

**BOARD OF COUNTY COMMISSIONERS  
SARPY COUNTY, NEBRASKA**

**RESOLUTION AUTHORIZING AGREEMENT WITH THE SCHEMMER ASSOCIATES FOR  
PROFESSIONAL SERVICES**

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2012), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers;

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2012), the powers of the County as a body are exercised by the County Board;

WHEREAS, general supervision and control of the public roads of each county is vested in the County Board by virtue of Neb. Rev. Stat. § 39-1402 (Reissue 2012);

WHEREAS, Sarpy County desires to enter into an agreement ("Agreement") with the firm of THE SCHEMMER ASSOCIATES for professional engineering services in conjunction with the preliminary design and final design for 230<sup>th</sup> Street and Capehart Road, BNSF Crossing, in Sarpy County;

WHEREAS, the Agreement is for services that are unique, non-competitive, and professional; and

WHEREAS, entering into the Agreement with THE SCHEMMER ASSOCIATES is in the best interests of the citizens of Sarpy County.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT this Board hereby approves and adopts the Agreement for professional services with THE SCHEMMER ASSOCIATES, a copy of which is attached hereto, and any other related documents, the same being approved and adopted by the Board.

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk are hereby authorized to execute on behalf of this Board, the Agreement.

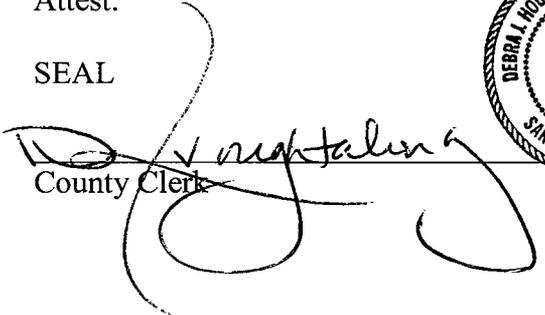
The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 18<sup>th</sup> day of June, 2013.

  
\_\_\_\_\_  
Sarpy County Board Chairman

Attest:

SEAL



  
\_\_\_\_\_  
County Clerk

**STANDARD FORM OF AGREEMENT  
BETWEEN SARPY COUNTY PUBLIC WORKS AND THE  
SCHEMMER ASSOCIATES  
FOR PROFESSIONAL SERVICES.**

**Sarpy County Project: C-77(14-3)  
230<sup>th</sup> and Capehart Road, BNSF Crossing  
PRELIMINARY AND FINAL DESIGN  
Professional Services Provided: Survey, Roadway, Bridge, Right-of-way**

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**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”) between

Sarpy County Public Works (“Owner”) and

The Schemmer Associates, Inc. (“Engineer”).

Owner intends to receive preliminary and final design services for survey, roadway and bridge, right-of-way design, appraisal and acquisition, and letting phase service for:

230<sup>th</sup> and Capehart Road, BNSF Crossing, Sarpy County Project: C-77(14-3)

\_\_\_\_\_ (“Project”).

Owner and Engineer 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 A.
- B. Owner shall pay Engineer as set forth in Exhibit B.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

## ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

### 3.01 *Commencement*

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth 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, 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 to the recovery of direct damages 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 contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment 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 of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since 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.

### *5.02 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 collating the various cost categories which 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. 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 Engineer's services.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

- C. Engineer may employ 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. 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. Engineer and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, 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 documents.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition or newer) unless both parties mutually agree to use other General Conditions by specific reference.
- H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

## 6.02 *Design Without Construction Phase Services*

- A. Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services beyond shop drawing review, therefore (1) Engineer's services under this Agreement shall be

deemed complete no later than the end of the shop drawing review Phase; (2) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (3) Owner waives any claims against the Engineer that may be connected in any way thereto.

### 6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, 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. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, 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 or on any other project 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 Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from

any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Owner shall not create any rights in third parties.

- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit D, "Insurance." 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 D, "Insurance." Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the "Standard General Conditions of the Construction Contract," (No. C-700, 2002 Edition or newer) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other 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 D. 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 shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- F. 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 D. 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 D will be supplemented to incorporate these requirements.

#### 6.05 *Suspension and Termination*

- A. Suspension.

By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

- 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.
      - 3) Engineer shall have no liability to Owner on account of such termination.
    - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.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,
    - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination.* The terminating party under Paragraph 6.05.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 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished 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.E.
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 6.05.D.1, to invoice Owner and to 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.

6.06 *Controlling Law*

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

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, 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, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted 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 Contractor, Contractor's subcontractor, supplier, other 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 6.07.C shall appear in the Contract Documents.

6.08 *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 E or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit E. If Exhibit E is not included, or if no dispute resolution method is specified in Exhibit E, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents 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 Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- 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 30 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 "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.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by Owner and Engineer in Exhibit F, "Allocation of Risks," if any.
- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- C. *Environmental Indemnification.* In addition to the indemnity provided under Paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) 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. *Percentage Share of Negligence.* To the fullest extent permitted by law, 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.

- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, 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 the Project.

#### 6.11 *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 facsimile, 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, who 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 law, 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 or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract," prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition):
  1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.
  2. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A of this Agreement.
  3. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. 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 properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

4. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which 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. §§1801 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.; and [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.
5. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
6. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
7. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
8. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
9. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
10. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any.
11. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

12. *Total Project Costs* – The sum of the Construction Cost, 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 pursuant to Exhibit B of this Agreement.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### **8.01 *Exhibits Included***

- A. Exhibit A, “Engineer’s Services,” consisting of 25 pages.
- B. Exhibit B, “Consultant Estimate of Hours and Expenses,” consisting of 6 pages.
- C. Exhibit C, “Payments to Engineer for Services and Reimbursable Expenses,” consisting of 3 pages.
- D. Exhibit D, “Insurance,” consisting of 2 pages.
- E. Exhibit E, “Dispute Resolution,” consisting of 1 pages.
- F. Exhibit F, “Allocation of Risks,” consisting of 1 pages.
- G. Exhibit G, “Residency Verification” consisting of 1 pages.

### **8.02 *Total Agreement***

- A. This Agreement (consisting of pages 1 to 14 inclusive, together with the exhibits identified 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 duly executed written instrument.

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

Owner:

Sarpy County ~~Public Works~~ Board of Commissioners

Engineer:

The Schemmer Associates

By: Jim Warren

By: Stephen D. Kathol

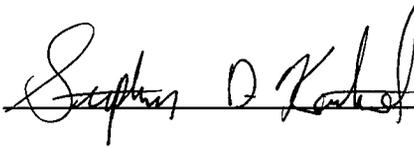
Title: Chairman

Title: Principal

Date: 6/18/13

Date: 6/10/13

Signed: 

Signed: 

Address for giving notices:

1210 Golden Gate Dr #1250  
Papillion NE 68046

Address for giving notices:

1044 N 115<sup>th</sup> Street  
Suite 300  
Omaha, NE 68154

This is **EXHIBIT A**, consisting of 25 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June, 2013.

**SCOPE OF SERVICES**

**FOR**

**230<sup>th</sup> and Capehart Road, BNSF Crossing  
SARPY COUNTY PROJECT C-77(14-3)**

**PRELIMINARY ENGINEERING**

(A) PROJECT DESCRIPTION

This schedule provides for the Consultant to prepare design plans for the above project that begins at approximately 223<sup>rd</sup> and Capehart Road and continues west over the BNSF railroad with new grade separated viaduct and ends at approximately 232<sup>nd</sup> and Capehart Road. Total project length is estimated at one-half mile. A new crushed rock roadway on new alignment is proposed to replace the existing at grade crossing at 230<sup>th</sup> and Capehart Road. Nebraska Minimum Design Standards for rural local roads with RL2 designation will be the minimum design standard. The ROA1 design standard will be used for typical bridge and roadway sections.

Work includes project management, public involvement, environmental evaluation, geotechnical engineering, preparing preliminary and final plans for roadway/bridge, topographic survey, right-of-way design and negotiation services, utility coordination, and other design tasks summarized below.

(B) COUNTY TO

1. Provide information, as available, pertinent to this project.
2. Make arrangement for stakeholder information meeting venue and logistics.
3. Prepare responses to comments submitted at Public Information Meeting or other times during the project. Consultant to provide assistance.
4. Sarpy County and Consultant will coordinate a potential request for relaxation of standard with the Nebraska Board of Public Roads Classification and Standards. Improvement to an existing crest vertical curve near 225<sup>th</sup> Street on Capehart Road may be limited by proximity impacts to adjacent homes.

### (C) APPLICABLE PUBLICATIONS

The Consultant shall follow the criteria of the current applicable publications of the American Association of State Highway and Transportation Officials and design criteria furnished by the State. These publications and others which the Consultant shall use in this work are:

1. American Association of State Highway and Transportation Officials, Geometric Design of Highways and Streets, 2011 – Green Book (AASHTO).
2. Nebraska Board of Public Roads Classification and Standards – Minimum Design Standards.
3. Nebraska Department of Roads - Roadway/Drainage/Erosion-Control Design – 2006 (two publications).
4. Nebraska Department of Roads 2007 - Standard Specifications for Construction will be referenced for design.
5. American Association of State Highway and Transportation Officials, Roadside Design Guide, 4<sup>th</sup> Edition, 2011.
6. American Association of State Highway and Transportation Officials, Load and Resistance Factor Design (LRFD) Bridge Design Specifications, 6<sup>th</sup> Edition.
7. Manual on Uniform Traffic Control Devices (FHWA).

### (D) PROJECT PLANS FORMAT, CONVENTIONAL AND CADD

1. The Consultant shall prepare plan and profile plan sheets on a scale of 1"=50'.
2. All plan sheets shall be half-size (11"x17")
3. The Consultant will utilize Microstation/Geopak and NDOR drafting procedures and guidelines in preparing the project plans.
  - (a) Line weights, line styles, text size and leveling will be according to NDOR standards.

### (E) DATA TRANSFER

1. The Consultant shall transfer all GRAPHIC files to the County in approved format. Native files will be in Microstation, but exports can be made for all base files to AutoCAD Civil 3d.

UPON NOTICE TO PROCEED, THE CONSULTANT SHALL PROVIDE ALL OF THE SERVICES AS OUTLINED IN THIS SCHEDULE.

### (F) PROJECT MANAGEMENT

1. General Project Management at 6% of total hours.

#### (G) GEOTECHNICAL ANALYSIS

1. The Consultant shall provide 6 (six) soil borings. The depths for four of the soil borings shall vary from a minimum of 10 feet deep (fill areas) to a maximum depth to extend 5 feet below anticipated final profile grade (cut areas) of Capehart Road. Two borings shall be in the vicinity of bridge abutments and shall extend to bedrock. Final locations shall be determined by the Consultant during an on-site visit.
2. The Consultant shall conduct a geotechnical evaluation of the soil borings for use in designing the roadway and bridge. An engineering report will provide recommendations for general subgrade requirements for crushed rock surfacing, settlement times, anticipated shrinkage, and specifications for construction materials testing.

#### (H) ENVIRONMENTAL STUDIES

##### **Environmental Documentation**

It is assumed that the project is locally funded and will not require full federal aid NEPA services. Environmental services are expected to include:

1. Wetland Delineation. Complete a jurisdictional wetland evaluation of the wetland and waters of the U.S. for the project site. Wetlands identified during the investigation will be delineated in accordance with the U.S. Army Corps of Engineers (COE) 1987 Wetlands Delineation Manual and the Midwest Regional Supplement. Wetland boundaries will be located by sub-meter accuracy GPS in the field. Data on soils, hydrology, and vegetation will be collected. Color photographs of the wetland and upland areas will be taken, and data sheets will be filled out at locations that will allow wetland boundaries to be determined. Areas that are not wetlands but meet the definition of "waters of the U.S." will be identified on maps only and not delineated in the field. A wetland report will be prepared documenting the findings. This task (Wetland Delineation) to be performed by Terracon (Subconsultant).
2. Wetland Permitting Assistance. This project is assumed to qualify for a Nationwide Permit (either 23 for Approved CE or 14 for Transportation Projects).
3. Storm Water Plan, SWPPP, NOI to be completed by Engineer
4. SHPO, Fish and Wildlife, and Nebraska Game and Parks coordination/concurrence letters.

### (I) MEETINGS

Task Assumes four (4) meetings to be held at various phases of design development. Meetings include time to prepare for meeting, travel, conduct meeting, and develop minutes summarizing decisions.

1. Initial progress meeting to be held with County early in design development after initial utility coordination, alignment, and profile have been schematically developed.
2. Plan-in-Hand and progress meeting to be held with Sarpy County. A representative from NDOR Rail, and BNSF will be invited to the meeting.
3. Pre-appraisal - Final Limits of Construction and R.O.W. Design Review.
4. 90% review meeting to coincide with Construction Contract Development.

### (J) PUBLIC INVOLVEMENT

Task assumes one meeting with local stakeholders.

1. Meeting with stakeholders with direct interest in the project. A suggested list of local stakeholders that should have input will be coordinated with Sarpy County. Possible stakeholders could be Gretna City Council, County Commissioner, and adjacent property owners.

This task assumes two individuals from the consultant will attend the local stakeholders meeting. A mosaic will be created at 1" = 50' scale with roadway and limits of construction features shown. The mosaic will include approximate limits of construction and filled shapes to portray bridge and roadway features.

### (K) 30% DESIGN PLANS

1. In general, the Consultant shall provide 30% design services for (but not be limited to):
  - (a) Site Inspections (1)
  - (b) Data Collection and Review.
  - (c) Existing right-of-way ownership (sheet development only)
  - (d) Horizontal and vertical alignment
  - (e) Geometric Design
  - (f) Typical Section
  - (g) Drainage Design
    1. Consultant to design local drainage to meet NDOR standards.
  - (h) Limits of Construction

- (i) Estimate of Earthwork Quantity
  - (j) Plan and Profile Sheets
  - (k) Construction/Removals sheets
  - (l) Preliminary layout special details
    - 1. Retaining wall evaluation and preliminary layout. Expected to coincide with bridge and possible minimizing right-of-way impacts/earthwork quantity.
    - 2. Guardrail Design – Prioritize and balance use of guardrail with earthwork and right-of-way impacts related to steeper foreslopes and minimizing right-of-way impacts behind guardrail.
  - (m) Quantities/Cost Estimate
  - (n) Plan Production and Printing
  - (o) Bridge Type Situation and Location plan.
  - (p) Concept level phasing plans for local access.
    - 1. It is assumed the roadway will be closed during construction
    - 2. Local access will be maintained at all times and significant grade changes will require temporary drives/surfacing to maintain access on 225<sup>th</sup> Street.
  - (q) QA/QC
2. Plan-in-hand
- (a) Develop Plan in Hand meeting including plan-in-hand report and revisions, agenda and minutes.

#### (L) UTILITIES

1. The Consultant shall show surveyed utilities on the project plan sheets, print and distribute to the utility companies for verification.
2. The Consultant shall coordinate directly with the utility companies and others to verify location and ownership of all existing overhead and underground utilities on the project.
3. The Consultant shall address specific utility problems with utility.
4. The Consultant shall analyze the utility constraint and be available to discuss the design of the project with affected utilities and shall attempt to eliminate or minimize conflict with utilities.
5. The Consultant will submit the plans to the utilities for their review. The affected utilities will, in turn, submit their rehabilitation plans and estimates back to the Consultant. Consultant shall document all coordination and submit to the County.

#### (M) RAILROAD COORDINATION

This task includes customary coordination with BNSF Railway and 30% and 90% plan submittals necessary for BNSF Railway approval. Up to two meetings at the Sarpy County Public Works Department office are included. This task also includes drafting the Operation and Maintenance Agreement by using the NDOR/BNSF Railway Agreement template, for execution by BNSF Railway and Sarpy County.

#### (N) BRIDGE DESIGN

This task will develop the final design and construction documents for the new bridge structure. The bridge will be designed and plans prepared in accordance with current policies of the Nebraska Minimum Design Standards and the Nebraska Department of Roads. The structural components will be designed in accordance with the AASHTO LRFD Bridge Design Specifications, 6<sup>th</sup> Edition.

The following bridge design tasks will be executed:

1. Geometric Design- task includes geometric design necessary to calculate bridge dimensions, top of slab elevations, bearing seat elevations, pile cut-off elevations, bottom of substructure elevations, and other elevations necessary to communicate construction details.
2. Concrete Slab Design- tasks includes the structural design of positive and negative moment reinforcing and cantilever slab reinforcing for the concrete slab. Design of all transverse and longitudinal reinforcing is included.
3. Beam Design- task includes design of prestressed/precast NU girders or Inverted-Tee beams as applicable.
4. Abutment Design- Task includes structural design of integral style abutment, wingwalls, piling layout, and piling capacity requirements.
5. Retaining Wall Design- Task includes structural design for approach embankment/abutment retaining wall design anticipated to be approximately 25-feet tall.

The following plan preparation tasks will be executed:

6. General Notes and Quantity Summary sheet. Task includes plan preparation and calculation of bridge pay item quantities.
7. Plan and Elevation sheet. Task includes plan preparation for plan and elevation sheet depicting type, size, location, and all customary bridge information.

8. Pile layout sheet. Task includes plan preparation of piling layout and dimensions at the abutments.
9. Geological Profile Sheet. Task includes plan preparation of the geological profile sheet depicting soil layers and other necessary information obtained from the soil borings.
10. Abutment and Wingwall sheet. Task includes plan preparation for abutment footing, turndown, and wingwalls. Two plan sheets are estimated.
11. Beam Layout sheet. Task includes plan preparation of beam layout with pertinent dimensions.
12. Cross-Section Sheet. Task includes plan preparation of bridge cross-section, including detailing of abutment diaphragms (turndowns).
13. Beam Detail sheet. Task includes preparation of standard NDOR NU Girder or Inverted-Tee girder beam sheet.
14. Barrier Railing. Task includes preparation of standard NDOR closed barrier railing sheet.
15. Bill of Bars. Task includes preparation of bill of bars sheets for all reinforced concrete elements. Effort for reinforcing calculations to determine bar length, number of bars, and bending diagrams are included in this task.
16. Retaining Wall Detail Sheet. Task includes plan preparation of layout and details of approach embankment/abutment retaining wall.

#### (O) TOPOGRAPHIC SURVEY

1. Provide current topographic survey in Microstation/Geopak format per Nebraska Department of Roads drafting standards. The survey shall include a digital terrain model. A listing of control points and benchmarks shall also be provided. A reasonable effort to recover existing property corners and sections corners for use in developing right-of-way Ownership Plans and new acquisition.

#### Topographical Survey

The Consultant will perform the necessary topographic ground survey including the existing centerline, intersecting streets, alleys and drives, tying the location of land monuments to the existing centerline, cross-sections and profiles necessary for the hydrologic study and hydraulic design of the drainage system. A topographic survey will be performed using electronic 'Total Station' technology in MicroStation/GEOPAK format. Copies of field book records and electronic records will be submitted to Sarpy County at the completion of final

design. Natural topographic features and man-made features, will be recorded by coordinates to the nearest one-tenth (0.1) of a foot. All such topographic features, which are pertinent to the design or are necessary to properly show the effect of the proposed work upon the adjoining property and/or improvements, will be recorded. The topographical survey will include a tree count, noting the size, type and location (station and offset will be noted on the plans). The tree count will be conducted after the design has sufficient detail to identify which trees may be impacted by the project.

The limits of the survey will include a 300 feet wide corridor along Capehart Road from 223<sup>rd</sup> Street to 232<sup>nd</sup> Street (approximately 3800 feet of topographic survey). Limits will also include survey along 225<sup>th</sup> Street for 500 feet south of Capehart Road and approximately 300 feet wide. For temporary road connection survey will be collected near 225<sup>th</sup> Street and Pine Hill Road (cul-de-sac) for design of a temporary connection while 225<sup>th</sup> and Capehart Road is closed.

#### Base Map Preparation

Consultant will create the base map of the topographic survey data.

#### Horizontal Control

The Consultant shall provide a list of horizontal control points with coordinates, descriptions, station and offset. Horizontal control will be referenced to the NE State Plane Coordinate System using known land survey monuments. Horizontal control will be included in the plans.

#### Vertical Control

Vertical control will be completed by differential level circuit referenced to NAVD 88.

#### Locate Section Corners

The Consultant will survey section corners in order to assemble the geometry to create the right-of-way drawings.

#### Bench Level Run

Bench levels will be run by direct leveling methods, (no "side shots" will be permitted). Levels will close within an allowable error of five-hundredths (0.05) of a foot times the square root of

the length of the level loop in miles. The Consultant will run a closed level circuit, establishing intermediate benchmarks along the project and on intersecting streets beyond the limits of the project. This level circuit will be tied to NAVD 88 benchmarks.

#### Utility Locates

Utilities will be drawn from surveying above ground features, including markings by utility companies resulting from the locate request. Information supplied by utility companies will be used to complete the placement of existing utilities on the plans. Locations from utility plans will be transferred into the topographic survey. Where available, above-ground features will be used to improve accuracy. The Consultant will add a disclaimer to the drawings with respect to the undetermined location of underground utilities.

#### (P) RIGHT OF WAY DESIGN

Right-of-way design to begin at approximately 60% design phase. Schemmer will provide services for Item 1 and 2. Midwest ROW will provide services for Item 3 and 4, and 5 under sub-consultant agreement.

1. Right of Way Strip Map and base drawings – This task will involve the preparation of a strip map showing adjacent existing right-of-way, and proposed permanent right-of-way, and temporary or permanent easements. Task also includes development of Index sheet with tract summary information for inclusion in project plans.
2. Right of Way Tract Drawings – This task will involve the preparation of tract drawings showing adjacent existing right-of-way, and proposed permanent right-of-way, and temporary or permanent easements. Individual tract maps with legal descriptions will be created according to NDOR Right of Way guidelines. It is anticipated that ten (10) tract drawings will be required for the project.
3. Provide research information for existing right-of-way and easements. This includes utility easements.
4. Appraisals - This task involves preparation of appraisal reports, which will provide values for the land, permanent or temporary easements, landscaping to be acquired, analyze cost to

cure items, and estimate severance damages to the remainder if any, for all affected properties to be acquired. Appraisal reports will be contracted by Midwest Right of Way Services, Inc.

5. Acquisition - Title reports and appraisals are then reviewed so that the necessary purchase documents can be prepared. After the documents have been prepared and reviewed, an offer will be made to each property owner in writing. We will attempt to meet with each property owner at least three times, if necessary. During our visits, we will explain the project and acquisition process to each owner. We will also verify ownership information and ask if there are any tenants on the property. Each visit will be documented on a call report and kept in the parcel file. If necessary, recommendations for negotiated settlements will be made to the agency. When an agreement is reached, we will obtain the necessary signatures of all interested parties on the conveyance documents.

Midwest Right of Way Services will perform the services in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Nebraska Department of Roads Right of Way Manual. Our goal is to acquire the necessary right of way through amicable negotiations. If condemnation is required, Midwest Right of Way Services will deliver the parcel files to the acquiring agency and be available for consultation or condemnation testimony.

#### (Q) 90% DESIGN PLANS

1. The Consultant shall prepare 90% final design plans to include all construction items, typical sections, phasing/temporary roadway sheets, all construction/removal sheets, retaining wall plans, contours and/or grading plans, limits of construction, cross sections, drainage design, draft erosion control, draft special designs, and submit them to the County and BNSF for review and approval.
2. Acquire BNSF Railway agreements for Construction.
3. The Consultant shall also prepare draft contract documents for County review.

#### (R) COMPLETED 100% PLANS AND DOCUMENTS (FINAL)

1. The Consultant, after the 90% review, shall complete the final design plans according to decisions made at the review.
2. The Consultant shall include (but not be limited to) in the final plans package the following:

- (a) Typical cross-sections
  - (b) Completed Plan and Profile Sheets
  - (c) Plan sheets including:
    - 1) Drainage
    - 2) Removal/Construction
    - 3) Pavement Geometrics
    - 4) Cross-section Sheets
    - 5) Erosion Control Plan
    - 6) Phasing Plans
  - (d) Bridge Plans (as detailed in task N)
3. Contract Documents including:
- 1) Front-end documents
  - 2) Special Provisions
  - 3) Advertisement for Bid and Instructions to Bidders
  - 4) Bid form
  - 5) Status of Utilities/Status of Right-of-way
  - 6) Consultant will coordinate final submittal and advertising with Sarpy County purchasing agent.
  - 7) BNSF Railway Agreements.
4. Additional tasks to be performed during final design include:
- (a) Special designs, modification/replacement
  - (b) Estimate of Earthwork Quantity
  - (c) Quantities/Cost Estimate
  - (d) Erosion Control Design
  - (e) Special Provisions
  - (f) Prepare Stormwater Pollution Prevention Plan (SWPPP) and NOI permit application. Prepare SWPPP documents for County signature and upload to Papillion Creek Watershed Partnership website.
  - (g) Post Construction Stormwater Management Plan (PCSMP):
    - 1) By supplemental if required.
  - (h) The Consultant shall stamp, sign and date all plans by the engineer registered in Nebraska.

5. The Consultant shall assist the County in bidding and award of the bid, contract preparation, and issue Notice of Award and Notice to Proceed. Review of contractor provided shop drawings.
6. Final QA / QC

(S) SCHEDULE

Notice to Proceed, July 1, 2013

Progress Meeting, September, 2013

Plan-in-hand and Stakeholder Meeting, November, 2013

Submittal of Environmental Documents (ongoing),

60% Design Plans & Final LOC's– Begin ROW Design Services, January, 2014

90% Design Plan Submittal, May, 2014

Environmental Permits (Approximately 2 months),

Right-of-way Acquisition (Estimated at 9 to 12 months), February 2015

100% Design Plans, February 2015

Bidding, Estimated April 2015

Construction, June 2015

(T) OPTIONAL ADDITIONAL SERVICES FOR PROJECT MANAGEMENT, CONSTRUCTION  
OBSERVATION AND SURVEYING

At the option of the County, the Consultant will provide any or all of the following services:

1. Provide during construction, the project management, shop drawing review, construction observation, project representation, erosion control inspections and reporting, surveying and testing for the improvements. The fee for optional services shall be determined at the time the County exercises the options.

# MIDWEST

Right of Way Services, Inc.

[www.midwestrow.com](http://www.midwestrow.com)

April 3, 2013

Mr. Shane E. Swope  
Transportation Engineer  
Schemmer Associates, Inc.  
1044 N 115th St #300  
Omaha, Nebraska 68154

RE: Proposal for Right of Way Services  
230th Street and Capehart Road Improvements  
Sarpy County, Nebraska

Dear Mr. Swope:

Midwest Right of Way Services, Inc. is pleased to provide this proposal for right of way services for the above-referenced project in Sarpy County, Nebraska.

## ***CONSULTANT AND KEY PERSONNEL***

***Consultant-*** Midwest Right of Way Services  
13425 "A" Street  
Omaha, Nebraska 68144  
(402) 955-2900  
(402) 955-2903 FAX

***Key Personnel-*** Jack Borgmeyer, President

## ***PROJECT UNDERSTANDING***

This project involves the acquisition of right of way from eight parcels of land located along Capehart Road in Sarpy County, Nebraska. The acquisitions may include fee title acquisitions, permanent easements and temporary construction easements, and are required for the construction of a railroad viaduct and road improvement project for Capehart Road.

## ***PROJECT MANAGEMENT***

This task will involve coordination of all project elements so that work is initiated as it should be, appropriate progress is made, and schedules are met. Coordination and scheduling of the title work, appraisals and reviews, and the acquisition and closing process will be the responsibility of the project manager.

### ***TITLE SEARCHES***

Title searches will be ordered for the property to be acquired in order to determine fee ownership and any liens and encumbrances which will affect the title. Midwest Right of Way Services will contract with Nebraska Title Company in Omaha to provide these services and pass the cost through to Sarpy County.

### ***APPRAISALS***

This task involves preparation of eight appraisal reports which will provide values for the land and easements to be acquired. Tom Stevens of Thomas Stevens and Associates will prepare and provide the reports. He is approved by the State of Nebraska Department of Roads to provide appraisal reports for Federal Aid Projects.

### ***APPRAISAL REVIEWS***

This task involves the review of the completed appraisal reports to verify they represent fair market value for the property under consideration and a reasonable estimate of just compensation due the property owners. Denny Knudson of Knudson Appraisals in Omaha will be the Review Appraiser for the project. He will review the reports in accordance with Department of Roads Appraisal Review Specifications. Mr. Knudson is approved by Nebraska Department of Roads to provide appraisal reviews for Federal-Aid Projects.

### ***ACQUISITION***

Midwest Right of Way Services' acquisition agents will make every effort to understand the project's objective before meeting with the property owner. They will prepare all documents, present and explain the offer, answer all acquisition-related questions, and secure signatures from all interested parties. Our acquisition agent will obtain tenant information from property owners and proceed to obtain signed a leasehold contract, if applicable.

Midwest Right of Way Services will perform the services in accordance with the Nebraska Department of Roads Right of Way Manual. Our goal is to acquire the necessary right of way through amicable negotiations. If condemnation is required, Midwest Right of Way Services will deliver the parcel files to Sarpy County and be available for consultation or condemnation testimony.

### ***TEAM MEMBERS***

*Jack Borgmeyer, SR/WA, R/W-RAC*, is President of Midwest Right of Way Services, Inc. Borgmeyer is qualified to complete all aspects of the right of way process. His experience includes right of way title searches, land and easement acquisition, relocation, condemnation testimony, and project management. Borgmeyer has over 30 years of experience relating to real estate and right of way.

*Stacey A. Kroeger, R/W-RAC, Right of Way Agent*, has worked for Midwest Right of Way Services for over ten years. She has performed acquisition negotiations and relocation assistance for the past six years. Her experience includes right of way title searches, acquisition negotiations and relocation assistance for state and local, federally funded projects in Nebraska and Kansas.

*Dave Minino, Right of Way Agent*, has worked for Midwest Right of Way Services since April of 2012. He has performed acquisition negotiations for airport, roadway, utility and drainage projects. His experience also includes real estate sales, title search and review, as well as the ability to read and interpret engineering plans.

*Denny Bliss, Right of Way Agent*, has worked for Midwest Right of Way Services since July of 2011. He has performed acquisition negotiations for airport, roadway, and drainage projects. His experience also includes preparation and review of legal descriptions, review of land title reports, as well as the ability to read, interpret and draw engineering plans. He is also an experienced CADD technician.

*Lynda Steigerwalt* provides office support and document preparation for Midwest Right of Way's acquisition and relocation agents. She has over seven years of experience in the title insurance and real estate industries.

### ***PAYMENT FOR SERVICES***

Midwest Right of Way Services proposes the right of way services detailed above for the following hourly fees:

	<u>Hourly Salary Rates</u>
Project Manager	\$ 90.00
Right of Way Agent/Relocation Agent	\$ 85.00
Mileage at Standard IRS Rate	\$ 0.565 per mile

The maximum fees for each task will be as follows:

<u>Task</u>	<u>Maximum Fee</u>
Project Management 8 parcels @ \$360.00 each	\$ 2,880.00
Acquisition 8 parcels @ \$2,380.00 each	\$ 19,040.00
Title Services 8 parcels @ \$200.00 each	\$ 1,600.00
Appraisals – Tom Stevens	\$ 8,400.00
Appraisal Reviews – Denny Knudson	\$ 4,000.00
<b>TOTAL MAXIMUM FEES</b>	<b>\$ 35,920.00</b>

If additional work or meetings are requested beyond the scope indicated in this proposal, we will contact you to discuss revising the contract amount before the additional work is started. Condemnation court testimony and consultation will be billed at our standard hourly rate plus expenses, if needed. Invoices will be sent on an approximate monthly basis for services rendered.

Shane E. Swope  
April 3, 2013  
Page 4

If the above described items are satisfactory to you, please sign and date the original and duplicate original of this letter in the space provided. Keep one executed copy of this letter for your files and return the duplicate copy to us for our files. Receipt of this letter contract will be considered our formal notice to proceed with the work.

Sincerely,

MIDWEST RIGHT OF WAY SERVICES, INC.



Jack Borgmeyer  
President

**ACCEPTANCE OF PROPOSAL AND AUTHORIZATION TO PROCEED**

\_\_\_\_\_  
Authorized Representative  
The Schemmer Associates, Inc.

Date: \_\_\_\_\_



April 2, 2013

Schemmer Associates  
1044 North 115<sup>th</sup> Street, Suite 300  
Omaha, Nebraska 68154

Attn: Mr. Shane Swope  
T: 402.493.7951

Re: Proposal for Wetland Delineation Services  
Sarpy County Project C-77(14-3)  
Papillion, Sarpy County, Nebraska  
Terracon Proposal No. P05130218

Dear Mr. Swope:

Terracon Consultants, Inc. (Terracon) is pleased to submit this proposal to conduct natural resources consulting services at the above referenced site. The purpose of our services will be to characterize the existing site conditions, to evaluate the extent of waterbodies and wetlands on the project site, to provide an opinion regarding whether or not the observed waterbodies or wetlands would be considered jurisdictional, and to summarize our results in a report.

## 1.0 SITE AND PROJECT INFORMATION

We understand that the project will include the construction of a viaduct near 230<sup>th</sup> Street and Capehart Road, Sarpy County, Gretna, Nebraska. Terracon is proposing to delineate wetlands and Waters of the U.S. (WUS) in areas that will be impacted by the proposed project (i.e., approximately 300 feet north and south from the centerline of Capehart Road for a length of 2,640 feet).

Item	Description
Location	230 <sup>th</sup> and Capehart Road
Existing improvements	Railroad and residences
Current ground cover	Based on recent aerials, the area of interest is primarily agricultural crop land, roadside ditches, and residential yards.
Existing topography/water bodies	Recent aerial photography indicates a drainageway that extends into the project area near station 21+50.

Terracon Consultants, Inc. 15080 A Circle Omaha, Nebraska, 68144  
P [402] 330 2202 F [402] 330 7606 terracon.com

## **Proposal for Wetland Services**

Sarpy County Project C-77(14-3) :: Gretna, Sarpy County, Nebraska

April 2, 2013 :: Terracon Proposal No. P05130218



Should any of the above information or assumptions be inconsistent with the planned construction, please let us know so that we may make any necessary modifications to this proposal.

Tributaries, creeks, wetlands, or ponds observed on the site may be considered WUS under the jurisdiction of the U.S. Army Corps of Engineers (USACE). Proposed impacts to a jurisdictional waterbody, including draining, filling, crossing, relocating, or discharging into the waterbody, require a Section 404 Permit from the USACE. Please note that only the USACE can make the final determination on the jurisdictional status of WUS, and on the need for permit processing and compensatory mitigation.

## **2.0 SCOPE OF SERVICES**

### **2.1 Base Services**

Terracon will complete a jurisdictional wetland evaluation of wetland and WUS for the project site. Wetlands identified during the investigation will be delineated in accordance with the USACE 1987 Wetlands Delineation Manual and the Midwest Regional Supplement. Wetland boundaries will be located by sub-meter accuracy GPS in the field. Data on soils, hydrology, and vegetation will be collected. Color photographs of the wetland and upland areas will be taken, and data sheets will be filled out at locations that will allow wetland boundaries to be determined. A wetland report will be prepared documenting the findings.

The delineation will use mandatory technical criteria, field indicators, and other sources of information to assess whether the project area has jurisdictional WUS or wetlands. The classification will be performed by a degreed biologist or environmental scientist. If wetlands are present, the upland boundaries within the project area will be identified. WUS will also be identified and mapped during the delineation.

The methods Terracon will use in the delineation generally follow the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (2010) and the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1987). Jurisdictional wetlands generally have three essential characteristics: hydrophytic vegetation, hydric soils, and wetland hydrology.

Our proposed Scope of Work includes the following:

- Assemble and review application and available information (i.e., aerial photographs, soil classifications and soil survey maps, USGS topographic maps, National Wetland Inventory (NWI) maps.

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- Perform an on-site visit to gather data pertaining to the hydrophytic vegetation community, surface hydrology, and hydric soil characteristics. The following items will be performed at discrete data point locations within suspect wetland areas on-site and will be characterized on appropriate wetland determination data forms for inclusion in the report.
  - Assess each stratum of vegetation (i.e., trees, saplings/shrubs, herbs, and woody vines). Vegetation will be classified by Genus species and dominance will be assessed.
  - Classify soil types and evaluate hydric soil indicators using shallow soil probes or space holes.
  - Observe site characteristics for wetland hydrology indicators.
- Utilize a Trimble GeoXT GPS (sub-meter accuracy) hand-held unit to map the location and boundaries of delineated wetlands. If heavy tree cover is present, a non-GPS survey may be needed to identify wetland boundaries. Fees for standard surveying have not been included in this proposal.
- Prepare maps showing the delineated wetland area(s) and identified WUS.
- Submit the Wetland and Waters of the U.S. Delineation Report containing the applicable data and wetland jurisdictional rationale to the client for submittal to the USACE.

## 2.2 Additional Services Beyond Base Services

The scope of this proposal includes one site visit to conduct a baseline delineation. Under the Midwest Supplement, on specific sites the USACE may request that the three wetland criteria be evaluated over time to provide additional information regarding seasonal changes in the wetland boundaries and/or characteristics. If the USACE requests additional information, we will provide additional scope for your approval prior to conducting the work.

The fees in this proposal do not include additional meetings or data collection/evaluation that may be required by the USACE. Fees do not include preparing a Section 404 Permit Application, Mitigation Plan, or other services that may be required if wetland or WUS impacts are proposed. Additional services will be necessary if compensatory mitigation is required for impacts to jurisdictional waterbodies or wetlands. Our specific involvement in these phases of the project is not known at this time. If necessary, budget estimates for additional services will be provided as the project scope evolves.

## 2.3 Schedule

According to the Midwest Supplement, the end of the growing season occurs when woody deciduous species lose their leaves and/or the last herbaceous plants cease flowering and their

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leaves become dry or brown. The growing season generally begins when two or more different non-evergreen vascular plant species growing in a wetland or surrounding area emerge from the ground, show new growth, bud, or flower. For better classification, the wetland delineation should be performed when vegetation is actively growing (generally May-October). If the wetland delineation will be performed outside of the growing season, surveying and classification of identified wetlands will be based on existing conditions and are subject to change. A follow-up visit may be necessary in the vegetative growing season to confirm plant species. Please note that the wetland delineation cannot be performed when the ground is covered in snow or when frozen ground conditions exist.

The delineation report will be submitted to the client within three to four weeks following the field visit or receipt of surveyed wetland boundaries. It is anticipated that Terracon can conduct the wetland delineation towards the end of May. The schedule for the wetland delineation is also dependent on weather conditions and the timing of receipt of notice to proceed for the project

In order to comply with the proposed schedule, the following items are required to be provided by the client at the time of notification to proceed in order to meet the client's required project completion date. Please include the following requested items along with the notification to proceed:

- Right of entry through the properties to conduct the field services;
- Notification of any restrictions or special requirements (such as safety) regarding accessing the site;
- Electronic diagram (AutoCAD or Micro Station) showing the proposed site layout and required delineation area; and
- A signed Agreement for Consulting Services evidencing acceptance of this scope of services

## 2.4 Scope and Report Limitations

The findings and conclusions presented in our report will be based on the site's current utilization and the information collected as discussed in this proposal. Please note that we do not warrant database or third party information or regulatory agency information used in the compilation of plans or reports. No warranties, express or implied, are intended or made.

## 3.0 COMMITMENT TO SAFETY

Terracon has a 100% commitment to the safety of all its employees. As such, and in accordance with our *Incident and Injury Free*® safety culture, Terracon will hold a meeting for

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our employees to review health and safety needs for this specific project. Anticipated safety concerns could include uneven terrain, remote site conditions, water hazards, and animal, insect, or toxic plant exposure. It may become necessary to provide additional measures to improve the safety of our employees, at additional cost, to reduce the risk for personal exposure. In the event your company is aware of specific safety concerns for the project site, Terracon respectfully requests notification of such concerns prior to mobilization.

**4.0 COMPENSATION**

Based on the proposed Scope of Work, our estimated fees are listed below:

<b>Item</b>	<b>Fee</b>
Travel, Site Data Review, Field Assessment and Wetland Identification	\$1,190
GPS Survey	\$100
WUS Delineation Report (incl. Regulatory Agency submittal if applicable)	\$2,610
<b>Total</b>	<b>\$3,900</b>

The proposed project will be invoiced on a lump sum basis. The fees presented are based on performing only the services discussed in this proposal. Changes beyond the Scope of Work of this proposal will be charged in accordance with our current unit fee schedule or a revised proposal. Interim invoices will be submitted regularly and are due upon receipt. Invoices will reflect the units performed in accordance with the above discussion.

**5.0 AUTHORIZATION**

This proposal may be accepted by executing both originals of the attached Agreement for Services and returning one copy to Terracon. Services will be initiated upon receipt of the written notice to proceed. The terms, conditions and limitations stated in the Agreement for Services, and sections of this proposal incorporated therein, shall constitute the exclusive terms and conditions and services to be performed for this project. This proposal is valid only if authorized within ninety days from the proposal date.

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**Terracon**

Terracon appreciates the opportunity to submit this proposal for natural resources services. If you have any questions or comments regarding this proposal, please contact Brandon Johnson at (402) 330-2202.

Sincerely,  
**Terracon Consultants, Inc.**



Brandon Johnson  
Environmental Biologist

  
*for* Eva S. Moritz, Iowa P.E.  
Environmental Engineer

BLJ/ESM:blj/nlm

Distribution: Addressee (1 via e-mail)

Attachment: Agreement for Services

## AGREEMENT FOR SERVICES

This **AGREEMENT** is between Schemmer ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Sarpy County Project C-77(14-3) project ("Project"), as described in the Project Information section of Consultant's Proposal dated 04/02/2013 ("Proposal") unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

- 1. Scope of Services.** The scope of Consultant's services is described in the Scope of Services section of the Proposal ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance/ Termination.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party. Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the Proposal unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Client will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Client agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.
- 5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties. For a limited time period not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with Client, however Client understands that such reliance will not be granted until those parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee.
- 6. LIMITATION OF LIABILITY.** CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE ASSOCIATED RISKS. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$10,000 OR CONSULTANT'S FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT. UPON WRITTEN REQUEST FROM CLIENT, CONSULTANT MAY NEGOTIATE A HIGHER LIMITATION FOR ADDITIONAL CONSIDERATION. THIS LIMITATION SHALL APPLY REGARDLESS OF AVAILABLE PROFESSIONAL LIABILITY INSURANCE COVERAGE, CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.
- 7. Indemnity/Statute of Limitations.** Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this Agreement. Causes of action arising out of Consultant's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of services on the project.
- 8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occ / \$2,000,000 agg); (iii) automobile liability insurance (\$1,000,000 B.I. and P.D. combined single

limit); and (iv) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

- 10. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.**
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client agrees to the level or amount of testing performed and the associated risk. Client is responsible (even if delegated to contractor) for requesting services, and notifying and scheduling Consultant so Consultant can perform these Services. Consultant is not responsible for damages caused by services not performed due to a failure to request or schedule Consultant's services. Consultant shall not be responsible for the quality and completeness of Client's contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Material unless specifically provided in the Services, and that Client is responsible for directing such disposition. In the event that test samples obtained during the performance of Services (i) contain substances hazardous to health, safety, or the environment, or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay Consultant the fair market value of this equipment and reasonable disposal costs. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site. Accordingly, Client waives any claim against Consultant and agrees to indemnify and save Consultant, its agents, employees, and related companies harmless from any claim, liability or defense cost, including attorney and expert fees, for injury or loss sustained by any party from such exposures allegedly arising out of Consultant's non-negligent performance of services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site.

Consultant: Terracon Consultants, Inc.  
By:  Date: 4/4/13  
Name/Title: Michael E. Hagemeister / Senior Principal  
Address: 15080 A Circle  
Omaha, NE 68144  
Phone: (402) 330-2202 Fax: (402) 330-7606  
Email: mehagemeister@terracon.com

Client: Schemmer  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name/Title: Shane Swope / Transportation Engineer  
Address: 1044 North 115th St Ste 300  
Omaha, NE 68154  
Phone: 402-431-6346 Fax: (402) 493-7951  
Email: sswope@schemmer.com

Reference Number: P05130218

This is **EXHIBIT A**, consisting of 25 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Engineer's Services**

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Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Additional Services as set forth below.

### **PART 2 – ADDITIONAL SERVICES**

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

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
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 or to investigate 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 its 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 Contract Documents, when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.
  4. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
  5. Furnishing services of Engineer's Consultants for other than Basic Services.
  6. Providing construction surveys and staking to enable Contractor to perform its work.
  7. Providing Construction Phase services beyond the original date for final completion of the Work.
  8. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

## 230th and Capehart Road , BNSF Crossing Consultant's Estimate of Hours

**Project Name:** 230th and Capehart Road , BNSF Crossing  
**Project Number:** C-77(14-3)  
**Control Number:** \_\_\_\_\_  
**Location (City, County):** Gretna, Sarpy  
**Firm Name:** The Schemmer Associates  
**Consultant Project Manager:** Shane Swope/Steve Kathol  
**Phone/Email:** 402-493-4800/sswope@schemmer.com  
**LPA Responsible Charge:** Bill Herr - Sarpy County  
**Phone/Email:** NA  
**Project Coordinator:** NA  
**Phone/Email:** herrb@sarpy.com  
**Date:** June 4th, 2013

MAJOR TASKS	ASSUMPTIONS	PERSONNEL CLASSIFICATIONS**								Total
		PR	PM	ENG	DES	SUR	SCR	DRF	ADM	
<b>F. PROJECT MANAGEMENT</b>										<b>104</b>
1. General Project Management		8	96							104
<b>G. GEOTECHNICAL ANALYSIS</b>										<b>84</b>
1. Soil Borings				8	8				16	32
2. Geotechnical Evaluation				24	24				4	52
<b>H. ENVIRONMENTAL STUDIES</b>										<b>36</b>
1. Wetland Coordination with Terracon and Permitting (Wetland Delineation/Report in Direct Costs)			2							2
2. Wetland Permitting			4							4
3. Storm Water Plan, SWPPP				2	8			8		18
4. SHPO, Fish and Wildlife, Game and Parks			6						6	12
<b>I. MEETINGS</b>										<b>50</b>
1. Initial Progress Meeting	Engineer+ Roadway		2	4	4					10
2. Plan in Hand and Progress meeting			2	6	6			6		20
3. Pre-appraisal - Final LOC's Review			2	4	4					10
4. Progress Meeting - 90% Review			2	4	4					10
<b>J. PUBLIC INVOLVEMENT</b>										<b>20</b>
1. Meeting with stakeholders			6		6			8		20
<b>K. 30% DESIGN &amp; PLAN IN HAND</b>										<b>357</b>
1. Preliminary Roadway Design										
a) Site Inspection				4	4					8
b) Data Collection and Review			2		4			4		10
c) Existing right-of-way ownership.								4		4
d) Horizontal and vertical alignment				16	16					32
e) Geometric Design				4	8					12
f) Typical Section				2	6			4		12
g) Drainage Design				8	8					16
h) Limits of Construction				1	8					9
i) Earthwork				4	4					8
j) Plan and Profile				2				8		10
k) Construction/Removal sheets				2	2			8		12
l) Retaining wall Evaluation and layout				2	16			8		26
m) Quantities / Cost Estimates				2	16					18
n) Plan Production and Printing					16			24		40
o) Bridge TS&L			2	30				30		62
p) Phasing					8			2		10
q) QA/QC		16	16							32
2. Plan-in-Hand			8	12	8			8		36
<b>L. UTILITIES</b>										<b>36</b>
1-5. Utility Coordination, includes, sending plans, responding to conflicts, review relocations			4		24			8		36
<b>M. RAILROAD COORDINATION</b>										<b>80</b>
1. Meeting, Correspondence, Agreements			24	56						80
<b>N. BRIDGE DESIGN</b>										<b>425</b>
1. Geometric Design				16						16
2. Concrete Slab Design				16						16
3. Beam Design				20						20
4. Abutment Design				24						24
5. Retaining Wall Design				16						16
6. General Notes and Quantity Summary Sheet				32				32		64
7. Plan and Elevation Sheet				12				30		42
8. Pile Layout Sheet				8				16		24
9. Geological Profile Sheet				8				20		28
10. Abutment and Wingwall Sheet				12				24		36
11. Beam Layout Sheet				3				6		9
12. Cross-Section Sheet				8				16		24
13. Beam Detail Sheet				4				4		8
14. Barrier Railing				2				4		6
15. Bill of Bars				24				32		56
16. Retaining Wall Detail Sheet				16				20		36
<b>O. TOPOGRAPHIC SURVEY</b>										<b>276</b>
1. Project Setup and Control					6			12		18
2. Two Person Field Survey Crew					6			128		134

4. Recover ROW corners, Section Corners				6		32				38
3. CADD, processing survey, DTM, drafting, base map prep				6			80			86
<b>P. RIGHT OF WAY DESIGN (BEGIN AT 60% DESIGN PLANS)</b>										<b>112</b>
1. Right of Way Strip Map and Base Drawing					40		16			56
2. Right of Way Tract Drawings					40		16			56
3, 4, 5 Completed by Midwest ROW										
<b>Q. 90% DESIGN PLANS</b>										<b>96</b>
1. Final Plans to include revisions from previous phases, draft erosion control, draft special designs, ROW				40			24			64
2. Acquire BNSF Agreements	8			8						16
3. Prepare Draft Contract Documents	16									16
<b>R. 100% PLANS AND DOCUMENTS</b>										<b>100</b>
1. Incorporate comments from 90% plan review				8			4			12
2. Develop final plans package				4			4			8
3. Final contract documents, status of utilities, ROW certificate	8									8
4. Miscellaneous additional tasks, estimates, special provisions, SWPPP			16	8			8			32
5. Assist in bidding phase		8								8
6. Final QA/QC	24	8								32
<b>Total Hours</b>	<b>48</b>	<b>226</b>	<b>434</b>	<b>304</b>	<b>80</b>	<b>172</b>	<b>486</b>	<b>26</b>		<b>1776</b>
<b>Total Days (8 hrs)</b>	<b>6.0</b>	<b>28.3</b>	<b>54.3</b>	<b>38.0</b>	<b>10.0</b>	<b>21.5</b>	<b>60.8</b>	<b>3.3</b>		<b>222.0</b>

CLASSIFICATIONS\*:

PR =	Principal	SCR =	Two Person Survey Crew
PM =	Project Manager	DRF =	Draftsman
ENG =	Engineer	ADM =	Administrative
DES =	Designer/Technician		
SUR =	Senior Registered Land Surveyor		

\*\* For User-Defined Classifications, you will need to edit the Classifications Legend located above To enter a new classification, replace "UD1" with its abbreviation (ex. GRA) and replace "User Defined 1" with

# 230th and Capehart Road , BNSF Crossing Labor Rates

**Project Name:** 230th and Capehart Road , BNSF Crossing  
**Project Number:** C-77(14-3)  
**Control Number:** \_\_\_\_\_  
**Location (City, County):** Gretna, Sarpy  
**Firm Name:** The Schemmer Associates  
**Consultant Project Manager:** Shane Swope/Steve Kathol  
**Phone/Email:** 402-493-4800/sswope@schemmer.com  
**LPA Responsible Charge:** Bill Herr - Sarpy County  
**Phone/Email:** NA  
**Project Coordinator:** NA  
**Phone/Email:** herrb@sarpy.com  
**Date:** June 4th, 2013

Labor Costs:		Hours	Blended Rate	Amount
Code	Classification Title			
PR	Principal	48	\$57.00	\$2,736.00
PM	Project Manager	226	\$49.00	\$11,074.00
ENG	Engineer	434	\$41.00	\$17,794.00
DES	Designer/Technician	304	\$30.00	\$9,120.00
SUR	Senior Registered Land Surveyor	80	\$38.00	\$3,040.00
SCR	Two Person Survey Crew	172	\$46.00	\$7,912.00
DRF	Draftsman	486	\$22.00	\$10,692.00
ADM	Administrative	26	\$20.00	\$520.00
<b>TOTALS</b>		<b>1776</b>		<b>\$62,888.00</b>

**CLASSIFICATIONS\*:**

PR = Principal  
 PM = Project Manager  
 ENG = Engineer  
 DES = Designer/Technician  
 SUR = Senior Registered Land Surveyor  
 SCR = Two Person Survey Crew  
 DRF = Draftsman  
 ADM = Administrative

**Average Rates Worksheet - 2013**

STAFFING PLAN		
EMPLOYEE NAME	CLASSIFICATION	SCHEMMER RATE
<b>Principal</b>		Average Rate: \$57.00
<b>Project Manager</b>		Average Rate: \$49.00
<b>Engineer</b>		Average Rate: \$41.00
<b>Designer/Technician</b>		Average Rate: \$30.00
<b>Senior Registered Land Surveyor</b>		Average Rate: \$38.00
<b>Two Person Survey Crew</b>		Average Rate: \$46.00
<b>Draftsman</b>		Average Rate: \$22.00
<b>Administrative</b>		Average Rate: \$20.00
		Average Rate:

## 230th and Capehart Road , BNSF Crossing Direct Expenses

**Project Name:** 230th and Capehart Road , BNSF Crossing  
**Project Number:** C-77(14-3)  
**Control Number:** \_\_\_\_\_  
**Location (City, County):** Gretna, Sarpy  
**Firm Name:** The Schemmer Associates  
**Consultant Project Manager:** Shane Swope/Steve Kathol  
**Phone/Email:** 402-493-4800/sswope@schemmer.com  
**LPA Responsible Charge:** Bill Herr - Sarpy County  
**Phone/Email:** NA  
**Project Coordinator:** NA  
**Phone/Email:** herrb@sarpy.com  
**Date:** June 4th, 2013

<b>Subconsultants:</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Amount</b>
Terracon Consulting - Wetland Delineation and Report	1	\$3,900.00	\$3,900.00
Soil Borings and equipment	1	\$1,525.00	\$1,525.00
Midwest ROW	1	\$35,920.00	\$35,920.00
<b>Subtotal</b>			<b>\$41,345.00</b>
<b>Printing and Reproduction:</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Amount</b>
Plan Production	1	\$500.00	\$500.00
<b>Subtotal</b>			<b>\$500.00</b>
<b>Mileage/Travel:</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Amount</b>
Meetings	150	\$0.57	\$84.75
Geotech	100	\$0.57	\$56.50
Survey	400	\$0.57	\$226.00
<b>Subtotal</b>			<b>\$367.25</b>
<b>Lodging/Meals:</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Amount</b>
<b>Subtotal</b>			
<b>Other Miscellaneous Costs:</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Amount</b>
Railroad Flagging - Requires a day rate - Estimate	2	\$1,000.00	\$2,000.00
			\$2,000.00
<b>TOTAL DIRECT EXPENSES</b>			<b>\$44,212.25</b>

## 230th and Capehart Road , BNSF Crossing Cost by Task

**Project Name:** 230th and Capehart Road , BNSF Crossing  
**Project Number:** C-77(14-3)  
**Control Number:** \_\_\_\_\_  
**Location (City, County):** Gretna, Sarpy  
**Firm Name:** The Schemmer Associates  
**Consultant Project Manager:** Shane Swope/Steve Kathol  
**Phone/Email:** 402-493-4800/sswope@schemmer.com  
**LPA Responsible Charge:** Bill Herr - Sarpy County  
**Phone/Email:** NA  
**Project Coordinator:** NA  
**Phone/Email:** herrb@sarpy.com  
**Date:** June 4th, 2013

Major Tasks	Total Hours	Direct Labor Cost	Overhead 172.20%	Fixed Fee 12.00%	Total Project Cost
F. PROJECT MANAGEMENT	104	\$5,160.00	\$8,885.52	\$1,685.46	\$15,730.98
G. GEOTECHNIAL ANALYSIS	84	\$2,672.00	\$4,601.18	\$872.78	\$8,145.96
H. ENVIRONMENTAL STUDIES	36	\$1,206.00	\$2,076.73	\$393.93	\$3,676.66
I. MEETINGS	50	\$1,802.00	\$3,103.04	\$588.60	\$5,493.64
J. PUBLIC INVOLVEMENT	20	\$650.00	\$1,119.30	\$212.32	\$1,981.62
K. 30% DESIGN & PLAN IN HAND	357	\$11,853.00	\$20,410.87	\$3,871.66	\$36,135.53
L. UTILITIES	36	\$1,092.00	\$1,880.42	\$356.69	\$3,329.11
M. RAILROAD COORDINATION	80	\$3,472.00	\$5,978.78	\$1,134.09	\$10,584.87
N. BRIDGE DESIGN	425	\$13,549.00	\$23,331.38	\$4,425.65	\$41,306.03
O. TOPOGRAPHIC SURVEY	276	\$10,392.00	\$17,895.02	\$3,394.44	\$31,681.46
P. RIGHT OF WAY DESIGN (BEGIN AT 60% DESIGN PLANS)	112	\$3,744.00	\$6,447.17	\$1,222.94	\$11,414.11
Q. 90% DESIGN PLANS	96	\$3,144.00	\$5,413.97	\$1,026.96	\$9,584.93
R. 100% PLANS AND DOCUMENTS	100	\$4,152.00	\$7,149.74	\$1,356.21	\$12,657.95
Direct Expenses					\$44,212.25
<b>TOTAL</b>	<b>1,776</b>	<b>\$62,888.00</b>	<b>\$108,293.12</b>	<b>\$20,541.73</b>	<b>\$235,935.10</b>

## 230th and Capehart Road , BNSF Crossing Project Cost

**Project Name:** 230th and Capehart Road , BNSF Crossing  
**Project Number:** C-77(14-3)  
**Control Number:** \_\_\_\_\_  
**Location (City, County):** Gretna, Sarpy  
**Firm Name:** The Schemmer Associates  
**Consultant Project Manager:** Shane Swope/Steve Kathol  
**Phone/Email:** 402-493-4800/sswope@schemmer.com  
**LPA Responsible Charge:** Bill Herr - Sarpy County  
**Phone/Email:** NA  
**Project Coordinator:** NA  
**Phone/Email:** herrb@sarpy.com  
**Date:** June 4th, 2013

<b>Direct Labor Costs:</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>
<b>Personnel Classification</b>			
Principal	48	\$57.00	\$2,736.00
Project Manager	226	\$49.00	\$11,074.00
Engineer	434	\$41.00	\$17,794.00
Designer/Technician	304	\$30.00	\$9,120.00
Senior Registered Land Surveyor	80	\$38.00	\$3,040.00
Two Person Survey Crew	172	\$46.00	\$7,912.00
Draftsman	486	\$22.00	\$10,692.00
Administrative	26	\$20.00	\$520.00
<b>TOTALS</b>	<b>1776</b>		<b>\$62,888.00</b>

<b>Direct Expenses:</b>	<b>Amount</b>
Subconsultants	\$41,345.00
Printing and Reproduction Costs	\$500.00
Mileage/Travel	\$367.25
Lodging/ Meals	
Other Miscellaneous Costs	\$2,000.00
<b>TOTALS</b>	<b>\$44,212.25</b>

<b>Total Project Costs:</b>	<b>Amount</b>
Direct Labor Costs	\$62,888.00
Overhead @ 172.200%	\$108,293.12
Total Labor Costs	\$171,181.12
Fixed Fee @ 12.00%	\$20,541.73
Direct Expenses	\$44,212.25
<b>PROJECT COST</b>	<b>\$235,935.10</b>

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

**Payments to Engineer for Services and Reimbursable Expenses**

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

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

**C2.01 Compensation For Basic Services (other than Resident Project Representative and Post-Construction) – Direct Labor Costs Plus Overhead Plus a Fixed Fee Method of Payment**

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative and Post-Construction Phase services, if any, as follows:
1. An amount equal to Engineer’s Direct Labor Costs plus overhead for the services of Engineer’s employees engaged directly on the Project, plus Reimbursable Expenses estimated to be \$41,345.00 plus Engineer’s Consultant’s charges estimated to be \$174,048.37, plus a fixed fee of \$20,541.73.
  2. Engineer’s Reimbursable Expenses Schedule is attached as Exhibit B.
  3. The total compensation for services under Paragraph C2.01 is estimated to be \$235,935.10 based on the distribution of compensation shown in Exhibit B.
  4. 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 compensation amount unless approved in writing by Owner.
  5. 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 Consultant’s charges.
  6. The portion of the amounts billed for Engineer’s services will be based on the applicable Direct Labor Costs for the cumulative hours charged to the Project during the billing period by Engineer’s employees plus overhead, Reimbursable Expenses, Engineer’s Consultant’s charges, and the proportionate portion of the fixed fee.
  7. Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits.
  8. Overhead includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers’ compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay

applicable thereto; the cost of general and administrative overhead which includes salaries and wages of employees engaged in business operations not directly chargeable to projects, plus non-Project operating costs, including but not limited to, business taxes, legal, rent, utilities, office supplies, insurance, and other operating costs. Overhead shall be computed as a percentage of Direct Labor Costs. Fixed fee is the lump sum amount paid to Engineer by Owner as margin or profit and will only be adjusted by an amendment to this agreement.

#### C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix B.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges, reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other 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 1.0.
- D. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1<sup>st</sup>, 2014) to reflect equitable changes in the compensation payable to Engineer.

#### 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 1.0.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- 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 a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount

or Owner and Engineer shall 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 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, the 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 **EXHIBIT D**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

**Insurance**

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Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

Engineers Certificate of Liability insurance is attached to this Exhibit D.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/10/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> The Harry A. Koch Co. P.O. Box 45279 Omaha NE 68145-0279	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 402-861-7000		FAX (A/C, No):
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> The Schemmer Associates, Inc. 1044 North 115th Street Omaha NE 68154	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	INSURER A : Continental Casualty Co.		20443
	INSURER B : Hartford Casualty Ins Co		29424
	INSURER C : Hartford Insurance Group		
	INSURER D : Hartford Fire Insurance Co		19682
	INSURER E :		
INSURER F :			

**COVERAGES**                      **CERTIFICATE NUMBER: 4832128**                      **REVISION NUMBER:**

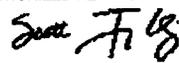
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR VWD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC			91UUNNG3103	12/31/2012	12/31/2013	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
								\$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			91UUNNG3103	12/31/2012	12/31/2013	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED      RETENTION \$			183288	12/31/2012	12/31/2013	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$5,000,000
								\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			91WEBN5497	12/31/2012	12/31/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$1,000,000
							E.L. DISEASE - POLICY LIMIT	\$1,000,000
A	Architects/Engineers Professional Liability Claims Made Basis			AEH288365469	12/31/2012	12/31/2013	\$2,000,000 \$2,000,000 \$125,000 Ded.	Ea.Claim Aggregate Ea.Claim

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

### CERTIFICATE HOLDER

### CANCELLATION

Sarpy County Public Works Attn: Dennis L. Wilson, P.E., County Engineer 15100 South 84th Street Papillion NE 68046	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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This is **EXHIBIT E**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Dispute Resolution**

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Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

### *H6.09 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 in accordance with Construction Industry Mediation Rules of the American Arbitration Association currently in effect. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

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

## **Allocation of Risks**

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Paragraph 6.10 of the Agreement is amended and supplemented to include the following agreement of the parties:

### **I6.10.B** *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation.* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total compensation received by Engineer under this Agreement.

This is **EXHIBIT G**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June \_\_\_\_\_, 2013.

## RESIDENCY VERIFICATION CLAUSE

The Consultant agrees to comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114. The Consultant is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Consultant is an individual or sole proprietorship, the following applies:

1. The Consultant must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).
2. If the Consultant indicates on such attestation form that he or she is a qualified alien, the Consultant agrees to provide the US Citizenship and Immigration Services documentation required to verify the Consultant's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Consultant understands and agrees that lawful presence in the United States is required and the Consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. Sect.4-108.