A G E N D A

City Council Meeting

March 6, 2017 - 6:00 p.m.

Call to Order

"I am required by law to inform the public that a copy of the Open Meetings Act is posted on the bulletin board to your right. This meeting is being recorded. If you wish to speak, come to the podium, state your name and address and speak directly towards the microphone the entire time you are addressing the governing body. Thank you".

PLEDGE OF ALLEGIANCE
ROLL CALL

CONSENT

1. **Approve minutes from the February 20, 2017 City Council Meeting.**
2. **Approve the Nebraska City Farmers Market request to use the Memorial Building parking lot every Thursday, May 11th thru August 31st 2017 and waive sign requirement for banner at 8th & Central.**

PROCLAMATIONS AND PRESENTATIONS

3. **Proclaim March 18th 2017 as Natural Gas Utility Workers Day.**

REPORTS

4. **Nebraska City, Nebraska 150 Committee Report.**
5. **Nebraska Concrete Pavement Association Award for Steinhart Trail Project.**
6. **Nebraska Concrete Pavement Association Award for South 11th Street Project.**
7. **American Council of Engineering Companies Award for South 11th Street Project.**

NEW BUSINESS

8. Accepting the report of new claims against the City and approving disposition of claims set for the period of February 21, 2017 to March 20, 2017.
9. Discussion/action to approve the Professional Services Agreement with JEO Consulting Group, Inc. for project No. 100080.00 North 11th Street & Orchard Drive improvements.
10. Discussion/action to approve the Arbor Day Event April 28th –April 30th 2017 with multiple requests.
11. Discussion/action to approve the New Hire wage request to hire a new Police Officer.
12. Discussion/action to approve the Legally Prom Silent Auction items request of an annual swim pass or day passes to be auctioned off.
13. **Ordinance 2981-16** to narrow the street right-of-way on 4th Rue.
14. **Ordinance 2984-17** to approve Manufactured Home Community Annual Permit Fee increase.
15. **Ordinance 2986-17** Third and final reading for annexation of Lot A-1 and Lot A-2 at W1/2NW1/4, 21-8-14 (Arbor Crossing development).
16. Discussion/action to excuse six consecutive regular meeting absences by Commissioner Johns.

ADJOURNMENT

City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.

Nebraska City
CITY OF NEBRASKA CITY, NEBRASKA
MINUTES OF CITY COUNCIL REGULAR MEETING
February 20, 2017

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Nebraska City was conducted in the William F. Davis Room at City Hall, 1409 Central Avenue, on February 20, 2017. Notice of the meeting was given in advance thereof by posting in at least three public places, the designated method for giving notice, as shown by the Certificate of Posting Notice attached to these minutes. Availability of the agenda was communicated in advance to the media, Mayor and Commissioners of this proceeding and said meeting was open to the public.

Mayor Bequette called the meeting to order at 6:00 p.m. The Mayor publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the room where the meeting was being held. Mayor Bryan Bequette then led in the Pledge of Allegiance. Upon roll call the following answered present: Paul Davis, Patrick Wehling, Vic Johns, Gloria Glover and Mayor Bequette. Absent: None. The following City Officials were present: City Administrator Grayson Path, City Attorney David Partsch, Police Chief David Lacy, Utilities Director Leroy Frana, Utilities Treasurer Jeff Kohrs, Construction and Facility Manager Marty Stovall and City Clerk-Treasurer Randy Dunster.

Mayor Bequette moved to approve the following consent items:
Approve minutes from the February 6, 2017 City Council Meeting.
Approve publication for three-year renewal of alfalfa/hay ground lease west of cemetery.
Approve First Addendum to Access and Hold Harmless Agreement with Terracon Consulting Inc.
Approve the relocation of the NCTC Street sign auction item to 10th St and 1st Ave.
Approve SDL request for Nebraska City Lourdes High School fund raiser event to be held March 18, 2017 as organized by the Knights of Columbus. Motion seconded by Commissioner Johns. Upon roll call the following voted YES: Davis, Wehling, Glover, Johns and Mayor Bequette. Voting NO: None. Motion carried

Mayor Bequette proclaimed March as Problem Gambling Awareness Month.

Mayor Bequette opened the Public Hearing on the use of $25,000 of City Economic Growth Funds for Nebraska City Tourism & Commerce. Dan Mauk and Amy Allgood spoke to explain the request. Mayor Bequette moved to close the Public Hearing, seconded by Commissioner Wehling. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried.

Treasurer's report was given, as of January 31, 2017, Total Nebraska City funds of $6,561,349.61. Total Cash and Reserve for Nebraska City Utilities of $15,499,797.43. Total City of Nebraska City and Utility funds $22,061,147.07.
Council acknowledged receipt of City Administrator Report. Grayson Path spoke regarding his report.
Council acknowledged receipt of Utility Financial Report for period ending December 2016.
Council acknowledged receipt of Utility Claims for period ending January 2017.

Moved by Commissioner Glover and seconded by Johns to accept the report of new claims against the City and approving disposition of claims set for the period of February 7, 2017 to February 20, 2017. Upon roll call the following voted YES: Davis with abstention on the claim pertaining to West Lake Ace Hardware, Wehling, Johns, Glover and Mayor Bequette. Voting NO: None. Motion carried.

CLAIMS LIST						
February 20, 2017						
A-1 Locksmith & Security	Loan	69,966.00		Mercer's Do-It-Best	Sup	199.94
Alfred Benesch & Co	Construct	1,637.00		Midwest Serv & Sales	Rep/Maint	217.55
Arbor Mart, Inc	Fuel	1,361.29		Midwest Turf and Irr	Rep/Maint	220.04
AVAC	Animal Exp	266.00		Napa Auto Parts	Rep/Maint	439.06
Asphalt & Concrete	Asphalt	466.88		Nationwide	Inv	12,337.91
Associated Fire	Rep/Maint	220.00		Nationwide Trust	Inv	2,146.00
Barrett Construction	Rep/Sup	4,391.69		NC Utilities	Utilities	7,854.60
Benefiel Truck Repair	Rep/Maint	170.00		NE Dept of Revenue	Sls Tax	51.18
Bennett, R.	Borrow	13,055.80		NE Health & Human	Misc	40.00
Bound Tree	Sup	978.22		NE Liquor Control Com	Misc	45.00
BRITE	Cap Out	17,409.00		NE Salt & Grain	Chem	3,283.33
Brown Glass Co	Rep/Maint	190.29		NE Technical Serv	Rfnd	20.00
Capital Business Sys	Contract	302.06		NJC Contracting	CDBG	24,995.00
Card Services	Multi	1,789.39		O'Reilly Auto Parts	Sup	91.86
Casey's General	Fuel	161.39		Otoe County Clerk	Contract	4,423.46
Cline Williams Wright	CDA	7,782.00		Paper Tiger	Garabage	35.00
Danner Construction	Rfnd	25.00		Payroll	Payroll	101,732.47
Douglas Tire Co.	Rep	46.95		Quill Corporation	Sup	122.53
Eakes Office Sol	Sup	322.15		Register of Deeds	Loan File	34.00
EMS Billing Services	Contract	3,829.17		Schneider Custom	Rfnd	200.00
Flagship Publishing	Adv	945.00		SENDD	CDBG	4,284.34
Friedli, P.	Rfnd	22.30		Shell	Fuel	1,828.70
Galls, LLC	Sup	26.60		Spiral Communication	Tele	1,054.26
Gatehouse Media	Adv	168.08		State Farm	Rfnd	1,420.22
Hanna:Keelan Ass.	CDA	7,500.00		Stutheit Implement	Rep/Maint	104.58
Hireright	Drug Scr	110.86		The Handyman Co	Rep/Maint	1,979.69
Ideal Pure Water	Sup	83.95		UHC	HRA	517.20
Inland Truck Parts	Rep/Maint	179.56		Unifirst	Contract	137.16
JEO Consulting	Engineering	2,845.00		VAIRKKO	Computer	270.90
Landis Engine Co	Sup	35.75		Van Wall Turf & Irr	Rep/Maint	157.30
Larson Motors	Rep/Maint	135.67		Verizon Wireless	Tele	14.04
Martin Marietta Mat	Gravel	4,660.37		Weaver, P.	Rfnd	25.00
Matheson Tri-Gas	Sup	244.87		Westlake Ace	Rep/Maint	49.41
Mead Lumber	Rep/Maint	13.39		Windstream,Inc.	Tele	1,483.50

Moved by Commissioner Johns and seconded by Wehling to approve **Resolution 2740-17** on the use of $25,000 of City Economic Growth Funds for Nebraska City Tourism & Commerce. Amy Allgood spoke to explain the request. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Mayor Bequette and seconded by Johns that the statutory rule requiring reading on three different days be suspended. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried. Mayor Bequette declared that the motion adopted by three fifths vote of the council and the statutory rule suspended for the consideration of said ordinance. Moved by Mayor Bequette and seconded by Johns for final passage of **Ordinance 2987-17** to issue bonds to pay off the 2016-01 BANS used to build the South 11th Street Project. John Tresec and Grayson Path spoke to explain the request. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried.

ORDINANCE NO. 2981-17

AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION VARIOUS PURPOSE BONDS, SERIES 2017, OF THE CITY OF NEBRASKA CITY, NEBRASKA, IN THE PRINCIPAL AMOUNT OF ONE MILLION NINE HUNDRED TEN THOUSAND DOLLARS ($1,910,000) ISSUED FOR THE PURPOSE OF PAYING THE COST OF CONSTRUCTING PAVING IMPROVEMENTS IN STREET IMPROVEMENT DISTRICT NO. 2016-1; PRESCRIBING THE FORM OF SAID BONDS; PROVIDING FOR A SINKING FUND AND FOR THE LEVY AND COLLECTION OF TAXES TO PAY SAID BONDS; PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE DELIVERY OF THE BONDS TO THE PURCHASER; PROVIDING FOR THE DISPOSITION OF THE BOND PROCEEDS AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM

Bruce Kreifels led a discussion regarding a land lease of 80 acres for the Three Hills Event Center proposal for October.

Moved by Mayor Bequette and seconded by Johns to re-adjust the request of Ordinance 2981-16 as stated for the difference in the right-of-way and have the City Attorney draft a new ordinance after coordination with Utilities and Landlords. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Johns and seconded by Wehling to approve the Farm to Fork Dinner and Sip & Stroll event on Sunday August 20th and request the closure of Central Ave from 7th Street to 9th Street from 12:00 PM to 10:00 PM. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried.

Shelley Stromp and Jeff Kohrs led the discussion on Nebraska City Utilities KPMG Audit results.

Dr. Christian Janousek led the discussion regarding the City Council Retreat conclusions.

Moved by Commissioner Davis and seconded by Johns to approve the BPW recommendation to approve an amendment to the Nebraska Department of Roads Electric Facilities Relocation Agreement for $72,312.19 for the South Intersection of Highway #75 and #2. Leroy Frana spoke to explain the request. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Davis and seconded by Mayor Bequette to approve the BPW recommendation to purchase three trucks and one fiberglass box for $116,147. Leroy Frana spoke to explain the request. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Davis and seconded by Wehling to approve the BPW recommendation to accept the final report and submittal of the 2016 Integrated Resource Plan. Leroy Frana spoke to explain the request. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried.

Tom Bales, President of the Nebraska City Baseball Association and Commissioner Wehling led a discussion regarding the Baseball Association's funding to increase fencing around the Legion field to increase spectator safety and organize admissions.

Moved by Commissioner Johns and seconded by Glover to approve **Resolution 2741-17** to approve and authorize the Mayor to sign Supplemental Agreement #2 regarding the 4th Corso Viaduct Project. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried.

Mayor Bequette introduced the second reading of **Ordinance 2986-17** for the annexation of Lot A-1 and Lot A-2 at W1/2NW1/4, 21-8-14 (Arbor Crossing development).

Moved by Mayor Bequette and seconded by Glover that the statutory rule requiring reading on three different days be suspended. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried. Mayor Bequette declared that the motion adopted by three fifths vote of the council and the statutory rule suspended for the consideration of said ordinance. Moved by Mayor Bequette and seconded by Wehling for final passage of **Ordinance 2988-17** regarding the Unite Franchise Agreement. Upon roll call the following voted YES: Johns, Wehling, Glover, Davis and Mayor Bequette. Voting NO: None. Motion carried.

ORDINANCE NO. 2988-17
A FRANCHISE ORDINANCE

AN ORDINANCE OF THE CITY OF NEBRASKA CITY ("CITY") GRANTING Unite Private Networks, LLC, 7200 NW 86th Street, Suite M. Kansas City, MO 64153, ("FRANCHISEE"), A NONEXCLUSIVE TELECOMMUNICATION CABLE, FIBER OPTIC CABLE, COAXIAL CABLE, OR OTHER COMMUNICATION CABLE (COLLECTIVELY, "COMMUNICATION CABLES") AND BROADBAND SERVICE FRANCHISE TO INSTALL, OPERATE, MAINTAIN, OR OTHERWISE LOCATE COMMUNICATION CABLES AND/OR CONDUCTORS, OPERATE AN BROADBAND SYSTEM OR SIMILAR COMMUNICATION SYSTEM, AND PROVIDE BROADBAND SERVICES OR SIMILAR SERVICES IN THE CITY OF NEBRASKA CITY; SETTING FORTH THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF SAID FRANCHISE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE AN EFFECTIVE DATE; AND TO PUBLISH SAID ORDINANCE IN PAMPHLET FORM.

Meeting Adjourned at 8:00 P.M.

AFFIDAVIT

I, the undersigned City Clerk for the City of Nebraska City, Nebraska, hereby certify that the foregoing is a true and correct copy of proceedings had and done by the Mayor and Board of Commissioners, that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes from which the foregoing proceedings have been extracted were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Randy A. Dunster, City Clerk-Treasurer

Nebraska City

City of Nebraska City
1409 Central Avenue
Nebraska City, NE 68410

HOME OF ARBOR DAY **Phone: 402-873-5515 Fax: 402-873-5685**

PUBLIC REQUEST FOR COUNCIL AGENDA OR INFORMATION ITEM

Your request will be reviewed and possibly scheduled for a future meeting,
*or forwarded to **City Staff** for appropriate action**

Name: _Nebraska City Farmers Market_____
Address: _806 1st Avenue _____
Phone #: _402-873-6654_____
Email Address: _amya@nebraskacity.com _____

CC: Police Dept: ____ Street Dept: __X__ Park Dept: _X__ Other: ____

Item Title:

Explanation of Request:

Nebraska City Farmers Market is requesting the use of the Memorial Building parking lot every Thursday, May 11th – August 31st. The market will run from 3:45 -6:00. We ask that the parking lot have cones put in the entrance and exit earlier in the day to prevent afternoon parking as the vendors will start setting up as early as 3:00 p.m.

Action Requested of Council:

We ask that the parking lot have cones put in the entrance and exit earlier in the day to prevent afternoon parking as the vendors will start setting up as early as 3:00 p.m.
We also would like permission to hang the Farmers Market banner on the west side of Mercers for the duration of the season.

Will this item require the expenditure of funds? Yes: ___ No: _X__

Council meetings are held on the 1st & 3rd Mondays of every month. All requests for information or inclusion on a Council Meeting Agenda must be submitted by noon on the Thursday preceding the Council meeting. Once a request is received, Administration will review it and determine whether it requires Mayor/Council action, or if the item needs to be handled by staff.

Nebraska City

Proclamation
Natural Gas Utility Workers Day

Whereas, natural gas is an important fuel and vital commodity for heating our homes, fueling our industries, and powering our nation; and

Whereas, natural gas provides an economical fuel for everyday use in our homes, businesses, industries, power generation facilities, and transportation industry; and

Whereas, natural gas is a safe fuel and readily available to all sectors of our economy and society; and

Whereas, natural gas fulfills these directives due to the hard work and dedication of the workforce of natural gas utility workers who work safely in providing this important commodity; and

Whereas, our City, Board of Public Works, and Utility Department is dedicated to providing natural gas to its citizens, businesses, and industries in a safe and economical manner;

Now, therefore, be it resolved that by virtue of the authority vested in me as Mayor of our City, I do hereby proclaim March 18th, 2017 as Natural Gas Utility Workers Day.

_____

Bryan Bequette, Mayor, Nebraska City NE

Nebraska City
CITY OF NEBRASKA CITY
1409 Central Avenue
Nebraska City, NE 68410-2223
Phone: 402-873-5515
Fax: 402-873-5685

Agenda Information Support Sheet

To: **Mayor and Commissioners**

Council Meeting: **March 6th, 2017**_____
Agenda Item: #_____
Submitted By: **Marty Stovall**_____

A. Synopsis of Issue:
a. Agreement for Professional Services with JEO Consulting Group Inc. for Project No. 100080.00 North 11th Street & Orchard Drive Improvements
b. Services include: Preliminary Design, Final Design Phase

B. Options:
a. Approve Mayor to sign Professional Service Agreement for JEO Consulting Group Inc. and begin design phase of North 11th Street & Orchard Drive.

C. Fiscal Note: Lump Sum fees for Basic Services are as follows:

a. Preliminary Design Phase $99,600.00
b. Final Design Phase $73,000.00
c. Bidding and Negotiating Phase $6,000.00
d. Construction Phase $87,500.00

Estimated Hourly Services are as follows:

e. Resident Project Representative $78,000.00
f. Permitting Services $6,500.00

In the 2017 Fiscal Year we have budgeted $160,000.00 for the Preliminary and Final Design of project No. 100081.00.

D. Total Project Cost for Preliminary and Final Design $172,600.00. JEO will complete 93% of Project Design in this Fiscal Year with the remainder of project Preliminary/Final Design costs of $12,600.00 or 7% being paid by Street Funds in 2018 budget.

E. Bidding, Negotiating, Resident Project Representative, Permitting Services, Construction Phase and Construction of the project will be paid by securing BAN's.

F. **Background:** North 11th Street & Orchard Drive Improvements is listed on the 1 & 6 Year Plan. The bridge over North Table Creek will be replaced as part of this project. (It was listed in recent bridge inspection as needing replaced due to major deficiencies at the southwest corner of substructure). Bridge will include a 10 foot wide sidewalk on the west side for future expansion of trails. New storm sewer will be included in the project, wider turn lanes on Orchard Drive & 19th street will enhance safety at these locations, replace deteriorated curb inlets on Orchard Drive, new asphalt overlay will start at our City Limit and continue to Bridge and from Bridge to 1st Avenue, new ADA curb ramps will be installed at all intersection, sidewalk will be installed on west side from 5th avenue to Bridge. This project will not only address needed repairs to our roadway and bridge but also provide us with a new clean and inviting entrance into Nebraska City.

****

Department Heads: **Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.**

ENGINEERING ■ ARCHITECTURE ■ SURVEYING ■ PLANNING

February 24, 2017

City of Nebraska City
c/o Marty Stovall
1409 Central Avenue
Nebraska City, NE 68410

RE: Nebraska City, Nebraska
North 11th Street & Orchard Drive Improvements
JEO Project No. 100081.00

Dear Marty:

Enclosed are two (2) originals of JEO's standard agreement for services on the above referenced project. Please review, and if acceptable, execute each copy and return one (1) original for our files.

The first part is the standard terms and conditions that are applicable to the entire agreement. Exhibit A and Attachment 1 to Exhibit A define the work that JEO expects to perform as part of basic services, and examples of the types of work that may be required as additional services. Exhibit B defines requirements of you under the agreement. Exhibit C defines JEO's fees for services. Exhibit D defines the services of an on-site resident project representative. Exhibit G defines the insurance coverages that JEO carries.

As noted in Exhibit C of the agreement, JEO's fees for services are as follows:

Lump sum fees for Basic Services, included in the Agreement, are:

Preliminary Design Phase	$ 99,600.00
Final Design Phase	$ 73,000.00
Bidding and Negotiation Phase	$ 6,000.00
Construction Phase	$ 87,500.00
Subtotal	$ $266,100.00

Estimated Hourly fees for Basic Services, included in the Agreement, are:

Resident Project Representative	$ 78,000.00
Permitting Services	$ 6,500.00
Subtotal	$ 84,500.00

Along with the other services defined under the construction phase of Exhibit C of the agreement, the construction administration phase includes twenty (20) site visits by the project engineer/manager. These visits are only intended to observe whether the project is being completed in general conformance with the plans and specifications. They are not to provide on-site representation during the construction phase of the project.

Please note, the estimate for RPR services, which include 700 hours of time for on-site observation and representation and Permitting Services, which include 40 hours of time, are only for you to use in planning and budgeting. You will only be billed for hours worked on the project in providing these services, and those hours may differ materially from our estimate.

Evan Wickersham will be the Project Manager on this project. We ask that you also designate a representative for JEO to work with that has the authority to give direction and act on your behalf during the project.

This agreement will be open for acceptance until 3/31/17 unless changed by us in writing.

If you have any questions, please contact me. JEO is excited about the opportunity to work with you on this project.

Sincerely,

Evan B. Wickersham, PE
Project Engineer

EBW:rb

Enclosures

[Professional Agreement]

NORTH 11TH STREET & ORCHARD DRIVE IMPROVEMENTS
Nebraska City, Nebraska

Agreement for Professional Services between
Owner and JEO CONSULTING GROUP INC

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

And

Issued and Published Jointly By

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

And

Amended By

JEO CONSULTING GROUP, INC.

Copyright ©1996 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

EJCDC No. 1910-1 (1996 Edition)

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Date Prepared February 24, 2017

STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as March 4, 2017 ("Effective Date") between

City of Nebraska City ("OWNER") and

JEO Consulting Group, Inc. ("ENGINEER").

OWNER intends to see Attachment "1" to Exhibit A ("Project").

OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

A. ENGINEER shall provide the Basic and Additional Service set forth herein and in Exhibit A.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.

C. If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitation of authority as set forth in Exhibit D.

ARTICLE 2 – OWNER'S RESPONSIBILIES

2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3 – TIMES FOR RENDERING SERVICES

3.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or date are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

3.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time of performance under this Agreement has been revised.

ARTICLE 4 – PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.

1. OWNER shall pay ENGINEER for Resident Project Representative(s) (RPR) Services defined in Exhibit D, as set forth in Exhibit C.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01A and 4.01.B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth on Exhibit C.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.

B. *Payments of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payments due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefore, the 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. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. *Payments Upon Termination:*

1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for these items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid 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.

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.

F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefore, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expenses to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinion of probable Construction Cost provided for herein 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 industry. However, since ENGEINER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary

from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

A. If a Construction Cost Limit is established between OWNER and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to the Agreement.

5.03 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of 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 the Agreement will be the care and skill ordinarily used by members of ENGINEER's 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. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER furnished information.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance of furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws and Regulations and OWNER mandated standards. 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, or compensation.

E. 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, reports, data, and information in performing or furnishing services under this Agreement.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.

G. Prior to the commencement of the Construction Phase, Owner shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Recommendation of Acceptance," or of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGIENER to provide the notices or certifications requested.

H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's 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's signing any such certification.

I. During the Construction Phase, ENGINEER shall not 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 by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. 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.

K. ENGINEER shall not be responsible for the acts or omission of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

L. 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 (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit J.

6.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

6.03 Design without Construction Phase Services

A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A.

B. It is understood and agreed that if 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, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

6.04 Use of Documents

A. All records of the Engineer shall be public records and shall belong to the City. City shall retain ownership and property interest therein.

B. Copies of OWNER furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by

ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. 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 30 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 30 day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification 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. 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 therefrom.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents by ENGINEER for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

6.05 Insurance

A. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

B. OWNER shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

C. ENGINEER shall cause the OWNER to be listed as additional insured on any general liability or property insurance policies carried by the ENGINEER which are applicable to the Project.

D. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insured with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

E. OWNER and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.

F. ~~All policies of property insurance 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 any of the insureds or additional insureds thereunder.~~

G. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by OWNER, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER, and Exhibit G will be supplemented to incorporate these requirements.

6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

a. By either party upon thirty (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 (7) days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or

2. upon seven (7) days written notice if the ENGINEER's services for the Project are delayed or suspended for more than ninety (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 as a result of such substantial failure if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its failure within no more than thirty (30) days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty (30) day period, and if such party has diligently attempted to cure the same, then the sure period provided for herein shall extend up to, but in no case more than, sixty (60) days after the date of receipt of the notice.

2. *For convenience,*

a. By OWNER effective upon the receipt of notice by ENGINEER.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to thirty (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.

6.07 Controlling Law

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

6.08 Successors, Assigns, and Beneficiaries

A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.B, the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, with respect to 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, monies 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. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

6.09 Dispute Resolution

A. OWNER and ENIGNEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under the provisions of this Agreement, or under Law.

6.10 Hazardous Environmental Condition

A. OWNER represents to ENGINEER that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, 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 Hazardous Environmental Condition; and

2. warrants that the Site is in full compliance with applicable Laws and Regulations.

E. 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 of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

6.11 Allocation of Risks

A. Indemnification

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers,

architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

3. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any costs, losses, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.

4. In addition to the indemnity provided under paragraph 6.11.A.2 of this Agreement, and to the fullest extent permitted by Law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that:

   a. any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and

   b. nothing in this paragraph 6.11.A.4 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.

5. The indemnification provision of paragraph 6.11.A.1 is subject to and limited by the provisions agreed to by OWNER and ENGINEER in Exhibit I, "Allocation of Risks," if any.

6.12 Notices

A. 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, or by registered or certified mail postage prepaid, or by a commercial courier services. All notices shall be effective upon the date of receipt.

6.13 Survival

A. All express representations, indemnifications, or limitation of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

A. 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.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

6.17 E-Verify

A. Engineer shall register with and use the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986, to determine the work eligibility status of new employees physically performing services within the state where the work will be performed. Engineer shall require the same of each subcontractor.

ARTICLE 7 – DEFINITIONS

7.01 Defined Terms

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda* – Written or graphic instruments issued prior to the openings of Bids which clarify, correct, or change the Bidding Documents.
2. *Additional Services* – The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2, of this Agreement.
3. *Agreement* – The "Standard Form of Agreement between OWNER and ENGINEER for Professional Services," including the Exhibits listed in Article 8 hereof.
4. *Application for Payment* – The form acceptable to ENGINEER which is to be used by the Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
5. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
6. *Basic Services* – The services to be performed for or furnished to Owner by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.
7. *Bid* – The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
8. *Bidding Documents* – The advertisement or invitation to Bid, instruction to bidders, the Bid form and attachments, the Bid Bond, if any, the proposed Contract Documents, and all Addenda, if any.
9. *Change Order* – A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.
10. *Construction Agreement* – The written instruction which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.
11. *Construction Contract* – The entire and integrated written agreement between the OWNER and Contractor concerning the Work.
12. *Construction Cost* – The cost to OWNER of those portions of the entire Project designated or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, 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 charge 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.

13. *Contract Documents* – Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price* – The monies payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times* – The number of days or the dates stated in the Construction Agreement to:

    a. achieve Substantial Completion, and

    b. complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of acceptance.

16. *Contractor* – An individual or entity with whom OWNER enters into a Construction Agreement.

17. *Correction Period* – The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective* – An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approved referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. *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.

20. *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.

21. *Effective Date of the Construction Agreement* – The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *ENGINEER's 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. The term ENGINEER includes ENGINEER's Consultants.

24. *Field Order* – A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

25. *General Conditions* – That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

28. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. *PCB's* – Polychlorinated biphenyls.

30. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel, oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

31. *Radioactive Materials* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

32. *Record Drawings* – The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.

33. *Reimbursable Expenses* – The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.

34. *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 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 are as set forth in Exhibit D.

35. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

36. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for the Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.

37. *Site* – Land of areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements

for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

38. *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.

39. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

40. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements the General Conditions.

41. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, right-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.

42. *Work* – The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

43. *Work Change Directive* – A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiation by the parties as to its effect, if any, on the Contract Price or Contract Times.

44. *Written Amendment* – A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

A. Exhibit A, "ENGINEER's Services," consisting of 9 page(s).

1. Attachment "1" to Exhibit A, consisting of 4 page(s).

B. Exhibit B, "OWNER's Responsibilities," consisting of 2 page(s).

C. Exhibit C, "Payments to ENGINEER for Services and Reimbursable Expenses," consisting of 3 page(s).

D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of 1 page(s).

E. Exhibit E, "Recommendation of Acceptance," consisting of 2 page(s).

F. Exhibit G, "Insurance," consisting of 1 page(s).

8.02 Total Agreement

A. This Agreement (consisting of pages 1 to 15 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:
CITY OF NEBRASKA CITY	JEO CONSULTING GROUP, INC.
By:	By: Evan Wickersham
Title: Mayor	Title: Project Manager
Date Signed:	Date Signed: 2/24/12
Address for giving notices:	Address for giving notices:
1409 Central Avenue	PO Box 160
Nebraska City, NE 68410	Nebraska City, NE 68410
Designated Representative (paragraph 6.02.A):	Designated Representative (paragraph 6.02.A):
By: Marty Stovall	By: Evan Wickersham
Title: Construction & Facilities Manager	Title: Project Manager
Phone Number: 402-873-5515	Phone Number: 402-873-6766
Facsimile Number: 402-873-5685	Facsimile Number: 402-873-4509
E-Mail Address:	E-Mail Address: ewickersham@jeo.com
Attest:	
By: Randy Dunster	
Title: City Clerk- Treasurer	

This is **EXHIBIT A**, consisting of 9 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 Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

~~**A1.01 Study and Report Phase**~~

~~A. ENGINEER shall:~~

~~1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.~~

~~2. Advise OWNER as to the necessity of OWNER's providing data or services of the types described in Exhibit B which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.~~

~~3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, including but not limited to mitigating measures identified in the environmental assessment.~~

~~4. Identify and evaluate _____ alternate solutions available to OWNER and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's judgment meet OWNER's requirements for the Project.~~

~~5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project with each component including the following, which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.~~

~~6. Perform or provide the following additional Study and Report Phase tasks or deliverables: See Attachment "1" to Exhibit A.~~

~~7. Furnish _____ review copies of the Report to OWNER within __ days of authorization to begin services and review it with OWNER.~~

~~8. Revise the Report in response to OWNER's and other parties' comments, as appropriate, and furnish _____ final copies of the revised Report to the OWNER within _____ days after completion of reviewing it with OWNER.~~

~~B. ENGINEER's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to OWNER.~~

A1.02 Preliminary Design Phase

A. Based upon OWNER's selection of a recommended solution and indication by OWNER of scope, extent, or design requirements, and upon authorization from OWNER, ENGINEER shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project desired by the OWNER.

2. Advise OWNER if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist OWNER in obtaining such reports, data, information or services.
3. Furnish the Preliminary Design Phase documents to and review them with OWNER.
4. Provide Opinion of Probable Construction Cost.
5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: See Attachment "1" to Exhibit A.

B. ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when the Preliminary Design Phase documents have been reviewed with the OWNER.

A1.03 Final Design Phase

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

1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the JEO standard format of Construction Specifications.
2. Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.
3. Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER.
4. Perform or provide the following additional Final Design Phase tasks or deliverables: See Attachment "1" to Exhibit A.
5. Prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel, and other advisors, as appropriate, and assist OWNER in the preparation of other documents.

B. In the event that the Work designed or specified by the ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

C. The number of prime contracts for Work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is 1.

D. ENGINEER's services under the Final Design Phase will be considered complete on the date when the Final Plans and Specifications have been reviewed with the OWNER.

A1.04 Bidding or Negotiating Phase

A. After acceptance by OWNER of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon authorization by OWNER to proceed, ENGINEER shall:

1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, and receive and process Contractor deposits or charges for the Bidding Documents.
2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
3. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
4. Perform or provide the following Bidding and Negotiating Phase tasks or deliverables: See Attachment "1" to Exhibit A.
5. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

A1.05 Construction Phase

A. Upon successful completion of the Bidding and Negotiating Phase, and upon authorization from OWNER, ENGINEER shall:

1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitation of the duties, responsibilities and authority of ENGINEER as assigned in said General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
2. *Resident Project Representative (RPR).* If included in Attachment "1" of Exhibit A provide the services of an RPR at the Site to assist the ENGINEER and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of RPR's services will not exceed ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.
3. *Selecting Independent Testing Laboratory.* Assist OWNER in the selection of an independent testing laboratory to perform the services identified in paragraph B2.01.0.
4. *Visits to Site by Project Engineer/Manager and Observation of Construction by Project Engineer/Manager.* In connection with observations of Contractor's work in progress while it is in progress:

   a. Make twenty (20) visits, not to exceed forty (40) hours, to the Site at intervals appropriate to the various stages of construction, as Project Engineer/Manager deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the work.

      Such visits and observations by Project Engineer/Manager, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to Project Engineer/Manager in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Project

Engineer/Manager's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, Project Engineer/Manager will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and Project Engineer/Manager shall keep OWNER informed of the progress of the work.

b. The purpose of Project Engineer/Manager's visits to, and representation by the Resident Project Representative, in any, at the Site, will be to enable Project Engineer/Manager to better carry out the duties and responsibilities assigned to and undertaken By Project Engineer/Manager during the Construction Phase, and, in addition, by the exercise of Project Engineer's/Manager efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. Project Engineer/Manager shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Project Engineer/Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Project Engineer/Manager neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

5. *Defective Work.* Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

6. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

7. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required.

8. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.

9. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute of "or equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.

10. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, test, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER'S review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

11. *Disagreements between OWNER and Contractor.* Render formal written decisions on all claims of OWNER and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

12. *Applications for Payment.* Based on ENGINEER'S observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

    a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER'S representation to OWNER, based on such observations and review, that, to the best of ENGINEER'S knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER'S responsibility to observe Contractor's work. In the case of unit price work, ENGINEER'S recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph A1.05.A.12.a are expressly subject to the limitations set forth in paragraph A1.05.A.12.b and other express or general limitations in this Agreement and elsewhere.

    b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER'S review of Contractor's work for the purposes of recommending payments nor ENGINEER'S recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance

with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

13. *Contractor's Completion Documents.*

    a. Receive and review maintenances and operating instructions, schedules, and guarantees.

    b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, test and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A1.05.A.8 and the annotated record documents which are to be assembled by the Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENGINEER'S review will be limited as provided in paragraph A1.05.A.8.

    c. ENGINEER shall transmit these documents to OWNER.

14. *Additional Tasks.* Perform or provide the following Construction Phase tasks or deliverables: See Attachment "1" to Exhibit A.

15. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a Recommendation of Acceptance that the Work is acceptable to the best of ENGINEER'S knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts.

C. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

~~**A1.06 Post-Construction Phase**~~

~~A. Upon authorization from OWNER, ENGINEER, during the Post-Construction Phase, shall, up to a maximum of _____ hours:~~

~~1. In company with OWNER or OWNER'S representative, provide an inspection of the Project within two (2) months before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.~~

~~2. Provide Engineering services necessary during the correction period.~~

~~B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Correction Period.~~

Part 2—ADDITIONAL SERVICES

A2.01 Additional Services Requiring OWNER'S Authorization in ADVANCE

A. If not specifically included in Exhibit A Part 1 basic services and if authorized by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

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.
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 resulting from OWNER'S request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A1.01.A.4, if any.
5. Services required as a result of OWNER'S providing incomplete or incorrect Project information with respect to Exhibit B.
6. Providing renderings or models for OWNER'S use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.
8. Furnishing services of ENGINEER'S Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in paragraph A1.03.C.
10. Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER'S office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.

13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as defined in basic services and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the Contract Times set forth in the Project Specifications, including services not specifically listed or provided beyond the hours and dollars in Post-Construction Phase during correction period.
17. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
18. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.
19. Preparation of operation and maintenance manuals.
20. Provide assistance in connection with the testing and adjusting of Project equipment or system.
21. Assist OWNER in training OWNER'S staff to operate and maintain Project, equipment, and systems.
22. Assist OWNER in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
23. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.
24. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 6.01.G of the Agreement.
25. Other services performed or furnish by ENGINEER not otherwise provided for in this Agreement.
26. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.
27. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
28. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
29. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, (6) default by Contractor or (7) weather.
30. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.

31. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

This is **Attachment 1 to EXHIBIT A**, consisting of 4 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated February 24, 2017.

Scope of Services

Project Description: The City of Nebraska City is planning to improve 11th Street from 1st Avenue to Orchard Drive; Orchard Drive from 11th Street to the North Corporate Limits; and to replace the bridge on 11th Street, north of 5th Avenue. Street Improvements to 11th Street will include mill and asphalt overlay of the existing surface, full-depth concrete patching, sidewalk improvements and installation of storm sewer at appropriate locations. Improvements to Orchard Drive include mill & overlay of the existing surface, concrete patching, widening the turn lane at the 19th Street Intersection and replacement of storm sewer inlet tops. The existing 11th Street bridge will be replaced with a new structure that includes a 10-foot wide walkway on the west side of the bridge.

Preliminary Design Phase

A. Attend a kick-off meeting with Owner to review the scope and requirements of the project, the goals and constraints of the Owner and project scheduling.

B. Review and finalize design criteria.

C. Collect existing data from historical drawings and plans, operational data, public documents or other readily available information.

D. Complete a preliminary drainage analysis on 11th Street from 1st Avenue to the 11th Street bridge to determine the appropriate limits of the proposed storm sewer improvements.

E. Provide engineering surveys necessary to obtain and develop design data, to develop horizontal and vertical control, and to develop topographic survey of the project site. Surveys will include the following:

1. Hydraulic Cross Sections for Bridge Data Sheet Preparation:
   - Upstream of existing bridge
   - At existing bridge
   - Downstream of existing bridge
2. Channel Profile:
   - Every 50 feet, 300 feet upstream and downstream of the existing structure. Includes location and elevation of existing structure.
3. Road Cross Sections of Proposed Alignment:
   - Every 50 feet from 1st Avenue to the North City Limits.
4. Topographic Survey from ROW to ROW within the project limits.
5. Locate all utilities using One Call Utility Locate.

F. Research for property survey's and plats to determine street right of way. Field locate existing property corners to identify the existing ROW location. (does not include setting new corners)

G. Plot all topography, profiles and cross sections (both roadway and hydraulic).

H. Complete a geotechnical investigation for the project. Geotechnical investigation to include recommend asphalt overlay thickness, investigation of underlying pavement and pavement substructure, soil analysis and proctor determination, recommended subgrade compaction requirements, soil bearing analysis and bridge pile recommendations.

I. Perform hydraulic analysis using HEC-RAS software to determine the creek flows, bridge length and grades. Prepare hydraulic report to NDOR Standards.

J. Prepare preliminary plan and profile sheet showing proposed improvements.

K. Prepare type, size and length (TS&L) bridge sheet per NDOR standards.

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L. Submit Hydraulic report, Plan and Profile sheet and TS&L Sheet to City for review.
M. Prepare a preliminary detour route map for the project.
N. Attend plan in hand meeting with City representatives. (1 Meeting)
O. Perform an internal quality assurance and quality control review of the plan.
P. Present completed preliminary design to Owner and review in detail.
Q. Prepare roadway and bridge renderings for use in public forums.
R. Facilitate a Public Meeting to inform the Public of the project, gather feedback and address public concerns. (1 Meeting)
S. Deliverables for this Phase:
    - Drainage Study for storm sewer
    - Hydraulic Study for bridge
    - Bridge/Roadway Renderings
    - Preliminary Plans including: cover sheet, typical cross-section of roadway, plan and profile sheets, bridge Type, size & length (TSL) sheet.

Final Design Phase

A. Finalize roadway plans based on comments from the Plan in Hand meeting and complete final roadway plans including title sheet, summary of quantities, removal sheets, construction sheets, plan and profiles, erosion control plans, phasing and traffic control plans, right of way plans roadway, culvert and channel sections.
B. Finalize bridge plans in accordance with AASHTO LRFD Bridge Design Specifications, current edition and with NDOR Bridge Office Policies and Procedures Manual and associated drafting standards. A bridge load rating will be performed on the final bridge design per NDOR standards.
C. Conduct a final field investigation with City staff to confirm appropriateness of designed plans.
D. Furnish plans to utility companies that have identified facilities with the project limits to review the project for conflicts.
E. Confirm Owner's bidding and procurement requirements for the project.
F. Prepare forms for Contract Documents including proposals, advertisements for bids, construction contracts, and payment and performance bonds as required, all subject to the approval of Owner's legal counsel.
G. Perform an internal quality assurance and quality control review of the plans and specifications.
H. Finalize technical specifications, including regulatory signage requirements.
I. Finalize detour route and construction signage plan.
J. Prepare a list of final construction quantities and furnish an Engineer's Opinion of Cost if requested.
K. Present completed final documents (Plans, Specifications, and Contract Documents) to Owner for review. (1 Meeting).

Permitting

A. Prepare Storm Water Pollution Prevention Plan and submit permit applications to NDEQ for NPDES permitting requirements.
B. Prepare and submit Army Corps of Engineers Permit (404) Application.
C. Complete a Wetland Delineation report.
D. Prepare and submit Flood Plain permit to local authority.
E. Consult with state and federal agencies on threatened and endangered species and historic features for permitting applications.
F. Prepare and submit Flood Plain permit application to local authority.

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Bidding and Negotiation Phase

A. Prepare the "Invitation to Bid" for the project and provide invitation to City Clerk. City Clerk to submit the "invitation to Bid" to local paper for advertisement. Cost for advertisement to be paid by the City.

B. Furnish copies of plans, specifications, and contract documents of the project to prospective bidders, material suppliers, and other interested parties upon their request and payment of the purchase cost established for the documents.

C. Respond to inquiries from prospective bidders and prepare any addenda required.

D. Conduct bid opening. (1 meeting)

E. Tabulate and analyze construction bids and report on them to the Owner, together with advice and assistance to the Owner in award of construction contract.

F. Prepare and submit necessary information to the Owner for project award approval.

G. Prepare Contract Documents for execution by Contractor and the Owner, and approval by Owner and Owner's legal and insurance counsel.

Construction Phase

A. Schedule and conduct pre-construction conference, on site, for the proposed improvements.

B. Facilitate a Public Meeting to update the Public of the project schedule, gather feedback and address public concerns. (1 Meeting)

C. Review shop drawings and related materials as provided by contractor.

D. Construction staking of project limits and horizontal & vertical alignment for street and storm sewer improvements.

E. Provide survey control points for bridge abutment locations.

F. Provide bridge shim survey and calculations for bridge girder elevations as required.

G. Include WEAP/NDOR pile driving report for pile analysis.

H. Provide interpretation of the plans and specifications, when necessary.

I. Review Contractor's monthly payment estimates and provide to Owner and review.

J. Prepare contract change orders and work directives and submit to the appropriate parties for consideration.

K. Initial bridge inspection and reporting to NDOR for opening new bridge in accordance with NDOR policies.

L. Consult with and advise Owner during construction.

M. Complete geotechnical and material testing (by Thiele Geotech Inc.). Testing to include:
   a. Compaction tests on storm sewer backfill (up to 10 tests)
   b. Asphaltic Concrete Material testing (up to 14 tests)
   c. Asphalt laydown compaction tests
   d. Compaction tests for concrete patching & bridge structure (up to 20 tests)
   e. Inspections on driven pile foundations with saximeter.

N. Conduct a final inspection of project with the Contractor and Owner, prepare a punch list and submit to both parties.

O. Review project for completion of punch list items.

P. Recommend to the Owner the acceptance of the projects, and complete the necessary certificates. These recommendations will be based on the Engineer's observation of construction utilizing professional judgment and accepted tests to determine that the Contractor has completed their contracts in substantial compliance with the plans, specifications and contract documents.

Construction Observation- Resident Project Representation

A. JEO will furnish a Resident Project Representative (RPR) to observe construction progress and quality of the work.

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B. The duties and responsibilities of the RPR are described as follows:
   a. Review of contractors work for general compliance with the plans and specifications.
   b. Facilitate weekly construction progress meetings.
   c. Complete Construction Observation Reports when on site.
   d. Coordinate pay quantities with Contractor and Engineer.
   e. Assist in the review of shop drawings.
   f. Review Storm Water Pollution Prevention Plan (SWPPP) record book on a monthly basis to confirm accuracy of information.
   g. Review of materials delivered to the site for specification compliance.
   h. Assist the Engineer in interpretation of the plans and specifications to the contractor.
   i. Review and coordinate materials testing by assigned testing firm (soil and concrete testing).
   j. Obtain as-built drawing from the Contractor and review for accuracy.

Additional Services Available Upon Request

A. Other environmental studies or permitting, not outlined in the scope of services.
B. Meetings not outlined in the scope of services.
C. Creation of Street Improvement District.
D. Traffic study.
E. Grant Administration.
F. Payroll record review and labor interviews.
G. Legal descriptions of land for acquisition or easements to construct project.
H. Design of any utility relocations.
I. Services resulting from changes in scope, extent or character of the project.

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This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services**.

OWNER's Responsibilities

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

B2.01 Unless specifically set forth in Part 1 of Exhibit A, and in addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:

A. Provide ENGINEER with all criteria and full information as to OWNER'S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will required to be included in the Drawings and Specifications; and furnish copies of OWNER'S standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.

B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following ENGINEER'S assessment of initially-available Project information and data and upon ENGINEER'S request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretations thereof.
5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER'S services, or any defect or nonconformance in ENIGNEER'S services or in the work of any Contractor.

E. Authorize ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests.

3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the monies paid.

4. Placement and payment for advertisement for Bids in appropriate publications.

J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

K. Furnish to ENGINEER data as to OWNER'S anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER'S opinion of Total Project Costs.

L. If OWNER designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.

M. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

~~O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof.~~

P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as OWNER determines necessary to verify:

1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.

2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

Q. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs B2.01.O and P.

R. Perform or provide the following additional services: None

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

ARTICLE 4 – PAYMENTS TO THE ENGINEER

C4.01 For Basic Services Having A Determined Scope—Lump Sum Method of Payment

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, except for services of ENGINEER'S Resident Project Representative Services and Permitting Services, if any, as follows:

1. A Lump Sum amount of $266,100.00 based on the following assumed distribution of compensation:

~~a.~~	~~Study and Report Phase~~	~~$~~
b.	Preliminary Design Phase	$ 99,600.00
c.	Final Design Phase	$ 73,000.00
d.	Bidding and Negotiating Phase	$ 6,000.00
e.	Construction Phase	$ 87,500.00
~~f.~~	~~Post-Construction Phase~~	~~$~~

2. The lump sum amount for Construction Phase as listed in C4.01A.1 includes up to a maximum of twenty (20) site visits and forty (40) hours, as listed in A1.05.

3. ENGINEER may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the OWNER.

4. The Lump Sum includes compensation for ENGINEER'S services and services of ENGINEER'S Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

5. The portion of the Lump Sum amount billed for ENGINEER'S services will be based upon ENGINEER'S estimate of the proportion of the total services actually completed during the billing period to the Lump Sum. All fees for Post-Construction phase will be billed and paid at the end of Construction Phase.

6. The Lump Sum is conditioned on Contract Times to complete the Work not exceeding 18 months. Should the Contract Times to complete the Work be extended beyond this period, the total compensation to ENGINEER shall be appropriately adjusted.

7. If more prime contracts are awarded for Work designed or specified by ENGINEER for this Project that identified in Exhibit A, the ENGINEER shall be compensated an additional amount to be negotiated for all Basic Services for each prime.

C4.02 For Basic Services Having an Undetermined Scope—Standard Hourly Rates Method of Payment

A. OWNER shall pay ENGINEER for Basic Services having an undetermined scope as follows:

1. *Resident Project Representative Services.* For services of ENGINEER'S Resident Project Representative, if any, under paragraph A1.05A.2 of Exhibit A, an amount equal to the cumulative hours, estimated to be 700 hours, charged to the Project by each (of ENGINEER'S) employees times Standard Hourly Rates for each employee for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and ENGINEER'S Consultant's charges, if any. The total compensation under this paragraph is estimated to be $ 78,000 .

2. ~~*NPDES Storm Water Permit Administration and Monitoring Services.* For services of ENGINEER and ENGINEER's Representative, if any under paragraph A1.05 and A1.06 of Exhibit A, an amount equal to the cumulative hours, estimated to be _____ hours, charged to the Project by each (of ENGINEER's) employees times Standard Hourly Rates for each employee for all NPDES Storm Water Permit Administration and Monitoring Services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. The total compensation under this paragraph is estimated to be $_____.~~

3. ~~*Environmental Sciences Services.* For services of ENGINEER's, if any under paragraph A1.01 through A1.06 of Exhibit A, an amount equal to the cumulative hours, estimated to be ___ hours, charged to the Project by each (of ENGINEER's) employee's times Standard Hourly Rates for each employee for all Environmental Sciences Services, including but not limited to wetland studies, NEPA documentation, migratory bird surveys, and agency coordination, performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. The total compensation under this paragraph is estimated to be $_____.~~

4. *Permitting Services.* For services of ENGINEER's, if any under paragraph A1.01 through A1.06 of Exhibit A, an amount equal to the cumulative hours, estimated to be 40 hours, charged to the Project by each (of ENGINEER's) employee's times Standard Hourly Rates for each employee for all Permitting Services, including but not limited to NPDES Storm Water, Corps of Engineers 404, flood plain, railroad occupancy and undercrossing, and highway, street, road, occupancy and undercrossing, performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. The total compensation under this paragraph is estimated to be $ 6,500 .

C4.03 For Additional Services

A. OWNER shall pay ENGINEER for Additional Services as follows:

1. *General.* For services of ENGINEER'S employees engaged directly on the Project pursuant to paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under paragraph A2.01A.23, an amount equal to the cumulative hours charged to the Project by each of ENGINEER'S employees times Standard Hourly Rates for each employee for all Additional Services performed on the Project, plus Reimbursable Expenses and ENGINEER'S Consultant's charges, if any.

2. *Serving as a Witness.* For services performed by ENGINEER'S employees as witnesses giving testimony in any litigation, arbitration, or other legal or administrative proceeding under paragraph A2.01.A.23, at the rate of $(to be negotiated) per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration, or proceeding will be on the

basis provided in paragraph C4.03.A.1). Compensation for ENGINEER'S Consultants for such services will be on the basis provided in paragraph C4.06.

C4.04 For Reimbursable Expenses

A. Reimbursable Expenses. ENGINEER typically includes most reimbursable expenses in hourly rates. To the extent not included, the OWNER will be notified and will be billed at cost times a factor of 1.1.

C4.05 Standard Hourly Rates

A. Standard Hourly Rates are set forth in Attachment "1" to Exhibit C.

B. The Standard Hourly Rates may change from time to time to reflect employee pay changes and associated overhead costs.

C4.06 For ENGINEER'S Consultant Charges

A. Whenever compensation to ENGINEER herein is stated to include charges of ENGINEER'S Consultants, those charges shall be the amounts billed by ENGINEER'S Consultants to ENGINEER times a Factor of 1.1.

C4.07 Factors

A. The ENGINEER'S Consultant's Factors include ENGINEER'S overhead and profit associated with ENGINEER'S responsibility for the administration of such services and costs.

C4.08 Other Provisions Concerning Payment

A. *Progress Payments.* The portion of the amounts billed for ENGINEER'S services which are related to the services identified in paragraphs C4.02 and C4.03, will be during the billing period based on the cumulative hours charged to the Project by each of ENGINEER'S employees times the Standard Hourly Rate for each employee plus Reimbursable Expenses and ENGINEER'S Consultant's charges, if any.

B. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period identified in paragraph C4.01, payment for ENGINEER'S services shall be continued based on the Standard Hourly Rates Method of Payment, unless otherwise negotiated.

C. *Estimated Compensation Amounts*

1. ENGINEER'S estimate of the amounts that will become payable for Basic 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.

This is **EXHIBIT D**, consisting of 1 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services**.

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

Paragraph 1.01C of the Agreement is amended and supplemented to include the following agreement of the parties:

D6.02 Resident Project Representative

A. ENGINEER shall furnish a Resident Project Representative ("RPR"), to assist the ENGINEER in observing progress and quality of the Work. The RPR under this Exhibit D will provide part-time representation during the Construction Phase of this project.

B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR, the ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, the ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in section A.1.05 of Exhibit A of the Agreement are applicable.

C. The duties and responsibilities of the RPR are limited and described as follows:

1. During the Construction Phase, the Engineer shall furnish a part-time Resident Project Representative whose duties shall include, but are not limited to:

   a. See Attachment 1 to Exhibit A.

EXHIBIT E
RECOMMENDATION OF ACCEPTANCE

DATE OF ISSUANCE _____

OWNER _____
CONTRACTOR _____
Contract: _____
Project: _____

OWNER's Contract No. _____ ENGINEER's Project No. _____

This Recommendation of Acceptance applies to all Work under the Contract Documents or to the following specified parts thereof:

To _____
OWNER

And To _____
CONTRACTOR

The Work to which this Recommendation of Acceptance applies has been inspected by authorized representatives of OWNER, CONTRACTOR and ENGINEER, and that Work is hereby declared to be complete in accordance with the Contract Documents on (date), expressly subject to the provisions of the related Agreement documents and the terms and conditions set forth herein.

CONDITIONS OF RECOMMENDATION OF ACCEPTABILITY OF WORK

The Recommendation of Acceptability of Work ("Recommendation") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Recommendation and rely thereon agree:

1. Said Recommendation is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Recommendation reflects and is an expression of the professional judgment of ENGINEER.
3. Said Recommendation is given as to the best of ENGINEER's knowledge, information, and belief as of the date hereof.
4. Said Recommendation is based entirely on and expressly limited by the scope of services ENGINEER has been employed by OWNER to perform or furnish during construction of the Project (including observation of the CONTRACTOR's work) under ENGINEER's Agreement with OWNER and under the Construction Contract referenced herein, and applies only to facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with OWNER and the Construction Contract referenced herein.
5. Said Recommendation is not a guarantee or warranty of CONTRACTOR's performance under the Construction Contract referenced herein nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents.

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees shall be as follows:

OWNER:_____

_____

CONTRACTOR:_____

_____

_____

The following documents are attached to and made a part of this Recommendation of Acceptance:
Payment Application No. ___ and Final

_____

This Recommendation of Acceptance does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

_____

Executed by ENGINEER on _____
Date

_____
ENGINEER

By: _____
(Authorized Signature)

CONTRACTOR accepts this Recommendation of Acceptance on _____
Date

_____
CONTRACTOR

By: _____
(Authorized Signature)

OWNER accepts this Recommendation of Acceptance on _____
Date

_____
OWNER

By: _____
(Authorized Signature)

EJCDC No. 1910-8-D (1996 Edition)
Prepared by the Engineers' Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

This is **EXHIBIT G**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services**.

Insurance

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.05 *Insurance*

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

1. By ENGINEER:

a.	Workers' Compensation:	Statutory
b.	Employer's Liability --	
	1) Each Accident:	$500,000
	2) Disease, Policy Limit:	$500,000
	3) Disease, Each Employee:	$500,000
c.	General Liability --	
	1) Each Occurrence (Bodily Injury and Property Damage):	$1,000,000
	2) General Aggregate:	$2,000,000
d.	Auto Liability--	
	1) Combined Single:	$1,000,000
e.	Excess or Umbrella Liability --	
	1) Each Occurrence:	$1,000,000
	2) General Aggregate:	$1,000,000
f.	Other (specify):	$1,000,000 per occur.
	Professional Liability	$2,000,000 aggregate

2. By OWNER:

a. none

ATTACHMENT "1" TO EXHIBIT C

HOURLY RATE SCHEDULE

ACTUAL HOUR BASIS

Project Managers:	$130.00	-	$190.00
Project Engineers:	$115.00	-	$185.00
Project Engineers (E.I.T.):	$95.00	-	$125.00
Engineering/Surveying/ Architectural/Planning Technicians:	$80.00	-	$140.00
Office/Administrative:	$84.00	-	$95.00
Principals:	$190.00	-	$225.00

City of Nebraska City
1409 Central Avenue
Nebraska City, NE 68410

HOME OF ARBOR DAY **Phone: 402-873-5515 Fax: 402-873-5685**

PUBLIC REQUEST FOR COUNCIL AGENDA OR INFORMATION ITEM

Your request will be reviewed and possibly scheduled for a future meeting,
*or forwarded to **City Staff** for appropriate action**

Name: _Arbor Day 2017_____
Address: _806 1st Avenue_____
Phone #: _402-873-6654_____
Email Address: _amya@nebraskacity.com

CC: Police Dept: _X_ Street Dept: __X__ Park Dept: _X_ Other: ____

Item Title:

Explanation of Request:
The theme for Arbor Day 2017 is "Come Home to Arbor Day… #NebraskaTradition"
The official event weekend will be April 28 – April 30.

The Arbor Day Committee would like to submit the following requests for your consideration.

Action Requested of Council:

- Street closure and no parking on Central Avenue between 16th and 6th street for the Arbor Day parade on Saturday, April 30th, 11 a.m. to 2 p.m.
- Street closure for the parade line-up on Saturday, April 29th, 11 a.m. to 2 p.m. between 16th to 20th street from 1st Avenue to 1st Corso, and on Central Avenue from 16th to 20th and on 1st Corso from 16th to 20th
- The Arbor Day 5 & 10K Run/Walk will be held Saturday, April 29th at 8:30 am. Start/Finish will be in the NCHS parking lot.

- Requesting that the downtown public restrooms open on Saturday and Sunday, April 28 – April 30.
- Requesting permission to place port-o-potty units along parade route Saturday and Sunday, April 28 – April 30.
- Request permission to place temporary way-finding signage throughout Nebraska City, directing residents and visitors to variety of events venues and attractions.

The Arbor Day Committee will place and remove these signs.

- Request for 6 picnic tables to be delivered to the City parking lot behind Arbor Bank for vendor area use on Saturday and Sunday, April 28 – April 30.
- Requesting 6 picnic tables to be placed in the Eagles Club parking lot for the Home and Garden Show on Saturday and Sunday, April 28 – April 30.
- Request street closure, on Central from 5th Street to 4th Street for Flea market on Saturday and Sunday, April 28 – April 30.

- Closure of 5th Street from central, North to alley for Fox Center beer garden on Sunday April 30th.
- Requesting 6 picnic tables to be placed at the Fox Center in the beer garden for the beer garden at the Bloody Mary State Championship competition on Sunday, April 30th
- We have an SDL permit for you to consider for the Bloody Mary State Championships on Sunday April 30th – Fox Center will submit

- Requesting that a proclamation proclaiming the 146th Arbor Day Celebration to be themed "Come Home to Arbor Day… #NebraskaTradition"

Will this item require the expenditure of funds? Yes: ___ No: _X__

Council meetings are held on the 1st & 3rd Mondays of every month. All requests for information or inclusion on a Council Meeting Agenda must be submitted by noon on the Thursday preceding the Council meeting. Once a request is received, Administration will review it and determine whether it requires Mayor/Council action, or if the item needs to be handled by staff.

***You will be notified as to how your request will be handled as soon as possible.**

For staff use only: Action Required.

AGENDA ITEM _____

CITY OF NEBRASKA CITY
MAYOR AND COMMISSIONER REPORT
AGENDA

Subject: Police Officer Hire	**Type:**	**Submitted By:** Chief Lacy
	CITY COUNCIL MEETING: MARCH 6, 2017	

SYNOPSIS:
THE NEBRASKA CITY POLICE DEPARTMENT IS IN NEED TO HIRE REPLACEMENT OFFICERS. THE DEPARTMENT HAS MADE AN OFFER TO A FORMER *CERTIFIED* CITY OFFICER, WHO RECENTLY RETIRED FROM THE OTOE COUNTY S.O.
THIS INDIVIDUAL APPLIED FOR THE POSITIONS RECENTLY ADVERTISED AND COMPLETED THE CIVIL SERVICE TESTING INCLUDING FINAL INTERVIEWS AND AGILITY EXAMINATION. THIS CANDIDATE'S NAME WAS FORWARDED TO ME AS THE #1 LISTED CANDIDATE

FISCAL IMPACT: WHILE THIS INDIVIDUAL IS SEEKING AN ELEVATED STEP COMPENSATION FOR HIS EXPERIENCE, THIS STEP INCREASE IS BELOW THE FORMER OFFICER HE WOULD BE REPLACING. BELIEVE THIS SHOULD NOT CAUSE ANY FISCAL CONCERNS REGARDING THE LINE ITEM FOR WAGES.

RECOMMENDATION: I WOULD RECOMMEND THE APPROVAL OF THE RATE STEP AND OFFICIAL APPOINTMENT OF THIS CERTIFIED OFFICER

TOTAL PURCHASE PRICE:

BACKGROUND.
THE CANDIDATE IS A NEBRASKA CITY RESIDENT, AND HAS SERVED IN LAW ENFORCEMENT FOR 33+ YEARS. HE CURRENTLY POSSESSES HIS NEBRASKA CERTIFICATION AS A LAW ENFORCEMENT OFFICER. ELIMINATING THE NEED TO SEND TO THE TRAINING ACADEMY (16 WEEKS) THEN FIELD TRAINING (10-12 WEEKS) AND AT A GREAT EXPENSE SAVINGS TO THE CITY
HE SERVED AS A NEBRASKA CITY POLICE OFFICER FROM 1982-93, WHEN HE THEN JOINED THE OCSO UNTIL HIS RETIREMENT IN 2015. HE HOLD NUMEROUS CETIFICATES OF TRAINING. (WOULD OFFER HIS RESUME).
THE FACT THAT HE RESIDES HERE, WORKED BOTH PD / SO, AND FOR THE LENGTH OF TIME HE HAS SHOWS HIM TO BE A RELIABLE INDIVIDUAL. THIS HIRE WOULD EXPIDITE THE ABILITY TO PUT AN OFFICER ON THE STREET ALMOST IMMEDIATELY, HELPING TO RELIEVE OVER-TIME EXPENSE, WHILE BRINGING STAFFING LEVELS BACK UP TO AFFORD TRAINING TO OTHER OFFICERS WANTING TO BUILD THEIR ABILITY TO BETTER SERVE THE COMMUNITY.

NEBRASKA CITY

City of Nebraska City
1409 Central Avenue
Nebraska City, NE 68410-2223
HOME OF ARBOR DAY
Phone: 402-873-5515 Fax: 402-873-5685

REQUEST FOR COUNCIL AGENDA OR PUBLIC INFORMATION / RECORDS

*Your request will be reviewed and possibly scheduled for a future meeting, or forwarded to City Staff for appropriate action**

Name: Carissa Phillips
Address: 1920 3rd Ave
Phone #: (402) 209-0659
Email Address: cp060856@hotmail.com

CC: Police Dept.: ___ Street Dept.: ___ Park Dept.: ___ Other: ___

Item Title: Legally Prom Donation Request

Explanation of Request:
Legally Prom is back for a second year & soliciting silent auction items

Action Requested of Council:
Swim Year or day passes to auction at the event

Will this item require the expenditure of funds? Yes: _ No: _ **Estimate $** ___

Council meetings are held on the 1st & 3rd Mondays of the month. All requests for inclusion on a Council Meeting Agenda must be submitted by 5 P.M. on the Tuesday preceding the Council meeting. Once a request is received, staff will review it and determine if it requires Mayor/Council action, or if the item can be handled by staff.
*You will be notified as to how your request will be handled as soon as possible.

For staff use only: Action Required.

Examination of Public Records are covered under Neb. Rev. State. §84-712 or other appropriate state statutes.

Fees: $0.25 per page

CITY OF NEBRASKA CITY

1409 Central Avenue
Nebraska City, NE 68410-2223
Phone: 402-873-5515
Fax: 402-873-5685

Agenda Information Support Sheet

To: **Mayor and Commissioners**

Council Meeting: March 6, 2017
Agenda Item: Vacating Width of 4th Rue
Submitted By: David J. Partsch, City Attorney

A. Synopsis of Issue:

a. A taxpayer proposal to narrow the street ROW on 5th Terrace and 4th Rue was originally proposed, but subsequently limited in scope to just address 4th Rue area where landowners were cooperating with the request. The ROW is currently 100' and will be 45' at its narrowest points. Council directed drafting of the ordinance with a 5' shift northward based off of the prior survey.

B. Options:

a. Cancel the project and leave the ROW as it is.
b. Pass Ordinance as drafted.
c. Amend Ordinance.

C. Fiscal Note:

a. Nominal recording costs.

D. Recommendation: Passage of the Ordinance. The ROW on 4th Rue can be vacated by 55 feet, still leaving 45 feet width for the roadway. NCU retains easements as necessary.

E. Background:

The Council previously approved a request from a landowner with property at the corner of 5th Terrace & 4th Rue to vacate street ROW in order to narrow the width to be more in line with ROW in other areas of the community. Currently the ROW on 4th Rue is 100'. The proposal would vacate a portion of 4th Rue ROW so that it would allow the owners to the north to maintain their bushes and trees and also build an extended handicap ramp. The City will still retain at least 45' for the street, which is comparable to many areas in town.

Nebraska City

ORDINANCE 2981-16

AN ORDINANCE TO VACATE A PORTION OF CITY STREET WIDTH ON 4TH RUE WITHIN NEBRASKA CITY, OTOE COUNTY, NEBRASKA, AS DESCRIBED IN SECTIONS 1 AND 2 HEREOF; REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; APPROVING PUBLICATIONIN PAMPHLET FORM; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, a request has been made that the width of the street known as 4th Rue in Nebraska City, Otoe County, Nebraska, at the portion described in Section 1 hereof be vacated, and;

WHEREAS, because of the location of said property, the City has determined the City no longer has a need for said City roadway property to be its current width, and hereby approves the narrowing of the street by vacation of said property as described herein.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSIONERS OF THE CITY OF NEBRASKA CITY, NEBRASKA:

SECTION 1. That a portion of 4th Rue between 4th Terrace and 5th Terrace in Nebraska City, Otoe County, Nebraska, be and the same is hereby vacated so as to reduce the road right-of-way width; said portion vacated shall consist of twenty-eight feet (28') on the northerly side of the roadway from 5th Terrace northerly to 4th Terrace and also twenty-seven feet (27') on the southerly side of the roadway from 5th Terrace northerly to the mid-point of the alley between 5th Terrace and 4th Terrace, all points to run parallel to the existing property lines (see attached survey plat map with described area shifted from map five feet (5') northerly).

Section 2. Said property vacated shall revert to the adjoining landowners, subject to the reservation of easements for existing municipal utilities over or buried within the above-described real estate vacated by this ordinance.

Section 3. That all ordinances or portions of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance is adopted and approved for publishing in pamphlet form, and shall be in full force and effect from and after 15 days after its passage, approval, and publication or posting as provided by law.

Passed and Approved this 6th day of March, 2017.

_____
Bryan W. Bequette, Mayor

Attest:

_____
Randy Dunster, City Clerk-Treasurer

CITY OF NEBRASKA CITY

1409 Central Avenue
Nebraska City, NE 68410-2223
Phone: 402-873-5515
Fax: 402-873-5685

Agenda Information Support Sheet

To: **Mayor and Commissioners**

Council Meeting: March 6, 2017
Agenda Item: Increasing Fee for Operating a Manufactured Home Community
Submitted By: David J. Partsch, City Attorney

A. Synopsis of Issue:

a. Staff alerted me to a conflict between our Code's stated fee of $25 for an annual permit to operate a manufactured home community (trailer court) and the annual fee listed on forms for inspection by the Building Inspector of $50. The Ordinance amends the Code to set the new total annual fee at $100, which will be inclusive of the fees for staff time and inspection.

B. Options:

a. Pass Ordinance as drafted setting a total annual fee of $100.
b. Amend Ordinance to set some other total annual fee.
c. Leave as is with the Code stating $25 annual fee, but the form adding a $50 inspection fee.

C. Fiscal Note:

a. Nominal annual fee income increase.

D. **Recommendation:** Passage of the Ordinance.

E. Background:

See Synopsis. Talk to Alan Viox or Crystaphena Balquier with any questions regarding processing of annual permit applications and inspections.

ORDINANCE NO. 2984-17

AN ORDINANCE AMENDING SECTION 21-20 OF THE CODE OF THE CITY OF NEBRASKA CITY, NEBRASKA (PERMIT TO OPERATE A MANUFACTURED HOME COMMUNITY); REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; APPROVING PUBLICATION IN PAMPHLET FORM; AND DECLARING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NEBRASKA CITY, OTOE COUNTY, NEBRASKA, AS FOLLOWS:

SECTION 1. AMENDMENT:

That Section 21-20 of the Code of the City of Nebraska City, Nebraska, is hereby amended to read as follows:

> **Sec. 21-20. - Permit to operate a manufactured home community.**
>
> (a) Any person who establishes, conducts, operates, or maintains a manufactured home community within the City, or within two (2) miles beyond the corporate limits thereof, without first obtaining a permit from the City as provided in this article shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than two hundred dollars ($200.00) nor more than five hundred dollars ($500.00), and each day such manufactured home community shall operate without a permit after a first conviction shall be considered a separate offense.
>
> (b) The application for an annual permit to conduct, operate, and maintain a manufactured home community shall be in writing and upon such form as the city shall provide, and shall include the full name and address of the applicant, or applicants, the current or most recent occupation of the applicant, number of lots available and occupied, utility systems information, and such other pertinent data as the city may require.
>
> (c) The annual fee for a manufactured home community permit shall be the sum of one hundred dollars ($100.00) payable on the second day of January of each year; provided, however, if such permit is obtained after July first of any year, the fee shall be the sum of fifty dollars ($50.00) for the remainder of the calendar year.

SECTION 2. REPEAL:

That all ordinances or portions of ordinances in conflict herewith are hereby repealed, including but not limited to Ordinance No. 1084, § 4 passed on February 6, 1961, and Ordinance No. 2164-91, § 1 passed on April 1, 1991.

SECTION 3. PUBLICATION AND EFFECTIVE DATE:

This ordinance is adopted and approved for publishing in pamphlet form, and shall be in full

force and effect from and after 15 days after its passage, approval, and publication or posting as provided by law. The provisions of this Ordinance shall become and be made part of the Nebraska City Municipal Code and sections of this Ordinance may be renumbered to accomplish such intention.

Passed and approved this 6th day of March, 2017.

_____
Bryan W. Bequette, Mayor

ATTEST:

_____
Randy Dunster, City Clerk-Treasurer

January 30th, 2017

City of Nebraska City
City Administrator
1409 Central Ave
Nebraska City, NE 68410

Re: Petition for Annexation to the City of Nebraska City

Mr. Mayor and City Council,

We, the below signed, are making petition to the City of Nebraska City to have the below defined and attached parcel s, as owned by us, be included in the corporate limits of Nebraska City pursuant to Nebraska Revised Statutes Section 16-117(7).

"Lot A-1 & Lot A-2 an Administrative Replat of Part of Lot A, H & E Subdivision Located in the West ⅓ of the N.W. ¼ of Section 21, T.8N., R.14E of the 6th P.M., Otoe County, Nebraska."

Sincerely,

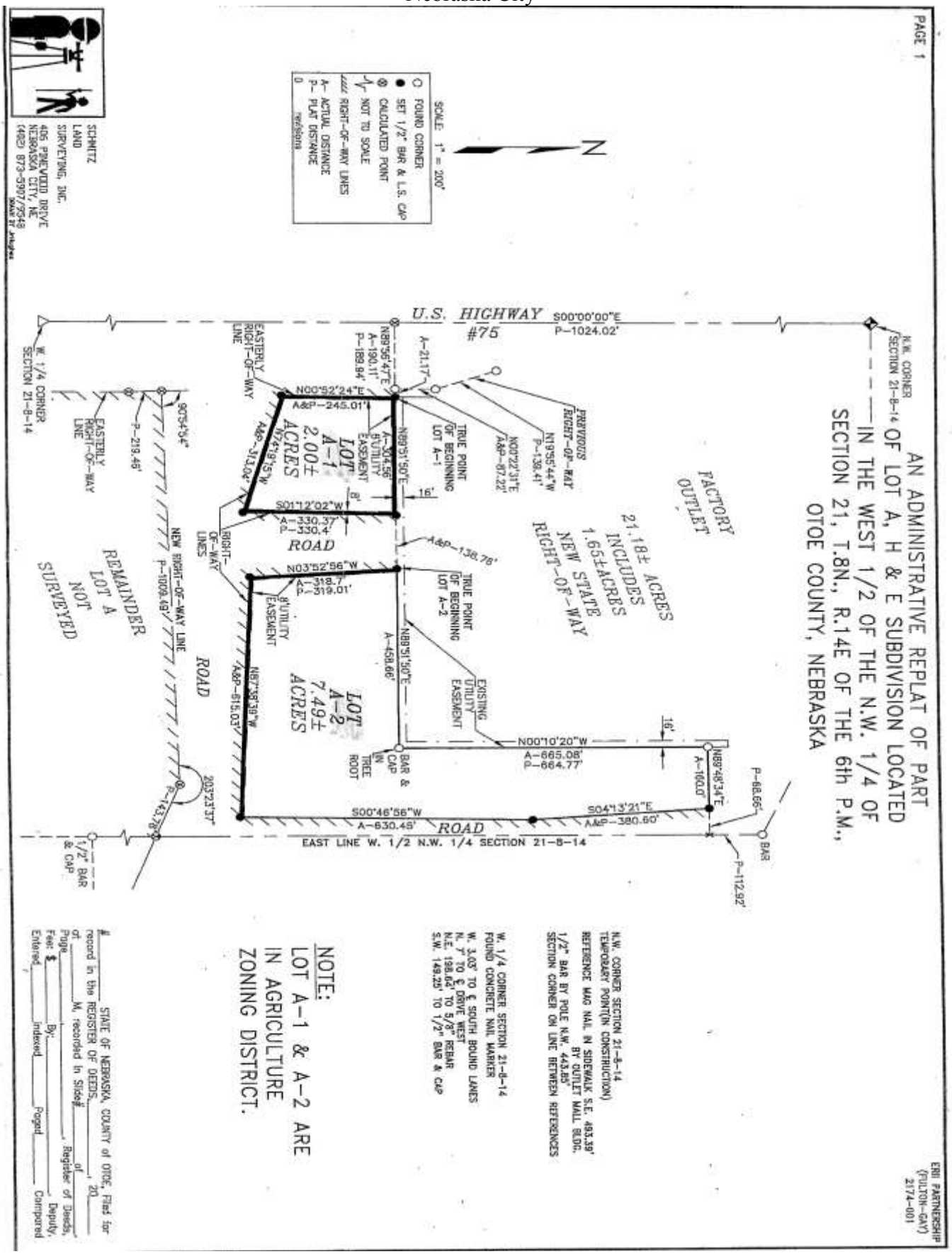
Terry Fulton

Melisa Fulton

Brett A. Gay

Robyn D. Gay

At.


PAGE 1
AN ADMINISTRATIVE REPLAT OF PART OF LOT A, H & E SUBDIVISION LOCATED IN THE WEST 1/2 OF THE N.W. 1/4 OF SECTION 21, T.8N., R.14E OF THE 6th P.M., OTOE COUNTY, NEBRASKA
ERH PARTNERSHIP (FULTON-GAY) 2174-001
SCHMITZ LAND SURVEYING, INC. 405 PINEWOOD DRIVE NEBRASKA CITY, NE (402) 873-3907/7548
SCALE: 1" = 200'
FOUND CORNER
SET 1/2" BAR & L.S. CAP
CALCULATED POINT
NOT TO SCALE
RIGHT-OF-WAY LINES
A- ACTUAL DISTANCE
P- PLAT DISTANCE
0 revisions
N.W. CORNER SECTION 21-8-14
U.S. HIGHWAY #75
S00°00'00"E P-1024.02'
A-21.17'
N89°56'47"E A-190.11' P-189.94'
N00°52'24"E A&P-245.01'
N19°55'44"W P-138.41'
N00°22'31"E A&P-87.22'
PREVIOUS RIGHT-OF-WAY
TRUE POINT OF BEGINNING LOT A-1
N89°51'50"E A-304.56'
8' UTILITY EASEMENT
16'
8'
S01°12'02"W A-330.37' P-330.4'
ROAD
A&P-138.78'
N03°52'56"W A-518.7' P-518.01'
TRUE POINT OF BEGINNING LOT A-2
N89°51'50"E A-458.66'
EXISTING UTILITY EASEMENT
N87°38'39"W A&P-515.03'
N00°10'20"W A-665.08' P-664.77'
16'
N89°48'34"E A-160.0'
P-68.66'
BAR
P-112.92'
BAR & CAP IN TREE ROOT
S00°46'56"W A-630.48'
S04°13'21"E A&P-380.60'
ROAD
EAST LINE W. 1/2 N.W. 1/4 SECTION 21-8-14
FACTORY OUTLET
21.18± ACRES INCLUDES 1.65±ACRES NEW STATE RIGHT-OF-WAY
LOT A-1 2.00± ACRES
LOT A-2 7.49± ACRES
REMAINDER LOT A NOT SURVEYED
EASTERLY RIGHT-OF-WAY LINE
W. 1/4 CORNER SECTION 21-8-14
90°54'54"
P-219.45'
NEW RIGHT-OF-WAY LINE P-1008.49'
R-143.78'
203°23'37"
1/2" BAR & CAP
N.W. CORNER SECTION 21-8-14 TEMPORARY POINT(IN CONSTRUCTION) REFERENCE MAG NAIL IN SIDEWALK S.E. 483.39' BY OUTLET MALL BLDG. 1/2" BAR BY POLE N.W. 443.85' SECTION CORNER ON LINE BETWEEN REFERENCES
W. 1/4 CORNER SECTION 21-8-14 FOUND CONCRETE NAIL MARKER W. 3.03' TO ℄ SOUTH BOUND LANES N. 7' TO ℄ DRIVE WEST N.E. 198.62' TO 5/8" REBAR S.W. 149.25' TO 1/2" BAR & CAP
NOTE: LOT A-1 & A-2 ARE IN AGRICULTURE ZONING DISTRICT.
STATE OF NEBRASKA, COUNTY of OTOE, Filed for record in the REGISTER OF DEEDS, ____, 20__ at ____ M, recorded in Slide# ____ of Page ____, Register of Deeds, Fee: $ ____ By: ____, Deputy, Entered ____ Indexed ____ Paged ____ Compared

LEGAL DESCRIPTION OF LOT A-1

A Part of Lot A, H & E Subdivision located in the West ½ of the N.W. ¼ of Section 21, T.8N, R.14E of the 6th P.M, Otoe County, Nebraska, being more particularly described as follows:
Commencing at the N.W. Corner of said Section 21, thence southerly along the West line of the said N.W. ¼, S00°00'00"E 1024.02 feet; thence leaving said West line and continuing easterly N89°56'47"E 190.11 feet to a point on the Easterly right-of-way line of U.S. Highway #75, said point being the True Point of Beginning; thence leaving said right-of-way line and continuing easterly N89°51'50"E 304.56 feet to a point on a road right-of-way line; thence continuing southerly along said right-of-way line S01°12'02"W 330.37 feet to a point; thence continuing northwesterly along said road right-of-way line N74°19'15"W 313.04 feet to a point on the said Easterly right-of-way line of U.S. Highway #75; thence northerly along the said Easterly right-of-way line N00°52'24"E 245.01 feet to the True Point of Beginning.
The above described tract contains 2.00± acres and is subject to all easements or rights-of-way now on record or indicated on this administrative survey plat.

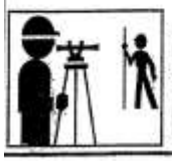
LEGAL DESCRIPTION OF LOT A-2

A Part of Lot A, H & E Subdivision located in the West ½ of the N.W. ¼ of Section 21, T.8N, R.14E of the 6th P.M, Otoe County, Nebraska, being more particularly described as follows:
Commencing at the N.W. Corner of said Section 21, thence southerly along the West line of the said N.W. ¼, S00°00'00"E 1024.02 feet; thence leaving said West line and continuing easterly N89°56'47"E 190.11 feet to a point, thence continuing easterly N89°51'50"E 443.32 feet to a point, said point being the True Point of Beginning; thence continuing easterly N89°51'50"E 458.66 feet to a point; thence continuing northerly N00°10'20"W 665.08 feet to a point; thence easterly N89°48'34"E 160.0 feet to a point on a road right-of-way line; thence southerly along said right-of-way line S04°13'21"E 380.60 feet to a point; thence southerly S00°46'56"W 630.45 feet to a point; thence continuing westerly along road right-of-way line N87°38'39"W 615.03 feet to a point; thence northerly along said right-of-way line N03°52'56"W 318.7 feet to the True Point of Beginning.
The above described tract contains 7.49± acres and is subject to all easements or rights-of-way now on record or indicated on this administrative survey plat.

SURVEYOR'S CERTIFICATE

I do hereby certify, that under my personal supervision, this administrative subdivision plat and legal descriptions were prepared from an actual survey completed this 27th day of June 2016, and is correct to the best of my knowledge.

David L. Schmitz, Reg. Land Surveyor
Nebraska Reg. No. 391



SCHMITZ
LAND
SURVEYING, INC.
406 PINEWOOD DRIVE
NEBRASKA CITY, NE
(402) 873-5907/9548

DISPOSITION

I, the undersigned, Esther Novak, Acknowledging Partnership/Agent for ER II Partnership, being the sole owner and proprietor of the land to be known as an ADMINISTRATIVE REPLAT OF PART OF LOT A, H & E SUBDIVISION, as appears on this subdivision plat, do hereby ratify and approve the disposition of my property as shown. I do hereby dedicate the eight foot utility easements as shown to the public for public use.

The disposition of the real estate as described on this subdivision plat is made with the undersigned owner's free consent and in accordance with her desires.

Esther Novak

ACKNOLEDGEMENT OF NOTARY

State of California
: ss
County of Yolo

On this_____day of _____, 2016, before me a Notary Public, personally appeared Esther Novak, Acknowledging Partnership/Agent for ER II Partnership on her own right and acknowledged the execution of this plat as her voluntary act and deed.

Notary Public _____

My commission expires _____

APPROVAL OF NEBRASKA CITY, NEBRASKA

Approved for the City of Nebraska City, Nebraska, pursuant to Section 19-916, R.R.S. of Nebraska, 1943, as amended, and Ordinance No. 2576-03 of the City of Nebraska City.

Date of Approval_____ Building Inspector _____

OTOE COUNTY TREASURER'S CERTIFICATE

This is to certify that I find no regular special taxes due or delinquent against the property described in this plat as shown by the records of this office as of _____, 2016.

Treasurer _____

Nebraska City
ORDINANCE NO. 2986-17

AN ORDINANCE OF THE CITY OF NEBRASKA CITY, NEBRASKA, TO EXTEND THE BOUNDARIES AND INCLUDE WITHIN THE CORPORATE LIMITS OF AND ANNEX TO THE CITY OF NEBRASKA CITY, NEBRASKA, CERTAIN CONTIGUOUS AND ADJACENT LANDS OUTSIDE THE CITY OF NEBRASKA CITY, OTOE COUNTY, NEBRASKA, AS DESCRIBED IN SECTION 2 HEREOF, AND TO PROVIDE FOR SERVICE BENEFITS THERETO; REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; APPROVING PUBLICATION IN PAMPHLET FORM; AND DECLARING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NEBRASKA CITY, OTOE COUNTY, NEBRASKA, AS FOLLOWS:

SECTION 1. It is hereby found and determined by the Mayor and City Council of the City of Nebraska City, Nebraska:

a. The tract of land located outside of Nebraska City, Otoe County, Nebraska as more particularly described in Section 2 hereof, is urban and suburban in character and is contiguous and adjacent to the corporate limits of the City of Nebraska City, Nebraska;
b. Police and fire benefits will be immediately available as well as other City services as provided by law;
c. Within the areas considered for annexation, the users of the City's utility services will have the benefits or rates applicable to users of such service within the City, with the cost of any extensions necessary being the responsibility of the developer;
d. There is a unity of interest in the use of such lots in such City and the convenience and welfare and interest of the City will be enhanced through incorporating such lots within the limits of the City.

SECTION 2. That the boundaries of the City of Nebraska City, Nebraska, be and hereby are extended to include within the corporate limits of such City the adjacent and contiguous lands located outside of the City of Nebraska City, Otoe County, Nebraska, which are described as follows:

Lot A-1 and Lot A-2 of an Administrative Replat of Part of Lot A, H & E Subdivision located in the West Half of the Northwest Quarter (W1/2NW1/4) of Section Twenty-One (21), Township Eight (8) North, Range Fourteen (14) East of the 6th P.M., Otoe County, Nebraska.

SECTION 3. That a certified copy of this ordinance, together with a plat of such lands, shall be filed of record in the office of the Register of Deeds of the County of Otoe, Nebraska.

SECTION 4. That the land described in Section 2 hereof is hereby annexed to the City of Nebraska City, Otoe County, Nebraska.

SECTION 5. That upon the taking effect of this ordinance, the police and fire services of such City shall be furnished to the lands hereinbefore annexed, and other City services will be available as provided by law. The City rates for utility services furnished by the Nebraska City Utilities shall apply to such lots.

SECTION 6. That all ordinances or portions of ordinances in conflict herewith are hereby repealed. The provisions of this ordinance are separable, and the invalidity of any phrase, clause, or part hereof shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 7. This ordinance is adopted and approved for publishing in pamphlet form, and shall be in full force and effect from and after 15 days after its passage, approval, and publication or posting as provided by law.

Passed and approved this ____ day of _____, 2017.

_____
Mayor

ATTEST:

_____
City Clerk-Treasurer

March 2, 2017

Mayor and Members of the Nebraska City City Council:
1409 Central Avenue
Nebraska City, NE 68410

Dear Mayor Bequette and Members of the City Council:

I have an opportunity to take a 12 week course that, unfortunately, will meet on Monday evenings starting in mid April, 2017. This creates a conflict with six city council meetings that I will be unable to attend.

This class was offered last August, and I postponed taking it due to the heavy involvement we had at that time with the budget, and some public safety meetings. I felt it more important to be a active, regular council participant and I shouldn't be gone during that important time.

My request is that I be excused from attending six of the regularly scheduled Monday Council meetings starting in mid-April and running to the end of May.

During this time away, however, I would continue to meet with my department heads several times per week, and be available to attend meetings during the day that address my departments or that would need my input. I would also arrange to continue to meet with and listen to the opinions of the public during the day as I have done in the past. I would remain informed by reading through each meeting's agenda packet.

This particular class has a great deal of significance to me. I would not ask all of you to consider this weighty request unless it was of great importance. I am asking that you consider these absences to be excused and that I be allowed to take this class.

If you have any particular questions that you would like to ask me, I would be glad to meet with you individually to discuss.

Sincerely,

Vic Johns
Street Commissioner