

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION AUTHORIZING CHAIRMAN TO SIGN AGREEMENT AND
SUPPLEMENT TO AGREEMENT FOR PROFESSIONAL SERVICES FOR THE
DESIGN OF THE MARV HOLUBAR TRAIL

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), 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; and,

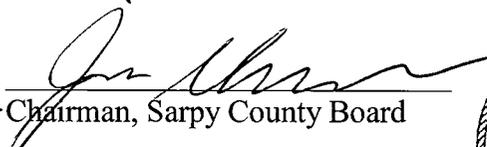
WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, an agreement with The Schemmer Associates, Inc. for preliminary and final design and project letting services for the Marv Holubar Trail, Project Number C-77(13-6).

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT, pursuant to the statutory authority set forth above, the Agreement AND Supplement to Agreement with The Schemmer Associates, Inc., for professional services, a copy of which is attached hereto, is hereby approved.

BE IT FURTHER RESOLVED that Chair and Clerk are hereby authorized to execute said agreement on behalf of Sarpy County, Nebraska.

The above and foregoing Resolution was duly approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on this 15th day of January, 2013.


 Vice-Chairman, Sarpy County Board



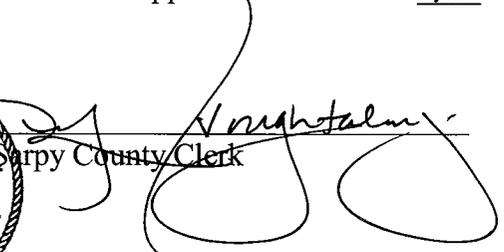

 Sarpy County Clerk

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STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of January 15, 2013 ("Effective Date") between

Sarpy County ("Owner") and

The Schemmer Associates, Inc. ("Engineer").

Owner intends to receive preliminary and final design plans, and project letting services for

Marv Holubar Trail in Bellevue, NE, Project number C-77(13-6)

("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 10 pages.
- B. Exhibit B, “Consultant Estimate of Hours and Expenses,” consisting of 5 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.

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:

Engineer:

Sarpy County

The Schemmer Associates

By: Jim Thompson

By: Stephen D. Kathol

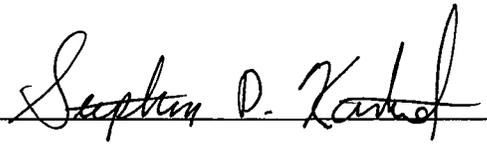
Title: Vice-Chairman Sarpy County Board

Title: Principal

Date: 1-15-2013

Date: 1/8/13

Signed: 

Signed: 

Address for giving notices:

Address for giving notices:

1210 Golden Gate Dr.

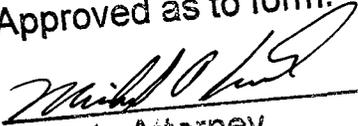
1044 N 115th Street

PAPILLION NE 68046

Suite 300

Omaha, NE 68154

Approved as to form:


County Attorney

This is **EXHIBIT A**, consisting of 10 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

SCOPE OF SERVICES
FOR
MARV HOLUBAR TRAIL
SARPY COUNTY PROJECT C-77(13-6)
PRELIMINARY ENGINEERING

(A) PROJECT DESCRIPTION

This schedule provides for the Consultant to prepare design plans for the above project that begins at Maass Road at approximately 45th Street, then travels along Maass Road from approximately 45th Street to 42nd Street, then crossing Maass Road and 42nd Street continuing northeasterly along Quail Creek to Twin Creek Drive. A section along 42nd Street runs from approximately 226' north of Twin Creek Drive continuing along 42nd Street northerly for approximately 760' to the access for the NRD trail along the south branch of the Papillion Creek.

Work includes project management, public involvement, NEPA evaluation, geotechnical engineering, preparing preliminary and final plans for trail, utility coordination, and other recapped design tasks.

(B) COUNTY TO

1. Provide current topographic survey in AutoCAD Civil 3D format for Consultant's use in preparing design documents for this project. The County shall provide any additional survey required for this project. The survey shall include a digital terrain model. A listing of control points and benchmarks shall also be provided.
2. Other information, as available, pertinent to this project.
3. Make arrangement for public information meeting venue and logistics.
4. Prepare responses to comments submitted at Public Information Meeting or other times during the project. Consultant to provide assistance.
5. Provide research information for existing right-of-way and easements. This includes utility easements.
6. Provide personnel to complete traffic counts at 42nd Street and Maass Road. Schemmer will provide electronic traffic counting equipment.

(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. Guide for the Development of Bicycle Facilities-2012 Edition (AASHTO)
2. Americans with Disability Act (ADA) Accessibility Guidelines
3. Manual on Uniform Traffic Control Devices (FHWA)
4. City of Omaha standard specifications will be followed for all items related to trail.
5. Nebraska Department of Roads standard specifications will be referenced for wall construction and other structural items required for design.

(D) PROJECT PLANS FORMAT, CONVENTIONAL AND CADD

1. The Consultant shall prepare plan and profile plan sheets on a scale of 1"=40'.
2. All plan sheets shall be half-size (11"x17")
3. The Consultant will utilize CADD and Schemmer drafting procedures and guidelines in preparing the project plans.
 - (a) Line weights, line styles, text size and leveling will be according to Schemmer standards.

(E) DATA TRANSFER

1. The Consultant shall transfer all GRAPHIC files to the County in AutoCAD Civil 3D 2012 format.

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

General Site Condition: There is a need to consider slope stability and retaining wall designs along creek south of Twin Creek Drive to immediately south of Highway 370. The erosion problems at Highway 370 result from poor storm sewer pipe backfill and use of oversized riprap to control

water runoff. The 5 to 10 deep ditches need to be excavated to remove the concrete, riprap and debris and reposition pipes.

1. The Consultant shall provide 6 (six) soil borings. The depths for four of the soil borings shall be 10 feet and two borings shall extend 25 feet deep. Final locations shall be determined by the Consultant during an on-site visit. A combination of hand borings and truck mounted borings are anticipated.
2. The Consultant shall conduct a geotechnical evaluation of the soil borings for use in designing the trail subgrade. An engineering report will provide recommendations for trail subgrade and specifications for construction materials testing.

(H) ENVIRONMENTAL STUDIES

Environmental Documentation

Sarpy County has belief that the proposed project will be classified as a Categorical Exclusion. As such, consultant will prepare an Environmental Determination Form and supporting documentation using the NEPA Categorical Exclusion form for Federal-Aid Recreational Trail Projects through the NGPC. This will be done in compliance with the National Environmental Policy Act (NEPA), and all applicable State and Federal laws, Executive Orders, and regulations. The Determination Form and supporting documentation will provide a level of analysis commensurate with the level of impact of the proposed action and its alternatives.

Sections in the Determination Form include:

1. Project Description
2. Environmental Study Area
3. Project Purpose and Need
4. Cost Estimate
5. Temporary Construction Impacts
6. Review of Travel Pattern
7. Easements
8. Relocations
9. Air Quality
10. Noise
11. Section 6(f): Previously completed by NGPC
12. Section 4(f): Not applicable to RTP projects.
13. Historic and Cultural Resources (Section 106): Previously completed by NGPC.
14. Socio-Economic/Environmental Justice

15. Threatened and Endangered Species: Correspondence with US Fish and Wildlife and NGPC T&E Coordinator previously completed by NGPC
16. Migratory Bird Act
17. Invasive Species
18. Erosion Control
19. Wild and Scenic or National Recreational Rivers
20. Wetlands/Waters of the United States/Waters of the State (Title 117)
21. Section 404/401 Permitting
22. Hazardous Materials
23. Public Interest
24. Environmental Commitments

The focus of these evaluations will be on important impacts and issues (i.e. resources with a reasonable likelihood of being affected to some extent), with less important areas only briefly discussed (i.e. resources with no potential to be affected to any extent). Based on the extent of adverse impacts, mitigation will be identified as required. Detailed mitigation plans with specific criteria and associated monitoring activities are outside of the scope of this study. Consultant will contact various agencies and interested stakeholders, including U.S. Department of Defense, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Nebraska State Historic Preservation Officers, Nebraska Department of Environmental Quality, Nebraska Department of Natural Resources, Nebraska Game and Parks Commission, and any other applicable agencies, and any other applicable stakeholders. Consultant will gather information from Sarpy County, agencies listed above, and other sources, including site visits. If necessary, the Consultant will arrange for an agency scoping meeting and site tour.

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).

1. Wetland Permitting Assistance. This project is assumed to qualify for a Nationwide Permit (either 23 for Approved CE or 14 for Transportation Projects).
2. Complete NEPA Forms and support for CE; provide for revisions required
3. Storm Water Plan, SWPPP, NOI to be completed by Engineer
4. Floodplain Development Permit.

(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. Meet with NDOR to discuss Hwy 370 bridge coordination and possible hydraulic needs. Verbal approval of trail under bridge has been provided by NDOR – District II.
2. Progress meeting to be held with County at approximately 15% design development after initial utility coordination, alignment, and profile have been schematically developed.
3. Plan-in-Hand and progress meeting to be held with county on the same day.
4. 90% review meeting to coincide with submittal to Nebraska Game and Parks and county review of proposed final plans package.

(J) PUBLIC INVOLVEMENT

Task assumes a one day meeting to meet with local stakeholders and conduct a public information meeting. The first will be a focused meeting and/or information gathering session with stakeholders prior to public meeting. The second will be an open house public meeting to follow individual meetings the same day. The public involvement meeting will be held at approximately 30% plans.

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. Initially it was decided local stakeholders are anticipated to be adjacent property owners to the trail. For estimating purposes we assumed 5 individual stakeholder meetings.
2. The public open house will be held in a suitable location in the area of the project. The consultant shall develop the advertisement. With input from Sarpy County, find a suitable location to host the open house, develop display board(s) of the current design highlighting critical design elements. Consultant shall also prepare a one page summary of the trail features.

This task assumes two individuals from the consultant will attend the local stakeholders and open house meeting.

(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) Highway 370 drainage evaluation and coordination.
 - (d) Horizontal and vertical alignment
 - (e) Geometric Design
 - (f) Typical Section
 - (g) Drainage Design
 1. Consultant to design local drainage to meet trail standards.
 2. A hydraulic analysis will be conducted on the existing creek and bridge for Highway 370 to develop an existing and proposed HEC-RAS model. The analysis will attempt to confirm a no-rise in floodplain elevation (the trail extension under highway 370 does not impact the floodplain). Consultant will provide a brief hydraulic analysis summary and existing/proposed HEC-RAS models to NDOR to document grading changes related to the Highway 370 bridges. The hydraulic data will also assist design of retaining walls and trail adjacent to the creek.
 - (h) Limits of Construction
 - (i) Estimate of Earthwork Quantity
 - (j) Plan and Profile
 - (k) Construction/Removals sheets
 - (l) Retaining wall evaluation and preliminary layout (Final Design to be contractor provided)
 - (m) Quantities/Cost Estimate
 - (n) Plan Production and Printing
 - (o) QA/QC
2. Plan-in-hand
 - (a) Develop Plan in Hand meeting including plan-in-hand report and revisions, agenda and minutes.
3. Traffic analysis for 42nd and Maass Road.

- a. Download and review data collected by Sarpy County personnel and develop a traffic analysis report. The report will summarize the review of signal warrants for the intersection and review/recommend the appropriate pedestrian crossing location and traffic control associated with the crossing.

(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) 90% DESIGN PLANS

1. The Consultant shall prepare 90% final design plans to include all construction items, typical sections, 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 Nebraska Game and Parks for review according to the schedule.
2. The Consultant shall also prepare draft contract documents for County and NGPC review.

(N) 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
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.
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) NDOR permit to occupy Right-of-way prior to Plan-in-hand.
 - (I) 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

(O) SCHEDULE

Notice to Proceed, January 16, 2013

Kickoff Meeting, January 24, 2012

30% Design Plans, April 1, 2013

Plan-in-hand, April 29, 2013

Submittal of Environmental Document, May 6, 2013

Environmental Approval, June 17, 2013

90% Design Plan Submittal, July 19, 2013

Right-of-way Acquisition, None Required

100% Design Plans, September 15, 2013

Bidding, October, 2013

(P) 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.

This is **EXHIBIT A**, consisting of 10 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

Engineer's Services

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.



October 31, 2012

Schemmer Associates
1044 North 115th Street, Suite 300
Omaha, Nebraska 68154

Attn: Mr. Matt Sutton, P.E.
T: 402.493.7951

Re: Proposal for Environmental Services
Marv Holubar Trail C-77(13-6)
Papillion, Sarpy County, Nebraska
Terracon Proposal No. P05120711

Dear Mr. Sutton:

Terracon Consultants, Inc. (Terracon) is pleased to submit this proposal to conduct natural resources consulting services at the 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 construction of an asphalt trail. Terracon is proposing to delineate the area that will be impacted by the proposed project which includes construction of the trail and 30 feet on both sides of the proposed trail. The trail is approximately 0.75 miles.

Item	Description
Location	Maass Road from approximately 45 th Street to 42 nd Street and along Quail Creek from Maass Road to Twin Creek, and on 42 nd Street north of Twin Creek Drive to the NRD Trail access point, Papillion, Sarpy County, Nebraska.
Existing improvements	Maass Road, 42 nd Street, Highway 370, Twin Creek Drive, and several commercial businesses.
Current ground cover	Surrounding land is residential properties, commercial businesses, and grassland.
Existing topography/water bodies	An aerial photograph indicates a drainage way that extends east/west along Maass Road and another drainage runs northwest/southeast along the existing Marv Holubar Trail.

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

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 Waters of the United States (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

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.
- 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.

Proposal for Wetland Services

Marv Holubar Trail Papillion, Sapry County, Nebraska
October 31 2012 . Terracon Proposal No. P05120711



- 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 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

Proposal for Wetland Services

Marv Holubar Trail · Papillion, Sapry County, Nebraska
October 31 2012 · Terracon Proposal No. P05120711



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. The schedule for the wetland delineation is 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 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

2.6 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 COMPENSATION

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

Item	Fee
Travel, Site Data Review, Field Assessment and Wetland Identification	\$1,800
GPS Survey	\$100
WUS Delineation Report (incl. Regulatory Agency submittal if applicable)	\$1,800
Total	\$3,700

Proposal for Wetland Services

Marv Holubar Trail · Papillion, Sapry County, Nebraska
October 31 2012 · Terracon Proposal No. P05120711



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.

4.0 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 Supplement to 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.

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

Sincerely,
Terracon Consultants, Inc.


Jessica Engelbart
Environmental Scientist


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

JES/ESM:leb

Distribution: Addressee (1 via e-mail)

Attachment: Agreement for Services

AGREEMENT FOR SERVICES

This **AGREEMENT** is between Schemmer Associates ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Marv Holubar Trail C-77(13-6), Papillion, Sarpy County, Nebraska project ("Project"), as described in the Project Information section of Consultant's Proposal dated October 31, 2012 ("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 \$50,000 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 STATED ABOVE, 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: 10/31/12
Name/Title: Michael E. Hagemeister, P.E., Sr. Principal
Address: 15080 A Circle
Omaha, Nebraska 68144
Phone: 402.330.2202 Fax: 402.330.7606

Client: Schemmer Associates
By: _____ Date: _____
Name/Title: Matt Sutton, P.E.
Address: 1044 north 115th Street, Suite 300
Omaha, Nebraska 68154
Phone: 402.493.7951 Fax: _____

Reference Number: P05120711

Marv Holubar Trail Consultant's Estimate of Hours

Project Name: Marv Holubar Trail
Project Number: C-77(13-6)
Control Number: _____
Location (City, County): East of 42nd Street on Highway 370 and Quail Creek, Bellevue, Sarpy
Firm Name: The Schemmer Associates
Consultant Project Manager: Shane Swope
Phone/Email: 402-493-4800/sswope@schemmer.com
LPA Responsible Charge: Gregg Nisotis - Sarpy County
Phone/Email: NA
Project Coordinator: NA
Phone/Email: 402-537-6913 / nisotisg@sarpy.com
Date: December 4th, 2012

MAJOR TASKS	ASSUMPTIONS	PERSONNEL CLASSIFICATIONS**					Total
		PR	PM	ENG	DES	ADM	
F. PROJECT MANAGEMENT							18
1. General Project Management		2	16				18
G. GEOTECHNIAL ANALYSIS							58
1. Soil Borings				5	4	11	20
2. Geotechnical Evaluation				20	16	2	38
H. ENVIRONMENTAL STUDIES							40
1. Wetland Coordination with Terracon and Permitting (Wetland Delineation/Report in Direct Costs)				4	2		6
2. Complete NEPA forms			2	16			18
3. Storm Water Plan, SWPPP				12			12
4. Floodplain Development				4			4
I. MEETINGS							36
1. Meeting with NDOR/County			4	4			8
2. Progress Meeting at 15% design			4	4			8
3. Plan in Hand and Progress meeting			8	8			16
4. Progress Meeting - 90% Review			4				4
J. PUBLIC INVOLVEMENT							38
1. Meeting with stakeholders prior to Open House			6	6			12
2. Open House, display boards, advertisement, attend meeting			4	6	16		26
K. 30% DESIGN & PLAN IN HAND							152
1. Preliminary Roadway Design							
a) Site Inspection				4	4		8
b) Data Collection and Review		2			2		4
c) Highway 370 drainage evaluation and coordination.				4			4
d) Horizontal and vertical alignment				6	12		18
e) Geometric Design				2	4		6
f) Typical Section					4		4
g) Drainage Design		2	16				18
h) Limits of Construction					2		2
i) Earthwork					4		4
j) Plan and Profile					8		8
k) Construction/Removal sheets					6		6
l) Retaining wall Evaluation and layout		4	6	12			22
m) Quantities / Cost Estimates				6	6		12
n) Plan Production and Printing					2		2
o) QA / QC		2	4				6
2. Plan-In-Hand					8		8
3. Traffic analysis for 42nd and Maass Road				20			20
L. UTILITIES							14
1-5. Utility Coordination, includes, sending plans, responding to conflicts, review relocations				4	8	2	14
M. 90% DESIGN							48
1. Final Plans to include 30% plans, draft erosion control, draft special designs			4	16	16		36
2. Draft Contract Documents			4	8			12
N. 100% PLANS AND DOCUMENTS							68
1. Incorporate comments from 90% plan review				4	8		12
2. Develop final plans package					16		16
3. Develop final contract documents, status of utilities, ROW certificate			4	8			12
4. Miscellaneous additional tasks, estimates, special provisions, SWPPP				16			16
5. Assist in bidding phase			2	4			6
6. Final QA/QC		2	4				6
Total Hours		6	78	213	160	15	472
Total Days (8 hrs)		0.8	9.8	26.6	20.0	1.9	59.0

CLASSIFICATIONS*:

PR = Principal
 PM = Project Manager
 ENG = Engineer
 DES = Designer/Technician
 ADM = Administrative

** 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

Marv Holubar Trail Labor Rates

Project Name: Marv Holubar Trail
Project Number: C-77(13-6)
Control Number: _____
Location (City, County): East of 42nd Street on Highway 370 and Quail Creek, Bellevue, Sarpy
Firm Name: The Schemmer Associates
Consultant Project Manager: Shane Swope
Phone/Email: 402-493-4800/sswope@schemmer.com
LPA Responsible Charge: Gregg Nisotis - Sarpy County
Phone/Email: NA
Project Coordinator: NA
Phone/Email: 402-537-6913 / nisotisg@sarpy.com
Date: December 4th, 2012

Labor Costs:		Hours	Blended Rate	Amount
Code	Classification Title			
PR	Principal	6	\$57.00	\$342.00
PM	Project Manager	78	\$42.00	\$3,276.00
ENG	Engineer	213	\$42.00	\$8,946.00
DES	Designer/Technician	160	\$30.00	\$4,800.00
ADM	Administrative	15	\$21.00	\$315.00
TOTALS		472		\$17,679.00

CLASSIFICATIONS*:

PR = Principal
 PM = Project Manager
 ENG = Engineer
 DES = Designer/Technician
 ADM = Administrative

Average Rates Worksheet - 2013

STAFFING PLAN		
EMPLOYEE NAME	CLASSIFICATION	SCHEMMER RATE
Principal	Average Rate:	\$57.00
Project Manager	Average Rate:	\$42.00
Engineer	Average Rate:	\$42.00
Designer/Technician	Average Rate:	\$30.00
Administrative	Average Rate:	\$21.00
	Average Rate:	
	Average Rate:	

Marv Holubar Trail Direct Expenses

Project Name: Marv Holubar Trail
Project Number: C-77(13-6)
Control Number: _____
Location (City, County): East of 42nd Street on Highway 370 and Quail Creek, Bellevue, Sarpy
Firm Name: The Schemmer Associates
Consultant Project Manager: Shane Swope
Phone/Email: 402-493-4800/sswope@schemmer.com
LPA Responsible Charge: Gregg Nisotis - Sarpy County
Phone/Email: NA
Project Coordinator: NA
Phone/Email: 402-537-6913 / nisotisg@sarpy.com
Date: December 4th, 2012

Subconsultants:	Quantity	Unit Cost	Amount
Terracon Consulting - Wetland Delineation and Report	1	\$3,700.00	\$3,700.00
Soil Borings and equipment	1	\$1,525.00	\$1,525.00
Subtotal			\$5,225.00
Printing and Reproduction:	Quantity	Unit Cost	Amount
Plan Production	1	\$500.00	\$500.00
Subtotal			\$500.00
Mileage/Travel:	Quantity	Unit Cost	Amount
Meetings	150	\$0.56	\$83.25
Geotech	100	\$0.56	\$55.50
Subtotal			\$138.75
Lodging/Meals:	Quantity	Unit Cost	Amount
Subtotal			
Other Miscellaneous Costs:	Quantity	Unit Cost	Amount
TOTAL DIRECT EXPENSES			\$5,863.75

Marv Holubar Trail Cost by Task

Project Name: Marv Holubar Trail
Project Number: C-77(13-6)
Control Number: _____
Location (City, County): East of 42nd Street on Highway 370 and Quail Creek, Bellevue, Sarpy
Firm Name: The Schemmer Associates
Consultant Project Manager: Shane Swope
Phone/Email: 402-493-4800/sswope@schemmer.com
LPA Responsible Charge: Gregg Nisotis - Sarpy County
Phone/Email: NA
Project Coordinator: NA
Phone/Email: 402-537-6913 / nisotisg@sarpy.com
Date: December 4th, 2012

Major Tasks	Total Hours	Direct Labor Cost	Overhead 172.20%	Fixed Fee 12.00%	Total Project Cost
F. PROJECT MANAGEMENT	18	\$786.00	\$1,353.49	\$256.74	\$2,396.23
G. GEOTECHNIAL ANALYSIS	58	\$1,923.00	\$3,311.41	\$628.13	\$5,862.54
H. ENVIRONMENTAL STUDIES	40	\$1,656.00	\$2,851.63	\$540.92	\$5,048.55
I. MEETINGS	36	\$1,512.00	\$2,603.66	\$493.88	\$4,609.54
J. PUBLIC INVOLVEMENT	38	\$1,404.00	\$2,417.69	\$458.60	\$4,280.29
K. 30% DESIGN & PLAN IN HAND	152	\$5,526.00	\$9,515.77	\$1,805.01	\$16,846.78
L. UTILITIES	14	\$450.00	\$774.90	\$146.99	\$1,371.89
M. 90% DESIGN	48	\$1,824.00	\$3,140.93	\$595.79	\$5,560.72
N. 100% PLANS AND DOCUMENTS	68	\$2,598.00	\$4,473.76	\$848.61	\$7,920.37
Direct Expenses					\$5,863.75
TOTAL	472	\$17,679.00	\$30,443.24	\$5,774.67	\$59,760.66

Marv Holubar Trail Project Cost

Project Name: Marv Holubar Trail
Project Number: C-77(13-6)
Control Number: _____
Location (City, County): East of 42nd Street on Highway 370 and Quail Creek, Bellevue, Sarpy
Firm Name: The Schemmer Associates
Consultant Project Manager: Shane Swope
Phone/Email: 402-493-4800/sswope@schemmer.com
LPA Responsible Charge: Gregg Nisotis - Sarpy County
Phone/Email: NA
Project Coordinator: NA
Phone/Email: 402-537-6913 / nisotisg@sarpy.com
Date: December 4th, 2012

Direct Labor Costs:	Hours	Rate	Amount
Personnel Classification			
Principal	6	\$57.00	\$342.00
Project Manager	78	\$42.00	\$3,276.00
Engineer	213	\$42.00	\$8,946.00
Designer/Technician	160	\$30.00	\$4,800.00
Administrative	15	\$21.00	\$315.00
TOTALS	472		\$17,679.00

Direct Expenses:	Amount
Subconsultants	\$5,225.00
Printing and Reproduction Costs	\$500.00
Mileage/Travel	\$138.75
Lodging/ Meals	
Other Miscellaneous Costs	
TOTALS	\$5,863.75

Total Project Costs:	Amount
Direct Labor Costs	\$17,679.00
Overhead @ 172.200%	\$30,443.24
Total Labor Costs	\$48,122.24
Fixed Fee @ 12.00%	\$5,774.67
Direct Expenses	\$5,863.75
PROJECT COST	\$59,760.66

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

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 \$48,760.99, plus Engineer’s Consultant’s charges, if any, estimated to be \$5,225.00, plus a fixed fee of \$5,774.67.
 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 \$59,760.66 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 1st, 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

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.

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

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

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.