: 4/18/23

By: 
Print name: Christine Laumer
Title: Story County Conservation Board Chair
Date Signed: 4/17/23

Address for Owner's receipt of notices:
56461 180th Street
Ames, Iowa 50010

Designated Representative (Paragraph 8.03.A):
Michael D. Cox
Title: Story County Conservation Director
Phone Number: 515-232-2516
E-Mail Address: mcox@storycountyIowa.gov

Engineer:
Garden & Associates, LTD.

By: 
Print name: Bradley J. Uitermarkt, P.E.
Title: President
Date Signed: 4/18/23

Engineer License or Firm's Certificate No.: 16716

State of: Iowa

Address for Engineer's receipt of notices:
P.O. Box 451
1701 3rd Avenue East, Suite 1
Oskaloosa, Iowa 52577

Designated Representative (Paragraph 8.03.A):
Matthew J. Walker
Title: Engineer
Phone Number: 641-672-2526
E-Mail Address: mwalker@gardenassociates.net

This is EXHIBIT A, consisting of 16 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated April 18, 2023.

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~~

~~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:~~
 - ~~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:~~
- ~~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 30 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~~

~~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.
 9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
 - a. None.
 10. Furnish 2 review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner ~~within [] days of authorization to proceed with this phase,~~ and review them with Owner. Within 30 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 2 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables ~~within [] 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:
 - a. **Prepare IDNR Construction Permit Application.**
 - b. **Prepare IDNR Storm Water Pollution Prevention Plan (SWPPP) and NPDES storm water permit application.**
10. Furnish for review by Owner, its legal counsel, and other advisors, 2 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 [] days of authorization to proceed with the Final Design Phase, and review them with Owner. Within 15 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 2 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 one (1). 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: **Upon award of the Construction Contract, the Engineer shall furnish to Owner three (3) executed copies of the Contract Documents.**
- 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.
 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.

Exhibit A – Engineer's Services

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: **Prepare Record Drawings.**
 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.

~~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 constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.

15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. ~~Preparing Record Drawings, and furnishing such Record Drawings to Owner.~~
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

Exhibit A – Engineer's Services

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

Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

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.
 9. **Perform or provide the following additional services or deliverables: None.**

This is **EXHIBIT B**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services dated April 18, 2023**.

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.

Exhibit B – Owner's Responsibilities

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

Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

- 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. Prepare and acquire easements needed for construction of Project, if required

Exhibit B – Owner's Responsibilities

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

Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved.

2. **Acquire permits for construction within State, County, City, and other Rights-of-Way**
3. **Acquire property needed for construction of Project, if required**

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **April 18, 2023**.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates

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 – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services, Construction Phase Services and additional services as follows:

1. 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 services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants' charges, if any.
2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2. **Estimated compensation in paragraph C2.01.A.4 includes Reimbursable Expenses and Standard Hourly Rate fees.**
4. The total compensation for services under Paragraph C2.01 is estimated to be **\$121,000** based on the following estimated distribution of compensation:

a. Study and Report Phase	NA
b. Preliminary Design, Final Design and Bidding or Negotiating Phase	\$75,100
c. Construction Phase	\$45,900
d. Post-Construction Phase	N/A
e. Additional Services (Easements, Legal Descriptions)	N/A
Total	\$121,000

5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below. The total estimated compensation listed above is based on the following:
 - a. **Construction Contract Time: 10 months.**
 - b. **Part-time Resident Project Representative (RPR) Services: 225 hours.**
6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
8. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of March 1st) to reflect equitable changes in the compensation payable to Engineer.

C2.02 Compensation For Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: 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.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.00.

C2.03 Other Provisions Concerning Payment

- A. 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 1.00.

- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. *Estimated Compensation Amounts:*
1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
- D. 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 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **April 18, 2023**.

Standard Hourly Rates and Reimbursable Expenses Schedule

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

GARDEN & ASSOCIATES, LTD. 2023 RATE SCHEDULE

<u>CLASSIFICATION</u>	<u>Hourly Rate</u>
Principal Engineer	\$ 169.00
Project Manager	\$ 163.00
Engineer 1	\$ 150.00
Engineer 2	\$ 137.00
Engineer 3	\$ 127.00
Engineer 4	\$ 116.00
Engineer 5	\$ 109.00
Surveyor 1	\$ 138.00
Surveyor 2	\$ 132.00
Surveyor 3	\$ 115.00
Technician 1	\$ 126.00
Technician 2	\$ 108.00
Technician 3	\$ 102.00
Technician 4	\$ 94.00
Technician 5	\$ 83.00
Technician 6	\$ 67.00
<u>REIMBURSABLE EXPENSES</u>	
Mileage, Per Mile	\$ 0.66
Printing, Per Square Foot	\$ 0.25
Printing - Color, Per Square Foot	\$ 2.00
Copying, Per Sheet	\$ 0.25
Copying - Color, Per Sheet	\$ 1.50
GPS Survey Equipment, Per Hour	\$ 50.00
Robotic Total Station Equipment, Per Hour	\$ 50.00
ATV GPS Mapping, Per Hour	\$ 135.00
Laser Scanning, Per Hour	\$ 165.00
GIS, Mapping Equipment, Per Hour	\$ 12.00

OTHER REIMBURSABLE EXPENSES

- Charges for outside services such as soils and materials testing, fiscal, and legal will be billed at their invoice cost.
- All other direct expenses will be invoiced at cost.

ADJUSTMENTS TO FEE SCHEDULE

- Rate Schedule effective March 1, 2023 through February 28, 2024. The Rate Schedule shall be subject to change each March 1st of each year.

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated **April 18, 2023**.

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.

Exhibit D - Resident Project Representative.

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

Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved.

Page 1

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

Exhibit D - Resident Project Representative.

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

Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

Page 3

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. [Deleted]~~
- 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 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **April 18, 2023**.



NOTICE OF ACCEPTABILITY OF WORK

PROJECT: **WASTEWATER CONVEYANCE SYSTEM – HICKORY GROVE PARK – 2023**

OWNER: **STORY COUNTY, IOWA**

CONTRACTOR: _____

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: _____

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT: _____

ENGINEER: **GARDEN & ASSOCIATES, LTD.**

NOTICE DATE:

To: **STORY COUNTY, IOWA**
Owner

And To: _____
Contractor

From: **GARDEN & ASSOCIATES, LTD**
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 **October 6, 2020**, 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 G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 18, 2023.

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):
- f. Professional Liability -- \$ 1,000,000
 - 1) Each Claim Made \$ 2,000,000
 - 2) Annual Aggregate \$ 2,000,000
- g. Other (specify): \$ N/A

2. By Owner:

- a. Workers' Compensation: Statutory

Exhibit G – Insurance.

- 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) General Aggregate: \$ 1,000,000
 - 2) Each Occurrence (Bodily Injury and Property Damage): \$ 1,000,000

- d. Excess Umbrella Liability
 - 1) Per Occurrence: \$ 1,000,000
 - 2) General Aggregate: \$ 1,000,000

- e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$ 1,000,000

- f. Other (specify): \$ N/A

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 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 18, 2023.

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 **mediator agreed upon by both parties to this Agreement**. 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 **Construction Industry Arbitration** 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 **Construction Industry Arbitration**. 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 **\$50,000** (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 **\$50,000** (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than **\$50,000** (exclusive of interest and costs). Disputes that are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~

Exhibit H - Dispute Resolution.

ECDC® E-500, Agreement Between Owner and Engineer for Professional Services.
Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies,
and American Society of Civil Engineers. All rights reserved.

Page 1

- ~~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 J**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **April 18, 2023**.

Special Provisions

The following paragraphs of the **Agreement** are amended to include the following agreement of the parties, as further modified and shown as **bold** or ~~stricken~~:

Delete paragraph 3.02.E in its entirety

Delete paragraph 5.02 in its entirety

In paragraph 6.01.B, add the following to the end: **“Engineer shall not be responsible for discovering deficiencies in the technical accuracy of Owner-furnished information”**

In paragraph 6.01.E.2, amend by adding the following in bold text:

“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 **prior to the effective date of this Agreement**, 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.”

In paragraph 6.04.B replace “shall” with **“may”**.

In paragraph 6.05.A, delete the second sentence.

In paragraph 6.05.B, delete the second sentence.

Delete paragraph 6.05.D in its entirety

In paragraph 6.10.B, amend by adding the following in bold text and removing the stricken:

“B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) **Owner and Owner shall notify appropriate governmental officials if Owner reasonably concludes that doing so is required by applicable Laws or Regulations;** and (2) ~~Engineer shall~~ **may** notify appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.”

In paragraph 6.11.A, add the following to the end:

“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”.”

In paragraph 6.11.B, add the following to the end:

“and to the extent (if any) required in Exhibit I, “Limitations of Liability”.”

Exhibit A: The following paragraphs of Exhibit A are amended to include the following agreement of the parties, as further modified and shown as **bold** or ~~stricken~~:

Delete paragraph A1.01 in its entirety

Modify paragraph A1.02.A by striking “acceptance by Owner of the Report and any other Study and Report Phase deliverables;” from the first sentence.

Modify paragraph A1.02.A.3 by striking the second sentence.

Add the following immediately after paragraph A1.02.A.9: **“None.”**

Modify paragraph A1.02.A.10 by striking “within [] days of authorization to proceed with this phase,” after the words “deliverables to Owner.”

Modify paragraph A1.02.A.11 by striking “within [] days after receipt of Owner’s comments” after the words “any other deliverables”

Add the following immediately after paragraph A1.03.A.9:

“a. Prepare IDNR Construction Permit Application.

b. Prepare IDNR Storm Water Pollution Prevention Plan (SWPPP) and NPDES storm water permit application.”

Modify paragraph A1.03.A.10 by striking “within [] days of authorization to proceed with the Final Design Phase,” after the words “Design Phase deliverables”

Add the following sentence immediately after paragraph A1.04.A.9: **“Upon award of the Construction Contract, the Engineer shall furnish to Owner three (3) executed copies of the Contract Documents.”**

Delete paragraph A1.05 in its entirety

~~Modify paragraph A1.05.A by striking “written” from the first sentence.~~

~~Delete “If requested by Owner to do so” from Article A1.05.A.6 regarding the Engineer maintaining a set of Drawings and Specifications.~~

~~Delete “and approve” from the first sentence and “and approvals” from the second sentence from Article A1.05.A.17.~~

Delete paragraph A1.06 in its entirety

~~Modify paragraph A1.06.A by striking “written” from the first sentence.~~

Modify paragraph A.2.01.A by striking the following Sub-items: 4 and 17.

Modify paragraph A.2.02.A by adding the following Sub-items: 9.

Exhibit B: The following paragraphs of Exhibit B are amended to include the following agreement of the parties, as further modified and shown as **bold** or ~~stricken~~:

In paragraph B2.01.T add the following:

- “1. Prepare and acquire easements for construction of Project, if required**
- 2. Acquire permits for construction within State, County, City, and other Rights-of-Way**
- 3. Acquire property needed for construction of Project, if required”**

Exhibit C: The following paragraphs of Exhibit C are amended to include the following agreement of the parties, as further modified and shown as **bold** or ~~stricken~~:

Add the following sentence immediately after paragraph C2.01.A.3: **“Estimated compensation in paragraph C2.01.A.4 includes Reimbursable Expenses and Standard Hourly Rate fees.”**

Modify paragraph C2.02.B by striking “lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges,” from the first sentence.

Exhibit D: The following paragraphs of Exhibit D are amended to include the following agreement of the parties, as further modified and shown as **bold** or ~~stricken~~:

Delete paragraph D1.01.C.12.b.

This is EXHIBIT K, consisting of **2** pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated April 18, 2023.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. 1**

The Effective Date of this Amendment is:
December 19, 2023.

Background Data

Effective Date of Owner-Engineer Agreement: **April 18, 2023**

Owner: **Story County, Iowa**

Engineer: **Garden & Associates, LTD**

Project: **Wastewater Conveyance System – Hickory Grove Park**

Nature of Amendment:

~~Additional Services to be performed by Engineer~~

X Modifications to services of Engineer

~~Modifications to responsibilities of Owner~~

X Modifications of payment to Engineer

~~Modifications to time(s) for rendering services~~

~~Modifications to other terms and conditions of the Agreement~~

Description of Modifications:

Add Basic Services - Construction Phase to Engineering Services provided under the Agreement. This amendment modifies the Agreement as follows and as shown on attached pages:

- **Agreement Between Owner and Engineer for Professional Services, page 1, identified Engineer's services:**
 - o **Remove strikethrough from "Construction Phase, and part time Resident Project Representative".**
- **Exhibit A – Engineer's Services, pages 7-12:**
 - o **Remove strikethrough from section A1.05 Construction Phase**
- **Exhibit C – Compensation Packet BC-2, pages 1-2:**
 - o **Modify Construction Phase amount in section C2.01.A.4 to be "\$45,900".**
 - o **Modify Total compensation amount in section C2.01.A.4 to be "\$121,000".**

- **Modify Construction Contract Time in section C.2.01.A.5 to be "10 months".**
- **Modify Part-time Resident Project Representative (RPR) Services to be "225 hours".**

Agreement Summary:

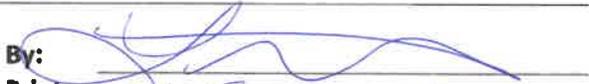
Original agreement amount:	<u>\$ 75,100</u>
Net change for prior amendments:	<u>\$ N/A</u>
This amendment amount:	<u>\$ 45,900</u>
Adjusted Agreement amount:	<u>\$ 121,000</u>

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:

Story County, Iowa

By: 

Print

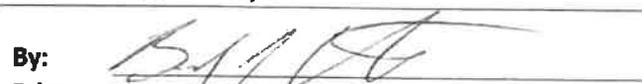
name: Latifah Faisal

Title: Story County Board of Supervisors Chair

Date Signed: 12/19/23

ENGINEER:

Garden & Associates, LTD

By: 

Print

name: Bradley J. Uitermarkt, P.E.

Title: President

Date Signed: 12/14/23

DO NOT WRITE IN THE SPACE ABOVE, RESERVED FOR RECORDER

Prepared By: Andrea Wagner, Story County Planning and Development, 900 6th Street, Nevada, IA 50201 (515) 382-7245

Please return to:
Planning & Development

**STORY COUNTY IOWA
ORDINANCE NO. 313**

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF STORY COUNTY, IOWA; AND
CHANGING THE BOUNDARIES OF THE DISTRICTS ESTABLISHED AND SHOWN ON SAID
MAP AS PROVIDED IN CHAPTER 92 OF THE CODE OF ORDINANCES, STORY COUNTY,
IOWA.**

BE IT ENACTED by the Board of Supervisors of Story County, Iowa:

WHEREAS; at their December 6, 2023, meeting, the Story County Planning and Zoning Commission recommended approval (vote 4-0) of the Official Zoning Map Amendment request submitted by Bill Gibson of Civil Design Advantage on behalf of the property owner, the Connie J. Prohaska Underwood Revocable Trust, for a portion of 5525 North Dayton Avenue, Ames, IA 50010, as referenced in the Official Zoning Map of Story County, Iowa, and identified under the process to change the boundaries of the districts established and authorized by Section 92.06 of the *Code of Ordinances, Story County, Iowa, and as referenced* as follows:

The following described property, under the ownership of the Connie J. Prohaska Underwood Revocable Trust, PO Box 2436, Ames, IA 50010, be amended from the A-1 Agricultural District to the A-R Agricultural Residential District.

GENERAL PROPERTY LOCATION:

Approximately 1.7 acres of that part of Parcel J, as recorded under Instrument Number 2009-00015246, located in Section 24 of Franklin Township (parcel 05-13-400-470), 5525 North Dayton Avenue, Ames, Iowa, and as shown on Attachment A, and;

WHEREAS: all other ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict; and

WHEREAS: if any section, provision, or part of this ordinance shall be adjudged invalid or

unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional; and

WHEREAS: this ordinance shall be effective after its final passage, approval and publication of the ordinance or a summary thereof, as provided by law.

Action upon FIRST Consideration: Approved
DATE: December 12, 2023

Moved Murken by:
Seconded by: Heddens Voting
Aye: Murken, Heddens, Faisl Voting Nay:
Not None Voting:
Absent: None

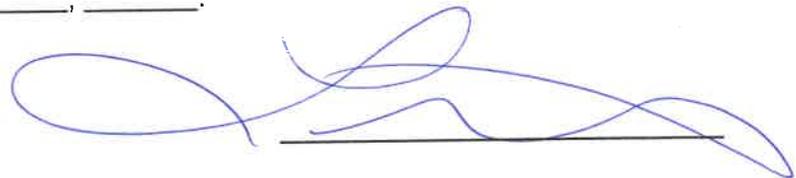
Action upon SECOND Consideration: Approved
DATE: December 19, 2023

Moved Heddens by:
Seconded by: Murken Voting
Aye: Heddens, Murken, Faisl Voting Nay:
Not None Voting:
Absent: None

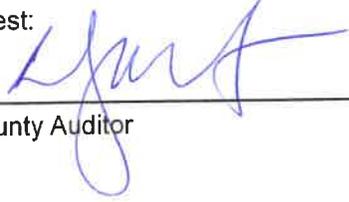
Action upon THIRD Consideration: Waived
DATE: January 2, 2024

Moved by: _____
Seconded by: _____ Voting
Aye: _____ Voting Nay:
Not _____ Voting:
Absent: _____

ADOPTED THIS 19th day of December, 2023.



Chairperson, Board of Supervisors

Attest: 

County Auditor

ROLL CALL Latifah Faisal Yea Nay ___ Absent ___
FOR ALLOWANCE Lisa Heddens Yea Nay ___ Absent ___
 Linda Murken Yea Nay ___ Absent ___

ALLOWED BY VOTE
OF BOARD

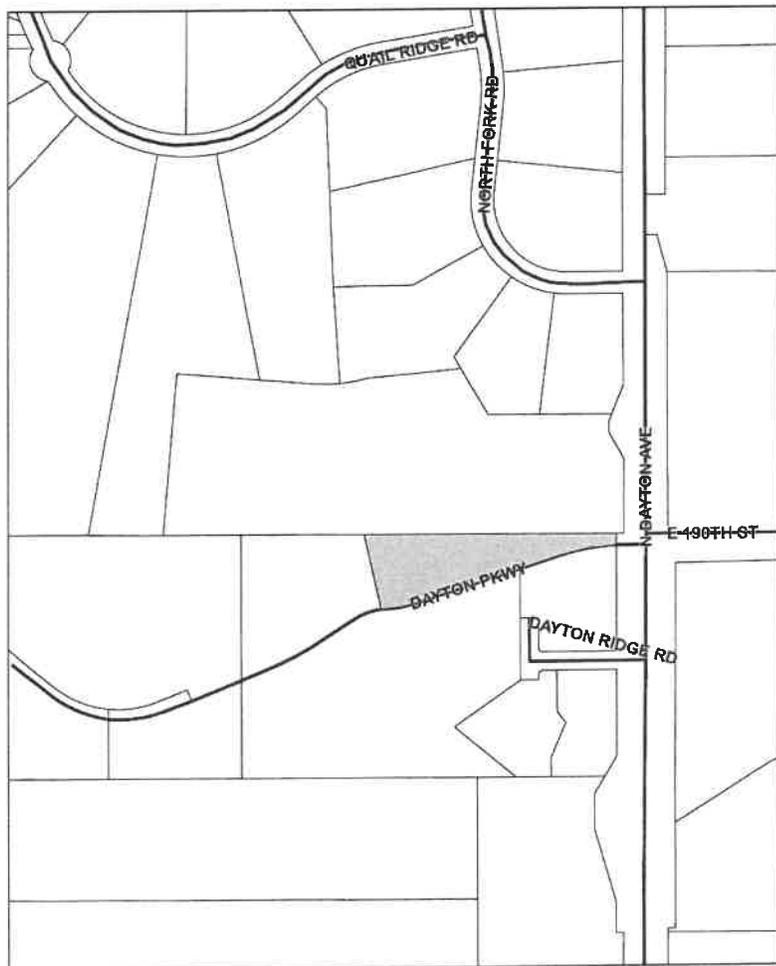
Yea 3 Nay 0 Absent 0

Above tabulation made by [Signature]

[Signature]
CHAIRPERSON

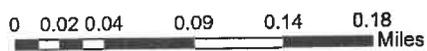
ATTACHMENT A

Portion of 5525 North Dayton Avenue, Ames (parcel #05-13-400-470) to be rezoned



Legend

- Portion to be Rezoned
- Parcels





Story County Planning and Development
Administration Building
900 6th Street, Nevada, Iowa 50201

Ph. 515-382-7245 Fax 515-382-7294
www.storycountyiowa.gov

MEMORANDUM

TO: Story County Board of Supervisors
FROM: Andrea Wagner, Planner
RE: Second Consideration of Ordinance 313, Amending Certain Boundaries of the Official Zoning Map of Story County, Iowa—Underwood Rezoning
MEETING: December 19, 2023

Introduction

Planning and Development staff received an application from Bob Gibson of Civil Design Advantage, on behalf of the Connie J Prohaska Underwood Revocable Trust, to rezone a portion of 5525 North Dayton Avenue (parcel #05-13-400-470), located in Sections 13 and 24 of Franklin Township.

The request is to rezone the approximately 1.7 acres of the parcel located in Section 24 from A-1, Agricultural to A-R, Agricultural Residential. If the request is approved, then 5525 North Dayton Avenue could potentially be split to facilitate a street lot for a future expansion of the Dayton Ridge Subdivision to the south.

Upon first consideration, at their December 12, 2023, meeting, the Board of Supervisors moved to approve Ordinance 313 as submitted and set second consideration for December 19, 2023.

No public comment was received during the December 12th Board meeting, and Planning and Development staff has not received any public comments in the interim. Staff requests that the Board of Supervisors waive third consideration.

A copy of Ordinance 313, a rezoning exhibit, and the applicant's narrative are posted to the agenda center. The original staff report from the December 12th Board meeting is also posted to the agenda center.

Recommendation

The Story County Board of Supervisors approve Ordinance 313 and waive third consideration (alternative 1).

1. **The Story County Board of Supervisors approves Ordinance 313, Amending Certain Boundaries of the Official Zoning Map of Story County, on second consideration and waives third consideration.**



2. The Story County Board of Supervisors approves Ordinance 313, Amending Certain Boundaries of the Official Zoning Map of Story County, with conditions on second consideration and sets third consideration for Tuesday, January 2, 2024.
3. The Story County Board of Supervisors denies Ordinance 313, Amending Certain Boundaries of the Official Zoning Map of Story County, on second consideration and sets third consideration for Tuesday, January 2, 2024.
4. The Story County Board of Supervisors remands Ordinance 313, Amending Certain Boundaries of the Official Zoning Map of Story County, back to staff for additional information, and directs staff to set first consideration for Tuesday, January 9, 2024.



DAYTON PARK PLAT 2
REZONING EXHIBIT

STORY COUNTY, IOWA

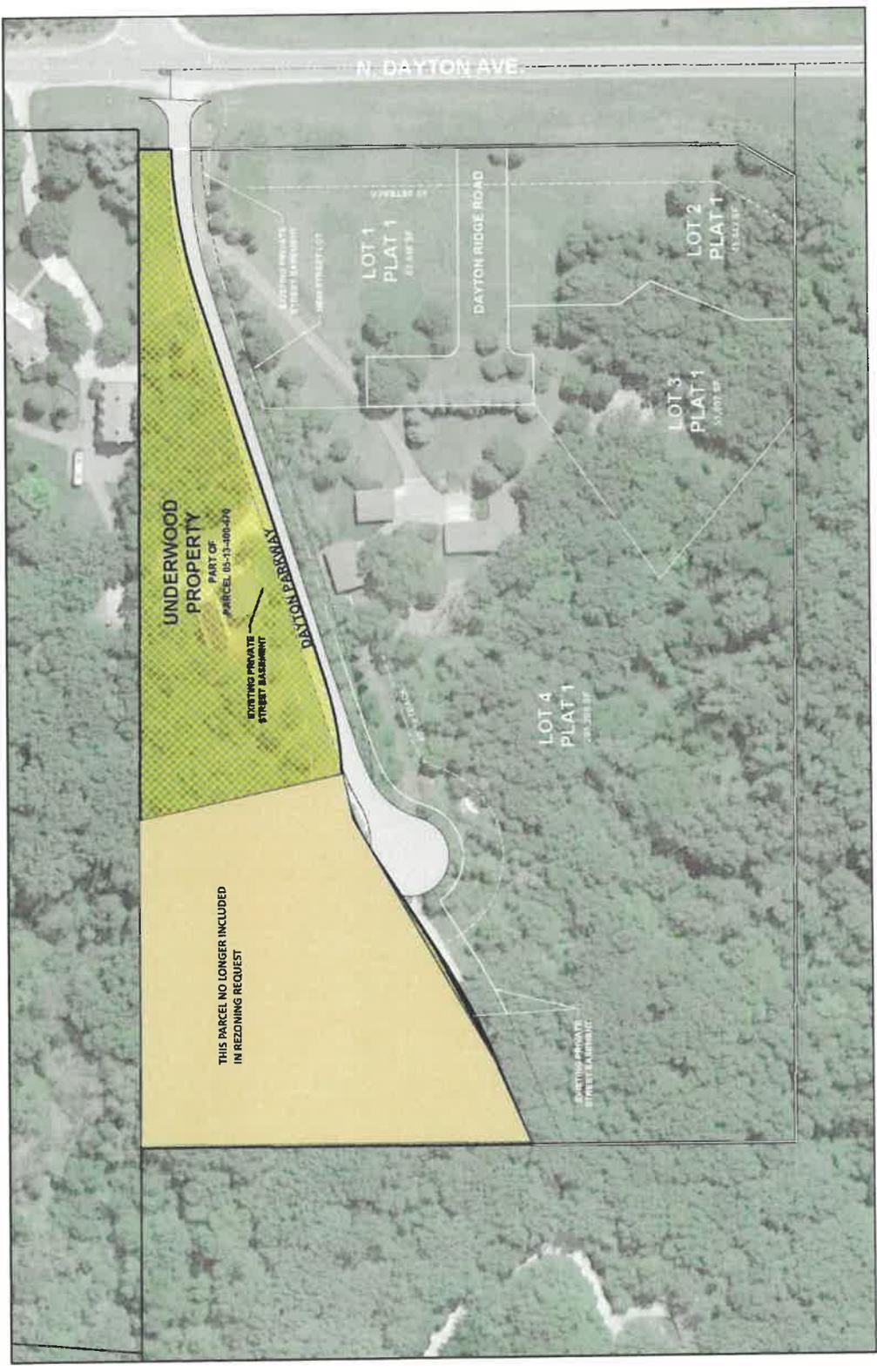


ENGINEER

TECH:

3405 S.E. CROSSROADS DRIVE, SUITE G
GRIMES, IOWA 50111
PHONE: (515) 368-4400 FAX: (515) 368-4410

DATE:	
BY:	
CHECKED:	
DATE:	



**REZONING
NARRATIVE
November 2023**

Jeff Gibbons, owner of 2305 Dayton Ridge Road (parcel 05-24-200-240) is anticipating replatting the property to create additional lots. In order to do that, Dayton Parkway, which is a street easement, will need to be converted to a dedicated street lot. This will require the cooperation of a property owner to the north, as half of the easement is on their lot. The property will need to be included in the new plat to create the street lot. But to include it in the plat, rezoning is required. A portion of the Underwood property (just a portion on the south of parcel 05-13-400-470) are currently zoned A-1. Planning staff has informed us that they need to be rezoned A-R. The owners have agreed to do this.

This rezoning is in conformance with Section 92.06 (2) of the Story County Code of Ordinances.

- The rezone is consistent with existing land uses. The Underwood property is already mostly A-R.
- The rezoning does not have any environmental impacts. In fact, the new paved street will eliminate the dust from the existing gravel drive.
- The LESA score of the property is approximately 177.

Staff Report

Story County Board of Supervisors

Date of Meeting:
December 12, 2023

Case Number OZM23-000001

Story County Zoning Map Amendment request from the A-1, Agricultural District to the A-R, Agricultural Residential District for a portion of the property located at 5525 North Dayton Avenue (Parcel #05-13-400-470) under the ownership of the Underwood, Connie J. Prohaska Revocable Trust. The proposed rezoning is requested so that the southernmost portion of 5525 North Dayton Avenue can potentially be split to create a street lot for an expansion of the Dayton Ridge Subdivision to the south. Because the southernmost portion of 5525 North Dayton Avenue is currently zoned A-1, Agricultural, it cannot be included in a potential subdivision request in the future. The rezoning request is consistent with the C2C plan, which identifies the area as Rural Residential. The Planning and Zoning Commission recommended approval of the request.



APPLICANT/PROPERTY OWNER:

Bob Gibson of Civil Design Advantage, on behalf of the Underwood, Connie J. Prohaska Revocable Trust

PO Box 2436
Ames, IA 50010

STAFF PROJECT MANAGER:

Andrea Wagner, Planner



PROPERTY INFORMATION

GENERAL PROPERTY LOCATION

5525 North Dayton Avenue, Ames

LEGAL DESCRIPTION OF THE PARCEL

Parcel J in the SE of the SE of Section 13 of Franklin Township

DESCRIPTION OF THE AREA TO BE REZONED

The southernmost approximately 1.7 acres of 5525 North Dayton Avenue, as shown in Figure 1, i.e. all that area currently zoned A-1, Agricultural.

PARCEL IDENTIFICATION NUMBERS

05-13-400-470

PARCEL SIZE

12.49 net-acres

Approximately 10.75 acres are in A-R

Approximately 1.7 acres are proposed to be rezoned to A-R from A-1

CURRENT ZONING

A-1 Agricultural and A-R Agricultural Residential

REQUESTED ZONING

A-R Agricultural Residential

FUTURE LAND USE MAP DESIGNATION

The Story County Cornerstone to Capstone C2C Plan designates the area as Rural Residential and a mapped Natural Resource Area. Per the C2C Plan: The Rural Residential Area designation offers the rural housing market segment choices in the unincorporated areas of the county. They are characterized by residential land uses adapted for a rural or agricultural setting at low, non-urban densities. Urban level services are not provided in these areas, and these are not priority areas for infrastructure development.

Mapped Natural Resource Areas are those areas in the County that have been identified "in order to preserve unique habitats, natural or sensitive areas, as well as open and recreational spaces."

CITIES WITHIN TWO MILES

Ames

FIGURE 1—MAP OF AREA TO BE REZONED AND SUBJECT PROPERTY

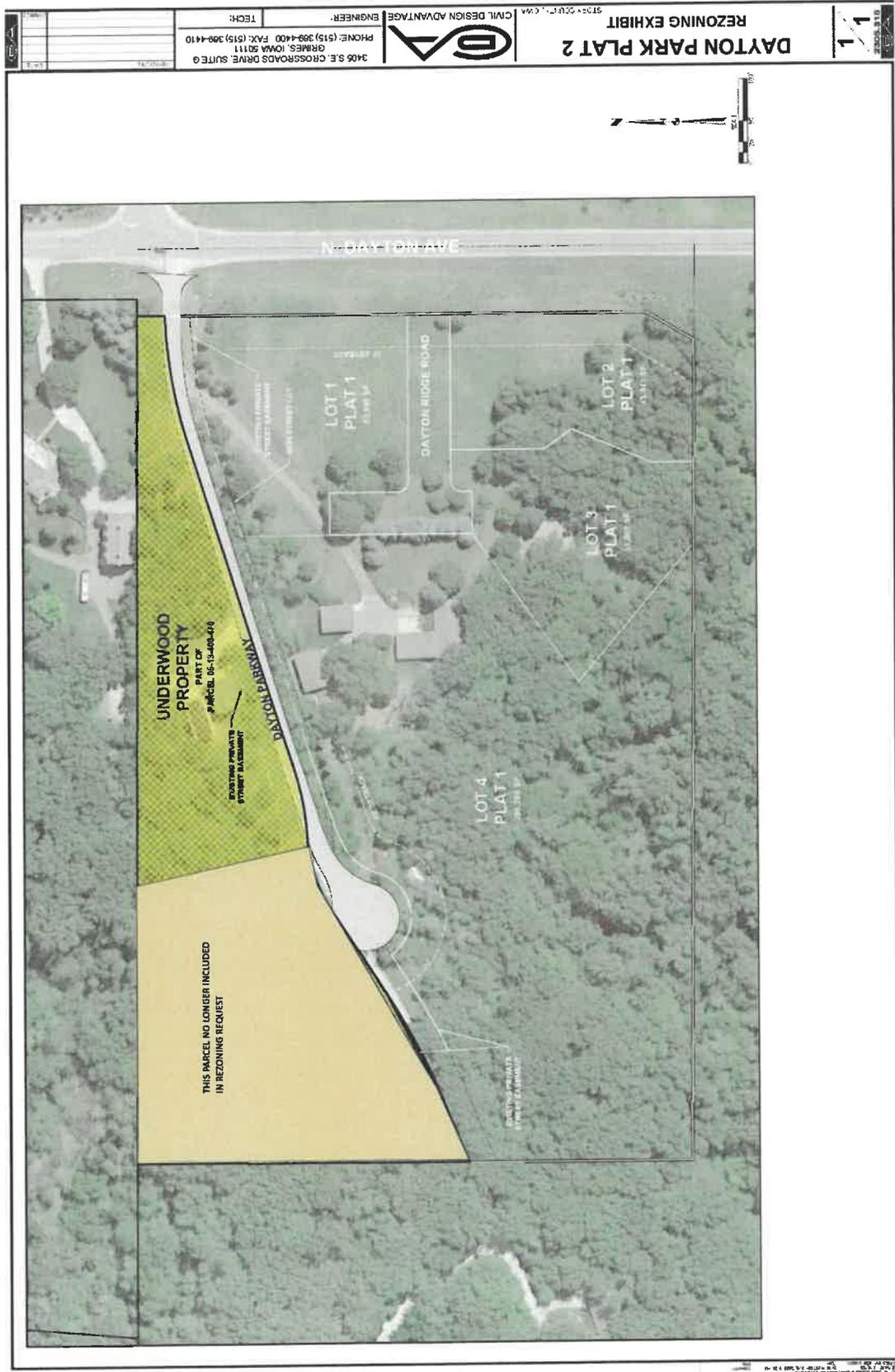
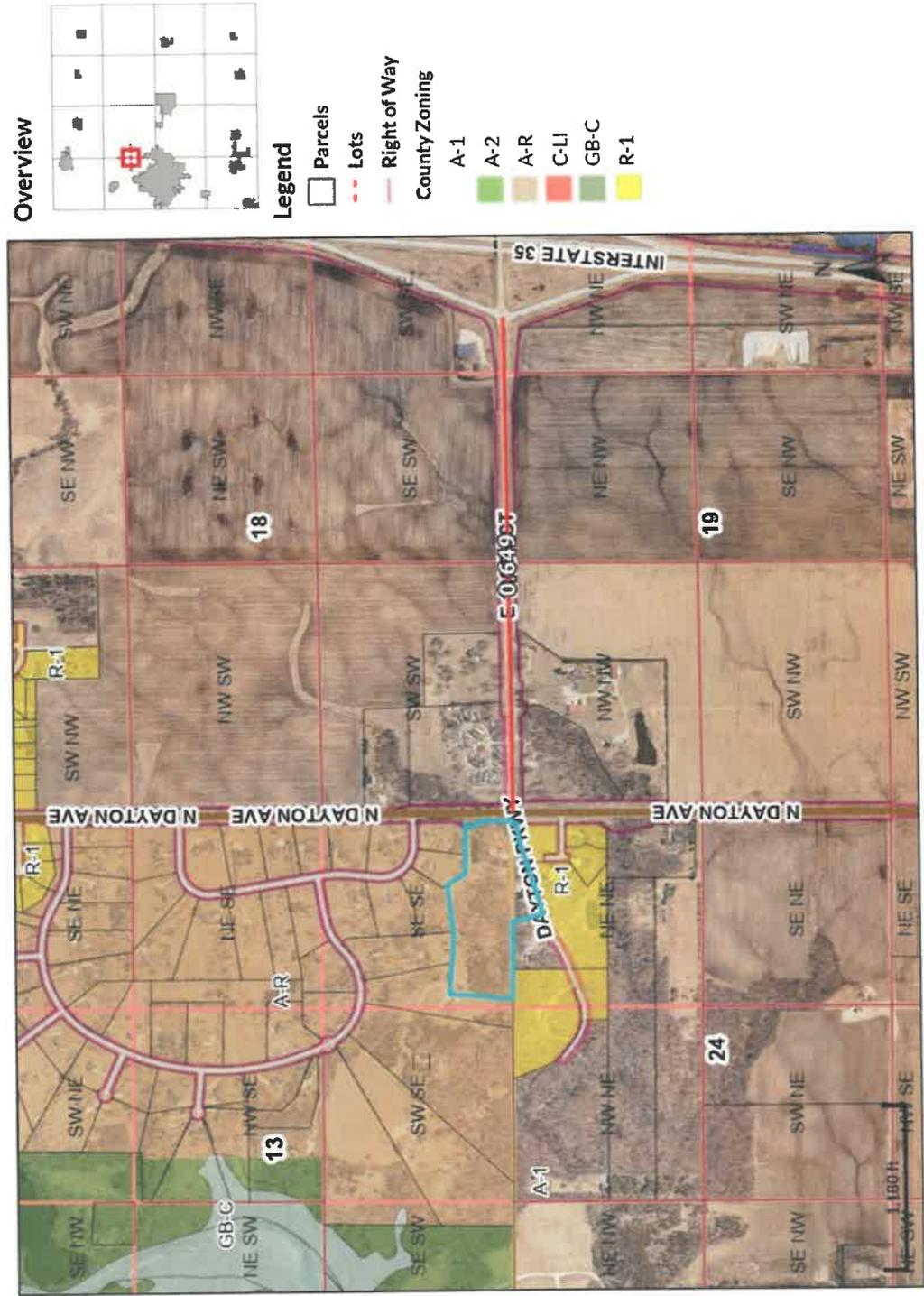


FIGURE 2—SURROUNDING ZONING





BACKGROUND

HISTORY AND CURRENT LAND USE

The subject property is 12.49 acres and located on North Dayton Avenue. The property is approximately 1.5 miles from the city limits of Ames and approximately a half mile west of the 190th Street ramp to Interstate 35.

The northern majority of the subject property, approximately 10.75 acres, is zoned A-R Agricultural Residential. It was zoned to Agricultural Residential in 1994 from the A-1 Agricultural District. The southernmost 1.7 acres was left as A-1 Agricultural.

A dwelling and accessory structures are located on the subject property, and the rezoning request does not affect continued residential use of the property. The western two-thirds of the property is an oak savanna remnant that is in good condition based on a site visit by County Conservation.

Previously, the rezoning request included another parcel to the west; however, it has been modified so that only the portion of 5525 North Dayton Avenue that is zoned A-1 would be rezoned to A-R if the request is approved. Figure 1 includes the area that is proposed to be rezoned, as well as the current layout of the Dayton Ridge Subdivision on the south side of Dayton Parkway.

PROPOSED USE

If the zoning map amendment is approved, the current use of the subject property will not change.

The purpose of the rezoning request is to facilitate a potential street lot in the future if an expansion of the Dayton Ridge Subdivision moves forward.

C2C PLAN

The property is designated Rural Residential and as a Natural Resource Area in the C2C Future Land Use Map.

Principles for Natural Resource Areas include:

- Generally discourage development within these areas. In unique circumstances where appropriate development types may enhance the area, recognize and encourage such approaches.
- Mitigate impacts of proposed development contiguous to areas identified as Natural Resource Area.
- Consider areas identified as Natural Resource Area for inclusion in the Greenbelt-Conservation District of the Land Development Regulations and/or take necessary steps to ensure resource conservation through other mechanisms.

Principle for Rural Residential areas include:

- Ensure that new development is sensitive to the predominantly rural nature of the areas.



- Encourage clustering of residential sites to limit the short-term and long-term costs associated with infrastructure improvements and the distribution of public services.
- Review design and development standards to ensure that conflicts between proposed development and agricultural and natural resources are minimized. Design new residential development to maintain the open character of rural areas and to protect and maintain agricultural uses and sensitive environmental features.

A rezoning of the property would be consistent with the area's designations in the C2C Plan. While there is a significant amount of mapped natural resources on the property as a whole, the purpose of the rezoning request is not to increase the density of the subject property or to permit development that would impact the oak savanna. Additionally, the portion of the subject property that would be rezoned from A-1 Agricultural to A-R Agricultural Residential contains only a small portion of the oak savanna and has existing accessory structures.

SURROUNDING AREA

Directly to the north and west of the subject property is the Country Estates Subdivision, which is zoned A-R, Agricultural Residential. To the east of the property, across North Dayton Avenue, is the Hickory Grove manufactured home community, which is zoned A-1, Agricultural.

To the south of the property are parcels zoned R-1, Transitional Residential, and one parcel that is zoned A-1 but classed as residential. There are no agricultural uses adjacent to the subject property. See Figure 2 for the zoning districts surrounding the subject property.

ANALYSIS

REZONING STANDARDS OF APPROVAL

According to Section 92.06(2) of the *Story County, Iowa Code of Ordinances*, applicable standards for approval include:

- 1. The proposed rezoning shall conform to the Story County Development Plan (C2C).**

Applicant Comment: *The rezone is consistent with existing land uses. The Underwood [subject] property is already mostly A-R.*

Staff Comment: The proposed rezoning is in conformance with the future land use designation of Rural Residential. According to the zoning compatibility matrix in Chapter 5 of the C2C Plan, the A-R zoning district is considered compatible in Rural Residential areas.

Because the property is already developed, the rezoning request in and of itself does not impact the designated Natural Resource Area on the property. If the subject property were later considered for a subdivision for additional development lots, then the Critical Natural Resource Area standards would apply to that proposal, which includes protections for critical areas.

- 2. The proposed rezoning shall conform to the Statement of Intent for the proposed district and district requirements.**



The statement of intent for the A-R district is:

The A-R Agricultural Residential District is designed to provide for single-family detached dwellings with limited activities interrelated with agricultural uses at a rural density. Community facilities and open-space uses that serve the residents may also be included in the layout of subdivisions within this district with special provisions to protect the rural residential character of the District. This District is not intended to permit isolated rural dwellings incompatible with surrounding land uses and not in conformance with the Cornerstone to Capstone (C2C) Comprehensive Plan.

Applicant Comment: *The rezone is consistent with existing land uses. The Underwood property is already mostly A-R.*

Staff Comment: Staff finds that the proposed rezoning conforms to the Statement of Intent for the A-R District. The rezoning request is for the portion of the subject property that contains existing accessory structures and some of the wooded area/oak savanna. The existing single-family dwelling and the majority of the wooded area/oak savanna is located on a portion that is already zoned A-R. Approval of the rezoning request would provide one, uniform zoning district for the entire parcel, rather than it being split-zoned. Split zonings can create constraints when a property owner is seeking a zoning permit because while the property itself may be split-zoned, structures cannot, which limits how structures may be placed on the property.

The existing parcel exceeds the 1 net-acre minimum lot size for a dwelling in the A-R district and conforms with the rural density expected for said zoning district.

3. The proposed rezoning shall be compatible with surrounding land uses and development patterns.

Applicant Comment: *The rezone is consistent with existing land uses. The Underwood property is already mostly A-R.*

Staff Comment: The rezoning is compatible with surrounding land uses and development patterns. A majority of the subject property was rezoned to the A-R district in 1994, at the same time as the land to the north for the Country Estates Subdivision. Adjacent land uses are rural residential, and there is a manufactured home community across North Dayton Avenue.

4. The proposed rezoning shall protect environmental resources. Rezoning of parcels containing more than fifty (50) percent of the gross acreage as lands identified with areas designated Natural Resource Areas on the Story County Development Plan (C2C) shall not be approved unless such requested action results in a district designation more restrictive than the current designation, the R-C Residential Conservation Design (Overlay) District is applied to the property, or conditions protecting the identified areas are attached to the rezoning request. (Ordinance No. 184)

Staff Comment: Strictly applied, the above standard would prevent the rezoning request due to the subject property as a whole containing more than 50 percent of gross acreage as lands identified as a Natural Resource Area. However, the majority of the mapped Natural Resource Areas are already zoned as A-R. For the portion of the property affected by the rezoning request, only 30-percent of



the gross acreage is designated as a mapped natural area. At this time, no new development is proposed on the subject property.

Staff recognizes that the standard above, as written in the ordinance, is intended to prevent, or add conditions to, rezonings of *entire* parcels that contain 50-percent or more of mapped Natural Resource Areas, and it is difficult to strictly apply the standard for this particular rezoning proposal.

County Conservation did review the subject property on September 28, 2023, and found that there is quality oak savanna located on-site, with the focus of the review on the area that is already zoned A-R.

- 5. In areas where the petition to rezone requests a change from A-1 District or A-2 District to another district, lands scoring 267 or above for total LESA score, as determined by a Land Evaluation Site Assessment (LESA) as adopted for Story County, shall not be approved. (Ordinance No. 208)**

Staff Comment: The total LESA score for the subject property is 145, thereby meeting the requirement.

COMMENTS

The following comments are part of the official record of the proposed **Story County Zoning Map Amendment, Case No. OZM23-000001**. If necessary, conditions of approval may be formulated based off these comments.

Interagency Review Team:

No comments.

City of Ames:

The City of Ames was notified of the request on November 29, 2023. Their staff inquired what the rezoning request would do to density and development potential, and County staff replied that the request will not change the density of the subject property but could facilitate an expansion of the Dayton Ridge Subdivision to the south.

Comments from the General Public

A rezoning sign was placed on the property on November 29, 2023.

Notice letters were sent to property owners within a ¼ mile of the proposed rezoning on November 20, 2023, and legal notice was published in the Ames Tribune, Nevada Journal, and Tri-County Times on November 30, 2023.

At the Planning and Zoning Commission meeting on December 6, 2023, one member of the public did provide comment that they would like to know more about the future subdivision plans south of Dayton Parkway, since it may impact their current easement to their property. The Commission asked staff to clarify if neighboring property owners would be provided notice of the subdivision when the application comes in, and staff stated that they would.



POINTS TO CONSIDER

1. The C2C Plan designates the subject property as a Rural Residential Area and a mapped Natural Resources Area. A rezoning to A-R is compatible with the Rural Residential designation and no impact to the natural resources on the property is proposed with the request.
2. By rezoning the property, the parcel would no longer be split-zoned. The majority of the property was zoned A-R in 1994.
3. If development were later proposed on the subject property through additional divisions, then protections for critical natural resource areas would apply.
4. The rezoning, if approved, will facilitate a future street lot for a potential expansion of the Dayton Ridge Subdivision.

ALTERNATIVES

The Planning and Zoning Commission recommended approval of the rezoning request (alternative one). The Board of Supervisors may consider the following alternatives for the rezoning request:

1. **The Story County Board of Supervisors approves Ordinance 313, Amending Certain Boundaries of the Official Zoning Map of Story County, on first consideration and sets second consideration for Tuesday, December 19, 2023.**
2. The Story County Board of Supervisors approves Ordinance 313, Amending Certain Boundaries of the Official Zoning Map of Story County, on first consideration, with conditions, and sets second consideration for Tuesday, December 19, 2023.
3. The Story County Board of Supervisors denies Ordinance 313, Amending Certain Boundaries of the Official Zoning Map of Story County, on first consideration and sets second consideration for Tuesday, December 19, 2023.
4. The Story County Board of Supervisors remands Ordinance 313, Amending Certain Boundaries of the Official Zoning Map of Story County, back to staff for additional information, and directs staff to set first consideration for Tuesday, January 2, 2024.

Following the ASSET budget allocation process in January, I will plan to bring recommendations to the Board in February. At that time, the Board could accept the recommendations or make changes as deemed appropriate.

Respectfully,

Sandra King

Sandra King
Director of External Operations and County Services

Attachment
FY25 ASSET Budget Requests

	A	B	C	D	E	F	G	H
49	HIRTA Public Transit	Transportation - County	2.13	\$115,000.00	\$96,000.00	(\$19,000.00)		Is req supported by date?
50	Total HIRTA			\$128,000.00	\$128,000.00	\$0.00		
51								no overall incr
52	Legal Aid Society of Story County	Legal Aid - Civil	2.10	\$152,814.00	\$172,172.00	\$19,358.00		increased request to aid in filling an attorney vacancy and handle increasing demand for FY24: 19% incr
53	Total Legal Aid			\$152,814.00	\$172,172.00	\$19,358.00		
54								
55	Lutheran Services in Iowa	Crisis Child Care	3.09	\$2,384.00	\$2,384.00	\$0.00		
56	Total LSI			\$2,384.00	\$2,384.00	\$0.00		
57								
58	Mid-Iowa Community Action (MICA)	Food Pantry	2.01	\$10,500.00	\$13,000.00	\$2,500.00		
59	Total MICA			\$10,500.00	\$13,000.00	\$2,500.00		
60								
61	Primary Health Care	Dental Clinic	3.01	\$10,000.00	\$12,490.00	\$2,490.00		
62	Total PHC			\$10,000.00	\$12,490.00	\$2,490.00		
63								
64	Raising Readers	Public Education & Awareness	1.12	\$4,472.00	\$4,830.00	\$358.00		
65	Raising Readers	Out of School Program	1.09	\$6,054.00	\$6,539.00	\$485.00		
66	Raising Readers	Family Development/Education	1.10	\$5,132.00	\$5,543.00	\$411.00		
67	Total Raising Readers			\$15,658.00	\$16,912.00	\$1,254.00		
68								
69	Story Time Childcare	Child Care - Infants	2.02	\$2,900.00	\$3,150.00	\$250.00		
70	Story Time Childcare	Child Care - Children	2.03	\$55,100.00	\$59,850.00	\$4,750.00		
71	Total Story Time			\$58,000.00	\$63,000.00	\$5,000.00		
72								
73	The Bridge Home	Supportive Housing	2.15	\$0.00	\$40,000.00	\$40,000.00		Not funded in FY24
74	The Bridge Home	Emergency Shelter	2.08	\$62,791.00	\$80,000.00	\$17,209.00		plus an additional \$16,322: \$79,113 total for FY24
75	The Bridge Home	Service Coordination - Rapid Re-Housing Program	3.13	\$4,000.00	\$12,000.00	\$8,000.00		200% Didn't request for FY22
76	Total The Bridge Home			\$66,791.00	\$132,000.00	\$65,209.00		98%
77								
78	The Community Academy	Out of School Program - Community Projects		\$5,375.00	\$48,260.00	\$42,885.00		798% New to ASSET in FY24
79	Total The Community Academy			\$5,375.00	\$48,260.00	\$42,885.00		
80								
81	The Salvation Army	Emergency Disaster Service	2.12	\$2,000.00	\$4,000.00	\$2,000.00		100%
82	The Salvation Army	Food Pantry	2.01	\$15,000.00	\$18,000.00	\$3,000.00		120%
83	The Salvation Army	Temporary Emergency Shelter (Hotel Voucher)	2.08	\$0.00	\$3,000.00	\$3,000.00		Not funded in FY24
84	The Salvation Army	Vehicle Maintenance & Repair Program	2.01	\$0.00	\$2,000.00	\$2,000.00		Not funded in FY24
85	Total Salvation Army			\$17,000.00	\$27,000.00	\$10,000.00		58% NEW services to ASSET
86								
87	University Community Childcare	Day Care - Infants	2.02	\$14,958.00	\$16,454.00	\$1,496.00		10%
88	University Community Childcare	Day Care - Children	2.03	\$11,176.00	\$12,293.00	\$1,117.00		10%
89	Total UCC			\$26,134.00	\$28,747.00	\$2,613.00		9%
90								
91	Youth and Shelter Services	Family Nest Program (FKA Storks Nest)	2.11	\$1,000.00	\$4,087.00	\$3,087.00		309%

	A	B	C	D	E	F	G	H
92	Youth and Shelter Services	Mentoring	1.07	\$41,737.00	\$46,787.00	\$5,050.00	12%	
93	Youth and Shelter Services	Day Care - School Age/Kids Club (incl Colo-Nesco)	2.04	\$71,060.00	\$73,192.00	\$2,132.00	3%	(incl \$16,060 for Colo-Nesco)
94	Youth and Shelter Services	Youth Development/Social Development - Community Youth Dev	1.07	\$36,500.00	\$37,595.00	\$1,095.00	3%	
95	Youth and Shelter Services	Family Development/Education	1.10	\$3,087.00	\$0.00	(\$3,087.00)	-100%	
96	Youth and Shelter Services	Public Educ & Awareness (Education & Prevention)	1.12	\$101,500.00	\$104,545.00	\$3,045.00	3%	
97	Youth and Shelter Services	Employment Assistance for Youth	1.08	\$6,516.00	\$27,711.00	\$21,195.00	325%	
98	Youth and Shelter Services	Summer Enrichment	1.09	\$19,974.00	\$23,973.00	\$3,999.00	20%	
99	Youth and Shelter Services	Transitional Living	2.07	\$44,000.00	\$50,600.00	\$6,600.00	15%	
100	Youth and Shelter Services	Emergency Shelter - Rosedale	2.08	\$66,524.00	\$101,350.00	\$4,826.00	5%	
101	Youth and Shelter Services	Service Coordination	3.13	\$5,000.00	\$5,000.00	\$0.00	0%	
102	Youth and Shelter Services	Substance Use Disorder Outpatient Treatment	3.16	\$20,000.00	\$40,000.00	\$20,000.00	100%	Used \$8,700 in FY22
103	Youth and Shelter Services	Transitional Housing Services - Rapid Rehousing (new)	2.01	\$0.00	\$35,000.00	\$35,000.00	Not funded in FY24	NEW request last FY, not funded. The County has not funded this type of service through ASSET (i.e. rent). Provider was advised last year.
104	Total YSS			\$446,898.00	\$549,840.00	\$102,942.00	23%	
105								
106	FY24 unallocated GB funds			\$89,330.00				
107	TOTAL GENERAL BASIC			\$1,360,387.00	\$1,568,286.00	\$207,899.00	15%	
108								
109								
110	LOCAL OPTION FUNDS							
111	Provider	Service		Budget 2024	Request 2025	Difference	% Change	
112	Hearland Senior Services	Adult Day Center	3.02	\$270.00	\$300.00	\$30.00	11%	
113	Hearland Senior Services	Home Delivered Meals - Meals on Wheels	3.05	\$669.00	\$700.00	\$31.00	5%	
114	Hearland Senior Services	Service Coordination/Outreach	3.13	\$785.00	\$810.00	\$25.00	3%	
115	Totals HSS			\$1,724.00	\$1,810.00	\$86.00	5%	
116								
117	Legal Aid Society of Story County	Legal Aid - Civil	2.10	\$10,591.00	\$11,544.00	\$953.00	9%	
118	Total Legal Aid			\$10,591.00	\$11,544.00	\$953.00	9%	
119								
120	The Salvation Army	Food Pantry		\$1,500.00	\$2,000.00	\$500.00	33%	
121	Total Salvation Army			\$1,500.00	\$2,000.00	\$500.00	33%	
122								
123	Youth and Shelter Services	Kids Club (including Colo-Nesco)	2.04	\$5,000.00	\$5,150.00	\$150.00	3%	
124	Youth and Shelter Services	Summer Enrichment	1.09	\$682.00	\$926.00	\$44.00	5%	
125	Total YSS			\$5,882.00	\$6,076.00	\$194.00	3%	
126								
127	FY24 allocated LO funds			\$19,697.00			9%	
128	FY24 unallocated LO funds			\$1,339.00				
129	TOTAL LOCAL OPTION			\$21,036.00	\$21,430.00	\$1,733.00	8%	
130								
131								
132	PUBLIC HEALTH FUNDS							
133	Provider	Service		Request 2024	Request 2025	Difference		
134	MGMC Home Health Services	Clinics	3.01	\$112,000.00	\$90,000.00	(\$22,000.00)	-20%	
135	MGMC Home Health Services	Homemaker / Home Health Aide	3.12	\$129,200.00	\$106,900.00	(\$22,300.00)	-17%	

FY25 - ASSET Funding Options For Consideration							
	3%	4%	5%	6%	7%	8%	
General Basic [FY24: 1,360,387]	\$1,401,199	\$1,414,802	\$1,428,406	\$1,442,010	\$1,455,614	\$1,469,218	
Local Option [includes \$394 increase]	\$21,430	\$21,430	\$21,430	\$21,430	\$21,430	\$21,430	
Public Health [includes \$31,250 decrease]	\$341,900	\$341,900	\$341,900	\$341,900	\$341,900	\$341,900	
Total that would be available to ASSET For FY25	\$1,764,529	\$1,778,132	\$1,791,736	\$1,805,340	\$1,818,944	\$1,832,548	
FY24 ASSET Funds	\$1,754,573	\$1,754,573	\$1,754,573	\$1,754,573	\$1,754,573	\$1,754,573	
Difference (new funds available)	\$9,956	\$23,559	\$37,163	\$50,767	\$64,371	\$77,975	
% Change	0.57%	1.34%	2.12%	2.89%	3.67%	4.44%	