

AGREEMENT BETWEEN
THE CITY OF WAVERLY
AND
THE SCHEMMER ASSOCIATES
FOR PROFESSIONAL SERVICES

PRELIMINARY DESIGN

**Professional Services Provided: Survey, Roadway Design, Traffic Analysis, and
Alternatives Analysis**

- **Intersection of Amberly Road and Canongate Road (Project 1)**

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AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

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

The City of Waverly (“Owner”) and

The Schemmer Associates Inc. (“Engineer”).

Owner intends to Contract with Engineer to receive preliminary design services including survey, roadway design, traffic analysis and alternatives analysis for project 1:

Intersection of Amberly Road and Canongate Road. This intersection improvement (“Project”).
project shall consist of an alternatives analysis to consider two alternatives for the
intersection of Amberly Road and Canongate Road.

- 1) A roundabout
- 2) A signal

The preliminary design will include a geometric layout, preliminary roadway modeling, drainage analysis, and cost estimate for comparison purposes between the two options. Construction phasing will consider Waverly School District timeframes. Schemmer will present the two alternatives to the City Council and and select a preferred alternative for final design.

Owner and Engineer agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 General

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

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

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

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer’s performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer.

5.02 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition or newer) unless both parties mutually agree to use other General Conditions by specific reference.

- H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

6.02 *Design Without Construction Phase Services*

- A. Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase, therefore (1) Engineer's services under this Agreement shall be deemed complete no later than the recommendation of bid letter; (2) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (3) Owner waives any claims against the Engineer that may be connected in any way thereto.
- B. Owner has the right to amend the Agreement to add construction phase services.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files

agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit D, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit D, "Insurance." Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the "Standard General Conditions of the Construction Contract," (No. C-700, 2002 Edition or newer) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit D. Such certificates shall be furnished prior to

commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit D. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit D will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. Suspension.

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

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

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

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform

and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination.* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination.*
 1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

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

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this

Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit E or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit E. If Exhibit E is not included, or if no dispute resolution method is specified in Exhibit E, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to

identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

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

Work itself), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract," prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition):

1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.
2. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A of this Agreement.
3. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land or rights-of-way, or compensation for damages to properties, or Owner’s costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
4. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
5. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates, consultants, subcontractors, or vendors.
6. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
7. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
8. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
9. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
10. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer’s agent or employee and under

Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any.

11. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
12. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included

- A. Exhibit A, "Engineer's Services," consisting of 9 pages.
- B. Exhibit B, "Owner's Responsibilities," consisting of 3 pages.
- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 2 pages.
- D. Exhibit D, "Insurance," consisting of 2 pages.
- E. Exhibit E, "Dispute Resolution," consisting of 1 pages.

8.02 Total Agreement

- A. This Agreement (consisting of pages 1 to 14 inclusive, together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

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

Owner:

City of Waverly

Engineer:

The Schemmer Associates Inc.

By: _____

By: Douglas G. Holle

Title: _____

Title: Transportation Group Leader

Date: _____

Date: April 14, 2026

Signed: _____

Signed: 

Address for giving notices:

Address for giving notices:

333 South 21st Street

Suite 102

Lincoln, NE 68510

This is **EXHIBIT A**, consisting of 9 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated ____.

Owner's Consultant's Services

ARTICLE A.1 – BASIC 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.

CITY OF WAVERLY – AMBERLY ROAD AND CANONGATE ROAD INTERSECTION IMPROVEMENT

Task 1. General Project Management

1.1 Project Management Plan and General Project Management Duties

The Consultant shall develop and maintain a Project Management Plan (PMP) for the Amberly Road and Canongate Road intersection reconstruction project. In the PMP, the Consultant shall outline items including but not limited to: project

1.2.1	Kickoff Meeting
1.2.2	Project Coordination Meeting
1.2.3	Meeting with City Staff Review Alternatives
1.2.4	Meeting with Waverly School District
1.2.5	Meeting with City Staff Progress Meeting
1.2.6	Presentation to City Council

team organization, roles and responsibilities; scheduling expectations; coordination and communication procedures; formatting protocols; filing protocols, project close-out procedures, and other important operational information pertaining to the project team. The Consultant shall develop and maintain a Quality Management Plan (QMP) to document the quality control processes to be implemented by the project team as part of the Project Management Plan.

The Consultant shall manage the coordination of the project team, coordination with City staff, coordination with key stakeholders, and preparation of progress reports and invoices in accordance with City requirements. The project schedule shall be prepared and updated as requested by the City.

Lump Sum Cost - \$8,200

1.2 General Project Meetings

The Consultant shall schedule and conduct an estimated 6 general project meetings during the design of the project from April 2026 to December 2026. It is anticipated that several meetings will occur in conjunction with design review meetings for the alternative analysis plan submittal. In addition to design review meetings there will be utility coordination meetings, and meetings with the Waverly School District. The remaining meetings will be scheduled at appropriate times from the kickoff to the Conceptual Plan Set Submittal or as necessary to facilitate coordination and communication on the project. A listing of anticipated general meetings is listed to the right, from the project schedule.

Lump Sum Cost - \$6,000

Assumptions	Deliverables
<p>It is anticipated that all meetings will be held at the City of Waverly City Hall or other locations approved by the City.</p> <p>QA/QC hours shall be included in the project management plan.</p>	<p>Develop and maintain a PMP and QMP in electronic format, accessible to the City and other designated key stakeholders</p> <p>Develop and maintain a Project Schedule utilizing Microsoft Project</p> <p>Schedule Status to be included in Invoice Progress Report</p> <p>Meeting agendas and minutes shall be prepared and submitted to meeting attendees</p>

Task 2. Survey & Right of Way

2.1 Site Inspections

The Consultant shall conduct site visits as required during the project to verify site features and design work. It is anticipated that two site visits will be necessary.

2.2 Data Collection and Review

The Consultant shall assemble and review preliminary data available for the project, including as-built information for existing streets, utilities, storm sewers, and other features within the project area. This shall also include review of existing environmental studies, traffic studies, and other study information available that pertains to the proposed improvements. Evaluation of intersection sight distances and existing vertical curvature shall be documented for the project file.

Lump Sum Costs 2.1 + 2.2 = \$2,200

2.3 Survey

The Consultant shall complete a survey for the project corridor. The Consultant shall coordinate with the City of Waverly to establish survey control points. The Engineer will establish control points along the project corridor at regular intervals and provide control point ties to topographic features of permanent nature. Horizontal control points will be established and referenced to existing section corners and lot pins. The control points will be permanent in nature and tied to the Lancaster County Coordinate system.

Vertical control points will be established and referenced to Lancaster County datum. There will be a minimum of three permanent benchmarks established with additional temporary benchmarks set along the project corridor at intervals not to exceed 300 feet.

A Utility-One-Call and mapping request shall be made for the project area. Utilities that are marked shall be surveyed. Above ground visible utilities shall be surveyed. The Consultant shall not be responsible for underground utilities not marked by the utility locate, or underground structures or tanks that are not visible on the surface of the site. An attempt shall be made to obtain utility maps from the utilities

listed on the Utility-One-Call ticket. If maps are provided, those utilities shall be placed on the survey drawing. Manholes shall be opened and surveyed to get the pipe sizes and flow line elevations.

2.3.1 Topographical Survey

Preliminary Field Survey. The topographic survey will be completed by the design consultant for the project corridor in accordance with current NDOT survey specifications. The design consultant will perform the necessary topographical ground survey, including the existing centerline, intersecting streets, and drives, tying the location of land monuments to the existing centerline, cross-sections, and profiles. A topographical survey will be performed using GPS and electronic "Total Station" technology in MicroStation *dgn. format. Copies of field book records and electronic records will be submitted to the City at the completion of the final design. Natural topographic features and man-made features will be recorded by coordinates to the nearest one-tenth (0.1) of a foot. All such topographic features, which are pertinent to the design or are necessary to properly show the effect of the proposed work upon the adjoining property and/or improvements, will be recorded. The topographical survey will include an exact and detailed tree count. The design consultant will document the size and number of trees during the preliminary field survey. The consultant will complete a site visit after LOC's are created, noting the size, type, and location of trees to be removed. Station and offset will be noted on the plans. Unless otherwise noted the limits of the survey are to be at least 100 feet on each side of the existing centerline or to the corners of structures on tracts and must include enough information to build the proposed typical cross-section and show the limits of construction. The survey limits will extend 250 feet before the start of the project and 250 feet beyond the end of the project. The topographic survey will extend along intersecting streets a minimum distance of 250 feet from the centerline of the roadway. See the figure attached to the end of this document.

2.3.2 Digital Terrain Model.

A Digital Terrain Model will be provided for use in cross-section creation. Natural topographic features and man-made features above ground (including existing adjacent building limits) will be recorded. All above and below ground utilities will be located once Digger's Hotline marks them. Sanitary and storm sewer manholes will have rim and flow line elevations surveyed.

2.3.3 Base Map Preparation.

The consultant will create the base map in Microstation ORD format using the topographic survey data.

Lump Sum Costs 2.3.1 + 2.3.2 + 2.3.3 = \$14,000

2.4 Right-of-Way Analysis

2.4.1 Right-of-Way Base Map

The Consultant shall prepare an existing right-of-way base map depicting all right-of-way and easements in the project area. Information will be provided by the City and shall be obtained through plats, title reports, surveyed property pins, and/or other means to depict a complete base map. The surveyor shall be responsible for the research necessary to build parcels. Plats, parcels, or land lots along the right-of-way need to be geometrically closed with parcel reports available upon the City's request. Enough corners need to be located to accurately locate lot lines per the practice and principles for licensing in the State of Nebraska. All obtained information shall be rectified to the surveyed section lines and local project coordinates. All adjustments to obtained information for the creation of the base map shall be documented. Work shall be performed under the direction of a Registered Land Surveyor in the State of Nebraska.

2.4.2 Right-of-Way Alternatives

Right-of-way impacts shall be evaluated in relation to the conceptual design. The Consultant shall provide preliminary limits of construction over the right-of-way base map.

Lump Sum Costs 2.4.1 + 2.4.2 = \$3,100

Task 3 Traffic Operations Analysis (FHU)

3.1 Existing Traffic Analysis

The City of Waverly previously hired a consultant to conduct a traffic study which was completed in August, 2022. FHU will review the traffic study completed recently and collect current traffic counts to determine if the existing volumes used in the analysis are similar to the traffic volumes in this intersection today.

The Consultant shall also complete an analysis and evaluation of the safety history of the intersection based on the most recent five (5) year crash data provided by the City and NDOT. Crash analysis will include a summary of crash history by year, severity, type, and contributing factor. Crash rates will be calculated and compared to Statewide/City averages to identify if this intersection is a high crash location. Based on the 2010 Highway Safety Manual methodology, the Consultant shall assess potential mitigation measures by reviewing available crash modification factors.

3.2 Traffic Forecasting

The Consultant, in coordination and communication with the City of Waverly shall develop future traffic demands based on the Lincoln MPO travel demand model. Adjustments from this model to accurately reflect future growth in the area shall be approved by the City. The study intersection will be evaluated as stop-controlled, a signalized intersection, and a roundabout.

3.3 Signal Warrant Analysis

Based on the alternative analysis and traffic forecasts, signal warrant evaluations shall be completed in accordance with the methodologies laid out in the Manual of Uniform Traffic Control Devices (MUTCD). A memorandum will be developed comparing the August, 2022 count data to the new count and summarizing the results of the crash and traffic analysis.

Lump Sum Costs 3.1 + 3.2 + 3.3 = \$10,700

Task 4 Alternatives analysis

4.1 Development of Alternatives Evaluation Matrix

The Consultant shall develop a list of evaluation criteria for review by the City. The parties shall collaboratively select appropriate criteria that will potentially include items related to operations, constructability, accommodation of alternative modes of transportation, and cost. These criteria will be used to evaluate and determine which alternatives will be advanced and selected to move through the evaluation process.

4.2 Development of Alternatives

Based on preliminary information and future traffic forecasts, the Consultant shall develop up two (2) different alternative intersection improvements for the proposed corridor. Each of the proposed alternatives shall be presented to the City and run through the qualitative evaluation matrix defined earlier in the scope of work.

4.3 Draft Alternatives Report

The Consultant shall document information, analyses, and coordination as part of a draft alternatives report. Conceptual design and cost estimates will be included as defined in Task 6. The report shall be submitted to the City to review prior to sharing any information with the stakeholders.

4.4 Final Alternatives Report

Following a review by the City, comments shall be addressed and incorporated into a final Alternatives Analysis Report. This report shall identify the preferred alternative that will be advanced to preliminary design.

Lump Sum Costs 4.1 + 4.2 + 4.3 + 4.4 = \$2,500

Task 5 Preliminary Field Investigation

5.1 Preliminary Drainage Study

Hydrologic & Hydraulic Analysis

The Consultant shall prepare a conceptual design layout of open and closed drainage systems in accordance with the most current edition of the City of Lincoln design manual. To the extent possible, recent drainage studies that have been completed in the area shall be used to identify flow characteristics at existing structures. The Consultant shall evaluate both upstream and downstream drainage impacts as part of the overall project drainage design. Detailed storm sewer plan & profiles are not included.

The existing culvert pipes and roadway ditches on Amberly Road and Canongate Road shall be analyzed for time of concentration and peak discharge for the 10-year event comparing existing to proposed conditions. The existing major crossroad structures/culverts shall be analyzed to approximate their existing capacities.

Potential roadway overtopping shall be evaluated for the 50 and 100-year flood events using available hydraulic modeling from FEMA's Flood Insurance Study. A determination whether additional conveyance is necessary to meet freeboard requirements or to prevent adverse upstream or downstream impacts will be prepared.

Lump Sum Costs 5.1 = \$5,100

Assumptions Tasks 2-5	Deliverables Tasks 2-5
<p>The Consultant shall complete/update traffic counts for the intersections of Amberly Road and Canongate Road if existing data is determined to be outdated or inadequate by the Consultant and the City. The counts shall include data as needed to support the alternatives analysis that shall be completed for the project. Counts shall be completed on a Tuesday, Wednesday, or Thursday, or as recommended for the AM, Midday, and PM peak hours.</p> <p>Five year crash data provided by the City and NDOT.</p> <p>The City shall select one preferred alternative concept to advance to future phases of development.</p>	<p>Draft and Final Alternatives Reports that document the information, analyses, and coordination developed throughout the process.</p> <p>Preliminary Drainage Study</p> <p>Alternatives evaluation matrix</p> <p>Project Initiation Checklist, Scoping Checklist</p> <p>Draft design criteria memorandum for each alternative.</p>

Task 6. Conceptual Design (two alternatives)

6.1 5% Roadway Design Conceptual Design Alternative 1

The Consultant shall work with the City’s Project Manager to develop and complete the design criteria form. The design criteria form shall include consideration for zoning or special district needs, City of Waverly Master Plan conformance, drainage, and other structural elements as appropriate. Some of these items may be included by reference if determined appropriate by the City. Any design exceptions should also be documented. The design is anticipated to be in conformance to “Nebraska Minimum Design Standards.”

The Consultant shall attend a concept review meeting on site with the City to discuss and review the conceptual design of two alternatives. The Consultant shall prepare meeting minutes and document any proposed modifications as a result of the meeting.

The Consultant shall prepare project base files and a conceptual plan document for each of the two (2) alternatives in accordance with NDOT CADD standards for the construction of the proposed project improvements. The base files will include a feature file with geometrics and ADA pedestrian facilities, a topo base file, and an existing ROW base file. The submittal package will include the following information:

- 1) Schemmer will develop a concept display for the selected intersection improvements showing curb returns and a general footprint for the grading and paving that would be involved in an intersection improvement for Amberly Road and Canongate Road. It is likely the intersection improvement will be a roundabout.
- 2) Schemmer will create a conceptual grading model for the intersection improvement to develop approximate limits of construction and calculate earthwork volumes for grading the intersection. The limits of construction will be used to identify preliminary right of way impacts.

- 3) Schemmer will review the completed drainage study and identify potential drainage improvements associated with the larger footprint associated with a roundabout.
- 4) Schemmer will calculate quantities for the intersection based on the conceptual design and develop a cost estimate based on these quantities and a contingency factor.
- 5) Schemmer will develop a report that outlines the conceptual design and the impacts from the design on the surrounding properties. This report will incorporate the existing traffic analysis and the preliminary concept to develop a cost estimate and a summary of benefits and impacts to be presented at the end of the concept phase.

6.2 5% Roadway Design Conceptual Design Alternative 2

The consultant will review the traffic analysis and the updated signal warrant analysis to determine if a signal is warranted at this intersection. If a traffic signal meets one of the warrants with present day traffic volumes, Schemmer will prepare a concept outlining the traffic signal and calculate a cost estimate and document impacts to utilities, stormwater facilities and right of way and present these findings to the City of Waverly.

If after a review of the signal warrant analysis, it shows a signal would not be warranted or warranted in the future design year, Schemmer will document this information and present it to the City of Waverly at the end of the conceptual design phase.

6.3 Floodplain Review.

It is understood that a Floodplain Permit is required. The Consultant will determine if the project concept designs encroach upon a FEMA mapped floodplain and will determine permitting requirements and whether any additional analysis would be required during final design. It is assumed that minimum FEMA regulatory requirements are met:

FEMA Minimum Standards require, when construction occurs in Base Floodplains, it does not increase, cumulatively, the floodplain base flood elevation more than one-foot.

FEMA Minimum Standards require, when construction occurs in floodways, it does not increase the base flood elevation any amount.

6.4 Cost Estimate

Opinions of Probable Construction Cost (OPCC) shall be completed with the deliverable packages and shall conform the AACE International Recommended Practices. The Consultant shall prepare a Class 4 estimate and include assumptions, contingency, range of expected cost, and escalation for the anticipated construction year for both alternatives.

Lump Sum costs 6.1 Alternative 1 = \$25,000

Lump Sum costs 6.2 – Alternative 2 = \$5,000

Lump Sum costs 6.3 -Flood Plain Review \$6,000

Lump Sum costs 6.4 Alternative 1 = \$ 1,500

Lump Sum Costs 6.4 Alternative 2 = \$1,500

Assumptions	Deliverables
<p>Design Criteria will be based on the preferred alternative</p> <p>5% Plan submittal is based on deliverables matrix</p> <p>Consultant has made utility as-built requests</p>	<p>Design Criteria Form (To be approved prior to proceeding with 15% design plans)</p> <p>5% Conceptual Drawings Package (PDF 2 alternatives)</p> <p>5% Construction Cost Estimate (2 alternatives)</p> <p>15% Plan Submittal Package for preferred alternative</p>

Task 7. Project Coordination

7.1 Utility Coordination

The Consultant shall provide utility coordination based on the following tasks.

Conceptual Design (to 15%)

The Consultant shall identify the location and size of existing utilities through a survey of One Call locates, obtaining as-built plans, or other means.

The Consultant shall coordinate with utility companies to verify the location and ownership of existing facilities.

The Consultant shall coordinate with the City of Waverly and local utilities.

Lump Sum Costs 7.1 = \$6,000

7.2 Wetland Delineation FHU

The Consultant shall verify and delineate any wetlands and Waters of the United States that may be within the project vicinity and determine if a 404 Permit may be required. The Consultant shall perform the delineation in accordance with the U.S. Army Corps of Engineers (COE) Wetland Delineation Manual, Technical Report, and the Midwest Regional Supplement to the COE Wetland Delineation Manual. The delineation field work will determine if wetland areas in question have all three jurisdictional wetland parameters: hydrophytic vegetation, hydric soils, and wetland hydrology, and if waterways in question have Ordinary High-Water Mark (OHWM). If present, the Consultant shall determine the USGS Hydrologic Code and Water Regime.

Delineation of wetlands shall be performed using transect methods with at least one sample point in the wetland and one in the upland at each upland/wetland interface. Wetlands shall be identified according to the Cowardin Classification and the Nebraska Wetland Subclass. Water regime (perennial, intermittent, ephemeral) will be based on best professional judgement and published resources (7.5-minute Topographic Map, County Soil Survey, National Hydrography Data Set, etc.). Digital ground photos shall be taken and GPS shall be used to locate wetland boundaries and

observation point locations. Consultant shall use a sub-meter accuracy GPS to map all wetland and/or stream channel boundaries, photo points and data points.

Findings of the wetland field investigation shall be documented in the Wetland Delineation Report. The report shall include mapping of the wetland areas and the calculation of the wetland acreage on the property. The draft report shall be submitted to the City of Waverly for review and comment.

Lump Sum Costs 7.2 = \$12,000

7.3 City of Waverly School District

The Consultant will meet with and provide regular updates as requested to the local school district to explain alternatives to school officials and describe impacts from improvements, including conceptual construction phasing.

Lump Sum Costs 7.3 = \$4,000

Assumptions	Deliverables
<p>The City of Waverly will work with the Consultant to identify utilities in the area and local representatives for the utility.</p> <p>Wetland Investigation, and delineation if required, will be performed between May 1st and October 31st.</p>	<p>Master list of contact information for utilities and log of communication with the representatives.</p> <p>List of potential utility conflicts.</p> <p>Meeting Agendas and Meeting Notes with City of Waverly school officials.</p> <p>Wetland Delineation report and a recommendation on the 404 Permit Application (if required).</p>

TOTAL COST TASKS 1.1 – 7.3 \$112,800

PROJ: 09278001 Waterford Trail.dwg
REV: \$PENVBUS
USER: msanner
DATE: 4/9/2026
DGN: ... Survey Limits.dgn

SCHEMMER
Design with Purpose. Build with Confidence.

PROJECT NO.	SHEET NO.
01276NY2	1
Date: 4/6/2026	Drawn: MDS
Horz. Scale: N.T.S.	Checked: MS
	Approved: MS



SURVEY LIMITS - FIGURE 1

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.
 4. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 5. Furnishing services of Engineer's Consultants for other than Basic Services.
 6. Providing construction surveys and staking to enable Contractor to perform its work.
 7. Providing Construction Phase services beyond the original date for final completion of the Work.
 8. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

**Project Schedule City of Waverly
Amberly Road and Canongate Road Intersection Improvement
April 2026**

<u>Milestone</u>	<u>Completion Date</u>
Notice to Proceed	April 15 th , 2026 (Assumed)
Kick-Off Meeting	April 20 th , 2026
Topographic Survey	April 27 th – July 5 th , 2026
Existing ROW Research	April 27 th – June 25 th , 2026
Traffic Analysis	May 3 rd – June 16 th , 2026
Begin Alternative Analysis	May 15 th , 2026
1 st Progress Meeting	May 20 th , 2026
Drainage Study	June 10 th – August 20 th , 2026
Begin Conceptual Design	June 20 th , 2026
Wetland Delineation	June 1 st – September 15 th , 2026
Meeting with School District	July 25 th , 2026
Complete Conceptual Design	October 5 th , 2026
2 nd Progress Meeting	October 14 th , 2026
City Council Approval of preferred Alternative	October 27 th , 2026

This is **EXHIBIT B**, consisting of 14 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated ____.

Owner's Responsibilities

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

A.2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require 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 interpretation 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, if not part of Engineer's services.
 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 the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Furnish as appropriate other services or 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 moneys 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 constructibility review.
- K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- L. If Resident Project Representative services are not to be provided pursuant to paragraph A.1.05.A.2 or otherwise, provide a qualified representative to observe the progress and quality of the Work.
- M. 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.

- 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 during construction 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 or Regulations applicable to Contractor's performing and furnishing the Work; or
 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 to Owner pursuant to paragraphs B.2.01.O and P.
- R. Owner designates _____ as their Project Manager who Schemmer shall coordinate all contractual matters with.

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

Payments to Engineer for Services and Reimbursable Expenses

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C.2.01 [Not Used]

C.2.02 Compensation for Basic Services (other than Resident Project Representative Services) – Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. The Lump Sum compensation of One hundred twelve thousand eight hundred dollars (\$112,800.00) for services performed in Exhibit A shall be payable as follows:
 - a. A sum which equals 30 percent of the Lump Sum compensation payable, after the Survey and Traffic analysis are completed
 - b. A sum which, together with the compensation provided under paragraph C.2.02.A.1.a, equals 50 percent of the Lump Sum compensation, after the alternative analysis has been started along with the conceptual design.
 - c. A sum which, together with the compensation provided under paragraph C.2.02.A.1.a and b, equals 80 percent of the Lump Sum compensation, after 50% of the conceptual design has been completed
 - d. A sum which, together with the compensation provided in paragraphs C.2.02.A.1.a, b, and c, equals 90 percent of the Lump Sum compensation, after the conceptual design has been completed.
 - e. A sum which, together with the compensation provided in paragraphs C.2.02.A.1.a, b, c and d equals 100 percent of the Lump Sum compensation, after the alternative has been selected and presented to the City Council.
2. 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.

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Lump Sum Method of Payment

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B. Period of Service. The compensation amount stipulated in paragraph C.2.02.A.1 is conditioned on a period of service not exceeding 9 months. Should such period of service be extended, the compensation amount for Engineer's services shall be appropriately adjusted.

(Exhibit C – Compensation for Basic Services (other than Resident Project Representative Services) –
Lump Sum Method of Payment

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

Insurance

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

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

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

Dispute Resolution

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

H6.09 Dispute Resolution

- A. Mediation. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation in accordance with Construction Industry Mediation Rules of the American Arbitration Association currently in effect. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

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

Allocation of Risks

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

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

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