

Agenda Item: 8.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Zach Nelson, Project Manager

SUBJECT: Engineering Services Agreement with Bartlett and West for TCRW Rosalie Water Line Extension Project - **REVISED**

DATE: October 1, 2014

The Village of Rosalie has been awarded funds from the USDA Rural Development Program and Community Development Block Grant Program to upgrade their current water main infrastructure in town as well as connect to the Thurston County Rural Water System as a whole sale customer.

The project will consist of installing approximately nine miles of 4" PVC water main that will tie into an existing TCRW main near the intersection of Hwy 94 / County Road 22 and then run south to the Village of Rosalie. (See attached map) Under a draft version of the water purchase agreement with the Village of Rosalie, the District will be responsible for hiring an engineering firm to design the water main extension and to hire a contractor to perform the work. The District will be reimbursed all associated engineering and construction costs by the Village. It is anticipated the water purchase agreement will be presented to the Board for consideration in November.

Bartlett and West have over 50 years of experience in the design of rural water systems, was the designer for the Thurston and Dakota County Rural Water Systems and have provided professional services for modifications to the TCRW system over the years. They have provided preliminary review and feedback during the application process for this project.

Attached is a proposed professional services agreement with Bartlett and West for design and construction of the project. The contract fees are broken down into the following categories:

Design Services -- \$33,200 Lump Sum.
Bidding and Construction Administration Services -- \$16,350 Lump Sum.
Construction Observation Services -- \$74,000 Hourly/Not to Exceed Sum.
Total, Not to Exceed -- \$123,550.

The tentative project schedule is to bid the project in the spring of 2015 and complete construction in the fall.

Staff recommends that the PPO Subcommittee recommend to the Board of Directors, that the General Manager be authorized to execute the proposed Professional Services Agreement with Bartlett and West for the design, bidding, and construction observation of the Thurston County Rural Water System – Rosalie Water Main Extension Project, as presented to the Subcommittee and for a fee not to exceed \$123,550, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

BARTLETT & WEST, INC.

AGREEMENT FOR PROFESSIONAL SERVICES

This is an agreement effective as of _____, 20 14 between Papio Missouri River NRD, Thurston County RWS, Thurston County, Nebraska ("CLIENT") and Bartlett & West, Inc. ("CONSULTANT").

WHEREAS, the CLIENT intends to Complete transmission water supply project that includes; 47,500 feet of 4-inch transmission waterline including road and stream crossings, valves, metering vault, and all other necessary waterline appurtenance to make a connection with the Village of Rosalie.

WHEREAS, the CLIENT intends to engage the CONSULTANT to perform certain professional services with regard to such work, which is hereinafter called the PROJECT.

The CLIENT and CONSULTANT therefore agree as follows:

ARTICLE I – DEFINITIONS AND RULES OF INTERPRETATION

- A. The agreement between the CLIENT and the CONSULTANT consists of this Agreement for Professional Services, the attached Standard Provisions of Agreement for Professional Services and the following exhibits and addenda:

1. _____
2. _____
3. _____

All such items together shall be referenced herein as the "Agreement."

- B. In the event of any conflict in the language of this Agreement for Professional Services with the Standard Provisions of Agreement attached hereto, the language of the Standard Provisions of Agreement shall control unless this Agreement for Professional Services specifically provides to the contrary.
- C. This Agreement represents the entire and integrated agreement between the CLIENT and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CLIENT and the CONSULTANT.
- D. This Agreement shall be governed by the laws of the state of Nebraska, not including that state's conflict of law rules.

ARTICLE II – SCOPE OF WORK

- A. The CONSULTANT shall perform services consistent with the CLIENT'S desire to complete the project defined above in four phases as described below. Any additional

services must be separately requested by the CLIENT and agreed to by the CONSULTANT pursuant to Article II.A.5 below.

1. Design Phase Services. CONSULTANT shall:

- a. Prepare detailed plan layout sheets and specifications indicating the scope, extent, and character of the work to be performed by the contractor. The construction contract documents shall be the latest edition of the EJCDC construction contract documents. The plan sheets will be prepared using the 2013 NAIP or newer aerial photography for Thurston County at a scale of 1 inch to 200 feet. All known existing facilities and utilities will be shown on the plans and considered during the design.
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 - i. NDOT, Use of Right of Way Permit
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 - iv. Corp of Engineers, Section 404 Permit
- c. During all phases of design advise the CLIENT of any adjustments to the opinion of probable construction costs or other costs related to completion of the project.
- d. Perform or provide the following additional Design phase tasks or deliverables:
 - i. Perform preliminary waterline routing and design. The final routing and design will be established at the final field check with the CLIENT. Provide an updated cost estimate based on the preliminary field check.
 - ii. Provide two sets of blackline prints to the CLIENT, and its attorney, to commence with the acquisition of waterline easements that are required for the new construction.
 - iii. Once all easements and right of way permits have been obtained, a final field check will be performed to determine the final pipeline route, if necessary, as well as locate all stream and road crossings, valves, meter vaults, and other items necessary for a complete set of bidding plans. At this meeting the Plans and Specifications will be reviewed with the CLIENT and necessary modifications will be made.
 - iv. Complete project design, re-calculate system hydraulics to analyze the final waterline routing and mechanical and electrical well design. Provide an updated cost estimate based on the final field check.
- e. Prepare and furnish bidding documents for review and approval by CLIENT. In addition, furnish additional copies of the documents to funding and regulatory agencies. Address comments from funding and regulatory agencies and communicate the nature of the comments to the CLIENT.
- f. Following the CLIENT'S review of the bidding documents, revise the documents based on the CLIENT'S comments, and furnish 2 copies to the CLIENT.

CLIENT shall provide comments on the bidding documents to the CONSULTANT within 30 days of receipt.

2. Bidding or Negotiating Phase Services. CONSULTANT shall:
 - a. Assist CLIENT in advertising for and obtaining bids or negotiating proposals for the work, attend pre-bid conferences, if applicable, and receive and process contractor deposits or charges for the bidding documents.
 - b. Issue Addenda as appropriate to clarify, correct, or change the bidding documents.
 - c. Attend the bid opening, prepare bid tabulation sheets, and assist the CLIENT in evaluating bids or proposals and in assembling the contract documents associated with the work.
3. Construction Phase Services (Construction Administration). CONSULTANT shall:
 - a. Act as the Client's representative as provided in the General Conditions of the Construction Contract. The extent and limitations of the duties, responsibility and authority of the CONSULTANT as assigned in the General Conditions shall not be modified, except as CONSULTANT may otherwise agree in writing.
 - b. Participate in a pre-construction conference prior to the commencement of the work at the site.
 - c. As appropriate, establish baselines and benchmarks for locating the work, which in the CONSULTANT'S judgment are necessary to enable the contractor to proceed.
 - d. In the event that the CONSULTANT believes that work will not produce a completed project that generally conforms to the contract documents, the CONSULTANT will recommend to the CLIENT that the Contractor's work be disapproved and rejected.
 - e. Recommend changes in the work and prepare change orders, field orders, and work change directives as appropriate.
 - f. Review and approve or take other appropriate action in respect to shop drawings, samples, inspection reports, and manufacturer's data furnished by the contractor. Such reviews and approvals or other actions are for the purpose of determining the general compatibility with the design concept of the project as a functioning whole as indicated in the contract documents.
 - g. Review and make recommendations regarding contractor's payment requests. Recommendations are made based on the CONSULTANT'S knowledge, information, and belief that the construction progress and quality of the work is in general conformance with the contract documents. By approving a contractor payment request, the CONSULTANT makes no representation that the Contractor's work complies in every respect to the requirements set forth in the contract documents and assumes no responsibility for compliance with the contract requirements by the Contractor.

- h. Using redline construction drawings as provided by the CLIENT or Contractor at the CLIENTS request record drawings will be created and 2 copies will be provided to the CLIENT.
- 4. Resident Project Representative (Construction Observation)
 - A. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 - 4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
 - 5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
 - 6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

- c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
- 7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
- 8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 9. *Inspections, Tests, and System Startups:*
 - a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.
- 10. *Records:*
 - a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in a Substantial Completion (pre-final) inspection, and assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.

- b. Observe Contractor-arranged inspections required by Laws and Regulations applicable to the Work, including but not limited to those performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- d. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

B. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
 - 3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
 - 5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 - 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 - 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 - 8. Authorize Owner to occupy the Project in whole or in part.
5. Additional services. Additional services will be provided by the CONSULTANT upon the request of the CLIENT and paid for as defined in Article V, Payment provisions. These services may include:
- a. Services resulting from significant changes in the scope, extent, or character of the portions of the project designed or specified by the CONSULTANT including, but not limited to, changes in size, complexity, CLIENT'S schedule, character of construction, or method of financing. These services may also be as a result of changes in laws or regulations or other causes beyond the CONSULTANT'S control.

- b. Providing construction surveys and staking to enable the contractor to perform its work other than the establishment of baselines and benchmarks.
- c. Serving as a consultant or witness for the CLIENT in any litigation, arbitration, or other dispute resolution process related to the project.
- d. Other services performed by the CONSULTANT not otherwise provided for in this agreement.

ARTICLE III - CLIENT'S RESPONSIBILITIES

In addition to other responsibilities set forth in this agreement, the CLIENT shall:

- A. Provide CONSULTANT with all criteria and full information as to CLIENT'S requirements for the project, including design objectives, capacity, performance requirements, and budgetary limitations upon which the CONSULTANT may rely.
- B. Furnish available information pertinent to the project including reports and data relative to previous designs, or investigation at or adjacent to the site.
- C. Arrange for safe access to and make all provisions for CONSULTANT to enter upon public and private property as required to perform services under the agreement.
- D. Examine alternative solutions, reports, drawings, specifications, and other documents presented by the CONSULTANT and render timely decisions pertaining to the documents.
- E. Provide timely reviews, approvals, and permits from all governmental authorities having jurisdiction over elements or phases of the project.
- F. Participate in conferences, meetings, bid openings, and other similar aspects of the project as requested by the CONSULTANT.
- G. Provide construction inspection and record daily quantity logs of construction activities and progress.

ARTICLE IV – TIME OF PERFORMANCE FOR SERVICES

- A. The services under this agreement have been agreed to in anticipation of the orderly progress of the project through completion. Unless a specific time of performance for services is specified in this agreement, CONSULTANT'S obligation to render services hereunder will be for a period which may reasonably required for the completion of said services. If a specific time of performance is provided herein and if the CLIENT has requested changes in the scope or character of the project, the time of performance shall be adjusted equitably.

ARTICLE V – PAYMENT PROVISIONS

- A. CLIENT shall pay the CONSULTANT for services described in the Scope of Work, Sections A.1 as follows:
 - 1. A Lump Sum fee of \$ 33,200.00. A payment in the amount of seventy (70) percent shall be made upon the final field check and final plan submittal to the owner. A payment in the amount of fifteen (15) percent shall be made upon submittal of the final plans and specifications to DHHS. The final payment of fifteen (15) percent shall be made upon received project approval from DHHS.
 - 2. The fees for bidding phase administration, construction phase administration, (A.2-A.3) will be billed on a Lump Sum fee of \$ 16,350.00. The Lump Sum amount billed

will be based on the estimate of the percentage of completion accomplished during the billing period.

3. The fees for construction observation (A.4) will be billed on an hourly plus reimbursable expenses basis. An estimated hourly basis fee for these services is \$74,000.00. This fee is estimated based on 4 months of observation services. The attached charge rates will apply through December 31, 2014. These rates are adjusted January 1st of each year.

4. Additional services as provided in (A.5) will be billed on an hourly plus reimbursable expenses basis. Before action is taken for any of the additional services an estimated cost for CONSULTANT fess will be provided and discussed with the CLIENT.

B. The Lump Sum includes compensation for CONSULTANT'S services and services of CONSULTANT'S sub-consultants, if any. The Lump Sum includes labor and direct expenses associated with providing the services as defined.

C. The portion of the Lump Sum amount billed for CONSULTANT'S services will be based upon the CONSULTANT'S estimate of the percentage of completion accomplished during the billing period.

ARTICLE VI – INSURANCE

A. Insurance – CONSULTANT shall purchase and maintain insurance as set forth below:

1. Commercial General Liability insurance with a limit of \$1,000,000 for each occurrence and \$2,000,000 general aggregate.
2. Automobile Liability insurance with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
3. Workers Compensation and Employer's Liability insurance in accordance with statutory requirements, with a limit of \$500,000 for each accident.
4. Professional Liability insurance on a claims made basis in the amount of \$1,000,000 per claim and annual aggregate.

Certificates of insurance evidencing the coverages indicated above will be provided to CLIENT upon request.

ARTICLE VII – DISPUTE RESOLUTION

A. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration if it involves an amount in excess of \$50,000. Prior to arbitration the parties shall endeavor to resolve disputes by mediation in accordance with paragraph 10 of the standard provisions of agreement incorporated herein.

B. Unless the parties mutually agree otherwise, arbitration shall be in accordance with the construction industry arbitration rules of the American Arbitration Association then in effect. The demand for arbitration shall be filed in writing with the other party to the agreement and with the American Arbitration Association.

- C. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- D. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in the state having jurisdiction thereof.

ARTICLE VIII – ALLOCATION OF RISKS

- A. 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 damage 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 the Owner, Consultant, and all other negligent entities and individuals.

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

CLIENT:

PAPIO MISSOURI RIVER NRD

By: _____

Title: _____

Date Signed: _____

CONSULTANT:

BARTLETT & WEST, INC.

By: Bryan Lord

Title: Project Manager

Date Signed: 10-6-14

By: _____

Title: _____

Date Signed: _____

Agenda Item: 8.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Zach Nelson, Project Manager

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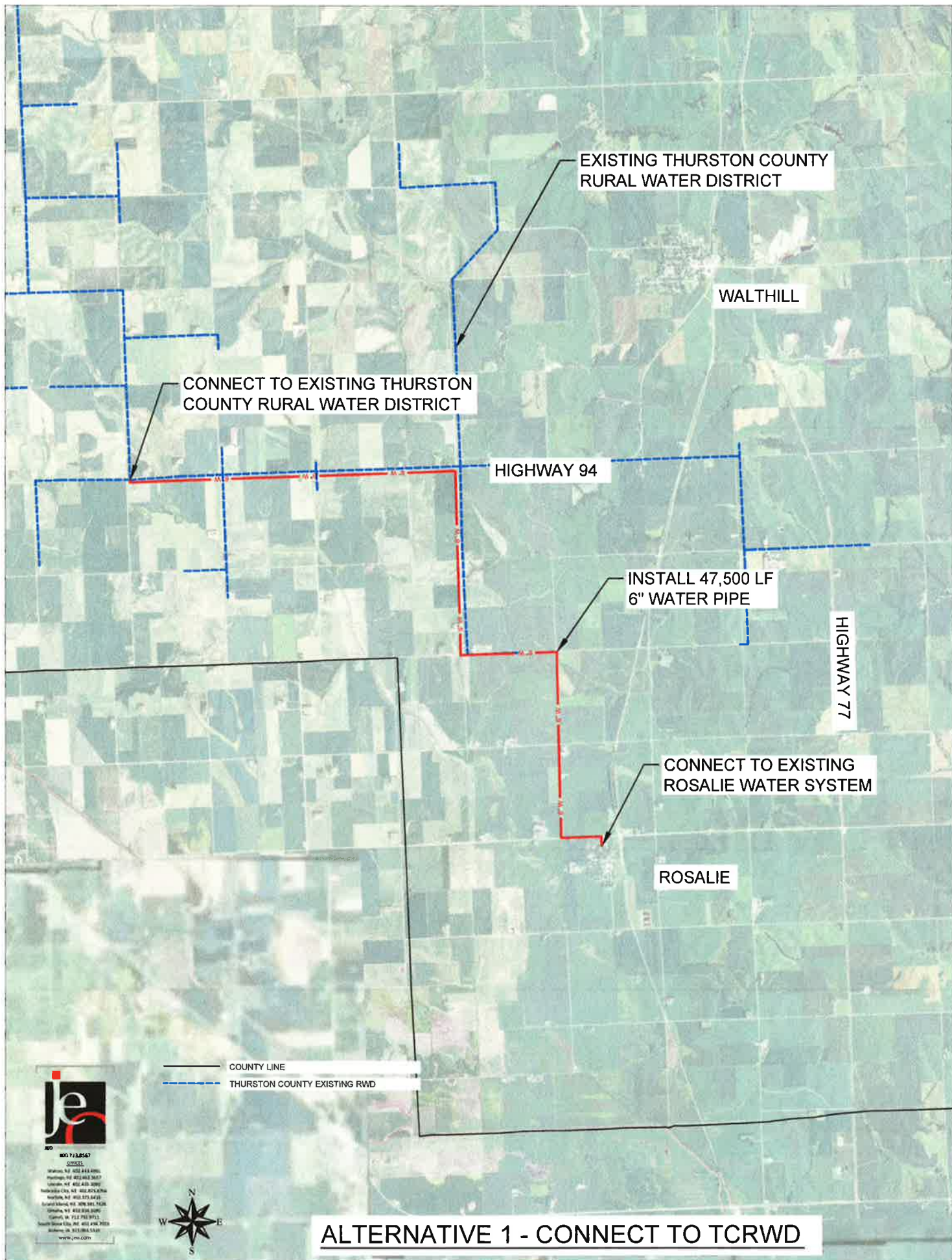
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1. *General:* RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Owner advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner with the knowledge of and under the direction of Engineer.
2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

- c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
- 7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
- 8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 9. *Inspections, Tests, and System Startups:*
 - a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.
- 10. *Records:*
 - a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in a Substantial Completion (pre-final) inspection, and assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.

- b. Observe Contractor-arranged inspections required by Laws and Regulations applicable to the Work, including but not limited to those performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- d. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

B. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - 2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
 - 3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
 - 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
 - 5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 - 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 - 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 - 8. Authorize Owner to occupy the Project in whole or in part.
5. Additional services. Additional services will be provided by the CONSULTANT upon the request of the CLIENT and paid for as defined in Article V, Payment provisions. These services may include:
- a. Services resulting from significant changes in the scope, extent, or character of the portions of the project designed or specified by the CONSULTANT including, but not limited to, changes in size, complexity, CLIENT'S schedule, character of construction, or method of financing. These services may also be as a result of changes in laws or regulations or other causes beyond the CONSULTANT'S control.

- b. Providing construction surveys and staking to enable the contractor to perform its work other than the establishment of baselines and benchmarks.
- c. Serving as a consultant or witness for the CLIENT in any litigation, arbitration, or other dispute resolution process related to the project.
- d. Other services performed by the CONSULTANT not otherwise provided for in this agreement.

ARTICLE III - CLIENT'S RESPONSIBILITIES

In addition to other responsibilities set forth in this agreement, the CLIENT shall:

- A. Provide CONSULTANT with all criteria and full information as to CLIENT'S requirements for the project, including design objectives, capacity, performance requirements, and budgetary limitations upon which the CONSULTANT may rely.
- B. Furnish available information pertinent to the project including reports and data relative to previous designs, or investigation at or adjacent to the site.
- C. Arrange for safe access to and make all provisions for CONSULTANT to enter upon public and private property as required to perform services under the agreement.
- D. Examine alternative solutions, reports, drawings, specifications, and other documents presented by the CONSULTANT and render timely decisions pertaining to the documents.
- E. Provide timely reviews, approvals, and permits from all governmental authorities having jurisdiction over elements or phases of the project.
- F. Participate in conferences, meetings, bid openings, and other similar aspects of the project as requested by the CONSULTANT.
- G. Provide construction inspection and record daily quantity logs of construction activities and progress.

ARTICLE IV – TIME OF PERFORMANCE FOR SERVICES

- A. The services under this agreement have been agreed to in anticipation of the orderly progress of the project through completion. Unless a specific time of performance for services is specified in this agreement, CONSULTANT'S obligation to render services hereunder will be for a period which may reasonably required for the completion of said services. If a specific time of performance is provided herein and if the CLIENT has requested changes in the scope or character of the project, the time of performance shall be adjusted equitably.

ARTICLE V – PAYMENT PROVISIONS

- A. CLIENT shall pay the CONSULTANT for services described in the Scope of Work, Sections A.1 as follows:
 - 1. A Lump Sum fee of \$ 33,200.00. A payment in the amount of fifty (70) percent shall be made upon the final field check and final plan submittal to the owner. A payment in the amount of fifteen (15) percent shall be made upon submittal of the final plans and specifications to DHHS. The final payment of fifteen (15) percent shall be made upon received project approval from DHHS.
 - 2. The fees for bidding phase administration, construction phase administration, (A.2-A.3) will be billed on a Lump Sum fee of \$ 16,350.00. The Lump Sum amount billed

will be based on the estimate of the percentage of completion accomplished during the billing period.

3. The fees for construction observation (A.4) will be billed on an hourly plus reimbursable expenses basis. An estimated hourly basis fee for these services is \$74,000.00. This fee is estimated based on 4 months of observation services. The attached charge rates will apply through December 31, 2014. These rates are adjusted January 1st of each year.

4. Additional services as provided in (A.5) will be billed on an hourly plus reimbursable expenses basis. Before action is taken for any of the additional services an estimated cost for CONSULTANT fees will be provided and discussed with the CLIENT.

- B. The Lump Sum includes compensation for CONSULTANT'S services and services of CONSULTANT'S sub-consultants, if any. The Lump Sum includes labor and direct expenses associated with providing the services as defined.
- C. The portion of the Lump Sum amount billed for CONSULTANT'S services will be based upon the CONSULTANT'S estimate of the percentage of completion accomplished during the billing period.

ARTICLE VI – INSURANCE

- A. Insurance – CONSULTANT shall purchase and maintain insurance as set forth below:
 - 1. Commercial General Liability insurance with a limit of \$1,000,000 for each occurrence and \$2,000,000 general aggregate.
 - 2. Automobile Liability insurance with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
 - 3. Workers Compensation and Employer's Liability insurance in accordance with statutory requirements, with a limit of \$500,000 for each accident.
 - 4. Professional Liability insurance on a claims made basis in the amount of \$1,000,000 per claim and annual aggregate.

Certificates of insurance evidencing the coverages indicated above will be provided to CLIENT upon request.

ARTICLE VII – DISPUTE RESOLUTION

- A. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration if it involves an amount in excess of \$50,000. Prior to arbitration the parties shall endeavor to resolve disputes by mediation in accordance with paragraph 22 of the standard provisions of agreement incorporated herein.
- B. Unless the parties mutually agree otherwise, arbitration shall be in accordance with the construction industry arbitration rules of the American Arbitration Association then in effect. The demand for arbitration shall be filed in writing with the other party to the agreement and with the American Arbitration Association.

- C. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- D. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in the state having jurisdiction thereof.

ARTICLE VIII – ALLOCATION OF RISKS

- A. 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 damage 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 the Owner, Consultant, and all other negligent entities and individuals.

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

CLIENT:

PAPIO MISSOURI RIVER NRD

By: _____

Title: _____

Date Signed: _____

CONSULTANT:

BARTLETT & WEST, INC.

By: _____

Title: _____

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

STANDARD PROVISIONS OF AGREEMENT FOR PROFESSIONAL SERVICES

The Client and Bartlett & West, Inc. (referred to as the Consultant), agree that the following provisions shall be part of this Agreement.

1. Payment. Unless stated otherwise in this Agreement, fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing. In the event Client fails to pay the Consultant within ninety (90) days after invoices are rendered, then Client agrees that the Consultant shall have the right to consider such failure as a substantial breach of this Agreement and the duties of the Consultant under this Agreement may be terminated at the election of the Consultant upon five (5) days written notice. Interest not exceeding the maximum rate allowable by law will be payable on any amounts not paid within 30 days of the billing date, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. If Client fails to pay Consultant the amount due under this Agreement in a timely manner pursuant to this section, Client shall be liable for and shall reimburse Consultant for expenses incurred by Consultant in connection with or in any way relating to Client's failure to pay. Such expenses shall include, without limitation, reasonable attorneys' fees, legal expenses, and court costs.

2. Taxes. Compensation payable to the Consultant pursuant to this Agreement shall be in addition to taxes that may be assessed against the Consultant by any state or political subdivision directly on services performed or payments for services performed by the Consultant. Such taxes that the Consultant may be required to collect or pay shall be added by the Consultant to invoices submitted to the Client pursuant to this Agreement.

3. Suspension. In the event all or any portion of the work prepared or partially prepared by the Consultant is suspended, abandoned, or terminated, the Client shall pay the Consultant for the work performed on an hourly basis, not to exceed any maximum contract amount specified herein.

4. Termination. This Agreement may be terminated by either Client or the Consultant upon thirty (30) days written notice in the event of substantial failure of the other party to perform in accordance with the terms of this Agreement. Client expressly agrees to hold the Consultant harmless from any liability arising out of the Consultant's termination of its services hereunder due to Client's failure to perform and/or pay in accordance with the provisions of this Agreement. In the event of termination of this Agreement, Client shall then promptly pay the Consultant for all of the fees, charges and services performed by the Consultant in accordance with the compensation arrangements under this Agreement or on an agreed hourly basis. If the Consultant files suit for breach of contract, all attorney fees, court costs, and other related costs will be paid by the Client if a Court finds the Client has breached its contract with the Consultant.

5. Delay. All agreements on the Consultant's part are contingent upon, and Consultant shall not be responsible for damages or be in default, or be deemed to be in default, by reason of delays in performance of others by reason of strikes, lock-outs, accidents, acts of God and other delays unavoidable or beyond Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rate or delays caused by failure of Client or

Client's agents to furnish information or to approve or disapprove Consultant's work promptly, or due to late or slow, or faulty performance by Client, other contractors or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of Consultant's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

6. Client Changes. In the event that any changes are made in the work to be performed hereunder, by the Client or persons other than the Consultant, and which affect the Consultant's work, any and all liability arising out of such changes is waived as against the Consultant and the Client assumes full responsibility for such changes unless Client has given the Consultant prior notice and has received from the Consultant written consent for such changes.

7. Third Party Information. The Consultant is not responsible, and liability is waived by Client as against the Consultant, for use by Client or any other person of any data, reports, plans or drawings not prepared by the Consultant.

8. Waiver of Consequential Damages. In no event shall the Consultant be liable for consequential damages, including lost profits, loss of investment or other incidental damages.

9. Completion. In no event shall any statute of limitations commence to run any later than the date when the Consultant's services are substantially completed and any cause of action against the Consultant arising from or pertaining to this Agreement must be initiated no later than two (2) years after the date when the Consultant's services are substantially completed.

10. Disputes. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of litigation. The mediator shall be jointly selected by the Client and the Consultant. If the parties are unable to agree, the Consultant shall present a list of three prospective mediators to the Client, who shall choose the mediator. In the event of failure on the part of the Client to do so within ten (10) days of receipt of the list, the Consultant shall choose the mediator. The mediator's fees shall be shared equally and shall be held at the offices of the Client or the Consultant as selected by the mediator.

11. Waiver of Subrogation. To the extent any damage or claim is covered by property insurance during construction, the Client and the Consultant waive all rights against each other and against the contractors, consultants, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Client or the Consultant, as applicable, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

12. Standard of Care. The Consultant's services shall be performed in a manner consistent with that degree of skill and care exercised by practicing professionals performing similar services under the same or similar circumstances and conditions. The Consultant makes no other representations or any warranties, whether expressed or implied, with respect to the services rendered hereunder.

STANDARD PROVISIONS OF AGREEMENT FOR PROFESSIONAL SERVICES

13. Consultant Data. All reports, plans, specifications, computer files, data resulting from laser scanning, tracings, survey notes, and other original documents are instruments of service and shall remain the property of the Consultant. Consultant may sell said instruments of service to third party sources.

14. Ownership. Consultant has and will retain all ownership rights in any software developed under this agreement, including all patent rights, copyrights, trade secrets, trademarks, service marks, related goodwill and confidential and proprietary information, except as explicitly stated in this agreement.

15. Ownership. Products of work shall be defined as any deliverable provided to the Client as a result of services under this agreement, including but not limited to software applications, databases, specifications, and documentation. All products of work delivered are proprietary to the Consultant and contain trade secrets, inclusive of unpublished specifications. The products of work are owned by Consultant and are protected by United States copyright laws, trademark laws and applicable international treaties and/or conventions. In consideration of the rights granted herein, Client agrees to retain all software, related materials, and information delivered or provided to it in strict confidence. All rights, title, and ownership in patents, trademarks, copyrights, trade secrets, know-how, or any other proprietary rights in the products of work remains exclusively with Consultant. Client shall not sell, transfer, lease, lend, assign, time-share, sublicense, publish, disclose, display, or otherwise make available the products of work in any form, including, but not limited to, flowcharts, logic diagrams, executable code, object code, source code, or technical documentation, to any other person or entity without the express written permission of Consultant. Client shall secure and protect the products of work in the same manner and to the same degree it protects its own proprietary information, using no less than a reasonable standard of care. Client shall not decompile or reverse engineer any of Consultant's software. Client shall not make any modifications or derivative works to the products of work.

16. Ownership. All error corrections, enhancements, new releases, and any other products of work created by Consultant in connection with the services provided under this agreement are and shall remain the exclusive property of Consultant, regardless of whether the Client, its employees, or agents may have contributed to the conception, joined in its development, or paid Consultant for the development or use of said products of work.

17. Confidentiality. All information relating to the Client that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by Consultant and shall not be disclosed or used by Consultant except to the extent that such disclosure or use is reasonably necessary to the performance of Consultant's Work. All information relating to Consultant that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by Client. These obligations of confidentiality shall extend after the termination of this agreement, but shall not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

18. Fees. When applicable to the project(s), the Client shall pay the costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial photography fees, and all other fees, permits, bond premiums, title company charges, and reproductions, and all other charges not specifically covered by the terms of this Agreement.

19. Construction Costs. If any opinion is prepared by the Consultant as to anticipated construction costs, such opinion represents a judgment as a professional and is supplied for the general guidance of the Client. Since the Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, the Consultant does not guarantee the accuracy of such opinion as compared to contractor bids or actual cost to the Client.

20. Job Site. If the work involves construction services, the Client agrees that in accordance with generally accepted construction practices, the construction contractor will be required by the Client to assume sole and complete responsibility for job site conditions during the course of construction of the project(s), including safety of all persons and property and that this requirement shall be made to apply continuously and not be limited to normal working hours. The Consultant does not assume responsibility for the safety of persons or property on or about the project site(s).

21. Construction Site Visits. If applicable, the Consultant shall make periodic visits to the project site(s) to observe the progress and quality of the executed work and to generally review whether the work is proceeding in accordance with plans and specifications. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work and does not assume responsibility for construction techniques, procedures, sequences and schedules or for the conduct, action, errors or omissions of any construction contractor, subcontractor, or material supplier, their agents or employees.

22. Resident Project Representation. When applicable, and by separate attachment executed by the Client and the Consultant, the Consultant may provide resident project representation under the Consultant's supervision that will be paid for by the Client as indicated in such separate agreement and that will be intended to give the Client further assurance with regard to the finished work but will not involve the Consultant in the construction means, methods, techniques, sequences or procedures or safety precautions or programs nor provide to the Client any guarantee by the Consultant of the accuracy, quality or timeliness of performance by any contractor, subcontractor, or material supplier.

23. Hazardous Materials. When applicable, and unless otherwise provided by specific agreement, the Consultant and the Consultant's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances at the project site(s).

24. Assignment/Third Party Reliance. Neither the Client nor the Consultant shall assign its interest in this Agreement without the written consent of the other. The services to be provided pursuant to this Agreement are being performed solely for the benefit of the Client, and no benefit is meant to be conferred upon any person or

STANDARD PROVISIONS OF AGREEMENT FOR PROFESSIONAL SERVICES

entity not a party to this Agreement, and no such person or entity should rely upon Consultant's performance of those services to the Client; and no claim against Consultant shall accrue to, any contractor, subcontractor, consultant, engineer, supplier, fabricator, manufacturer, lender, tenant, surety, home-owner's association or any other third-party as a result of this Agreement or the performance or non-performance of services on the project(s).

25. Client Representative. The Client shall designate an individual with authority to act on behalf of the Client as to all aspects of the project(s), shall examine and respond promptly to submissions from the Consultant, shall give prompt written notice to the Consultant if the Client becomes aware of any defect in the project(s), and shall otherwise fully cooperate as may be required or appropriate in connection with the project(s).

26. The Equal Employment Opportunity Clause required under Executive Order 11246, the affirmative action commitment for disabled veterans and other covered veterans, set forth in 41 CFR 60-250.5, the affirmative action commitment for disabled veterans and other protected veterans, set forth in 41 CFR 60-300.5, the affirmative action clause for disabled workers, set forth in 41 CFR 60-741.5, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in this Agreement. By accepting this Agreement, Client certifies that it complies with the authorities cited above and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8. This Agreement also hereby incorporates, where applicable, 29 CFR Part 471, Appendix A to Subpart A.

27. Severability. Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

BARTLETT & WEST, INC.
2014 SCHEDULE OF HOURLY CHARGES
Effective January 1, 2014

Engineer XI/Landscape Arch XI	\$200.00	Right-of-Way Technician V	\$95.00
Engineer X/Landscape Arch X	190.00	Right-of-Way Technician IV	86.00
Engineer IX/Landscape Arch IX	179.00	Right-of-Way Technician III	78.00
Engineer VIII/Landscape Arch VIII	165.00	Right-of-Way Technician II	69.00
Engineer VII/Landscape Arch VII	152.00	Right-of-Way Technician I	59.00
Engineer VI/Landscape Arch VI	137.00		
Engineer V/Landscape Arch V	127.00	GIS Coordinator VIII	\$200.00
Engineer IV/ Landscape Arch IV	117.00	GIS Coordinator VII	190.00
Engineer III/Landscape Arch III	107.00	GIS Coordinator VI	180.00
Engineer II/Landscape Arch II	97.00	GIS Coordinator V	170.00
Engineer I/Landscape Arch I	87.00	GIS Coordinator IV	155.00
		GIS Coordinator III	140.00
		GIS Coordinator II	125.00
		GIS Coordinator I	115.00
Engineering Technician XI	\$160.00		
Engineering Technician X	140.00	GIS Developer/DBA V	\$150.00
Engineering Technician IX	125.00	GIS Developer/DBA IV	140.00
Engineering Technician VIII	108.00	GIS Developer/DBA III	130.00
Engineering Technician VII	97.00	GIS Developer/DBA II	120.00
Engineering Technician VI	89.00	GIS Developer/DBA I	110.00
Engineering Technician V	81.00		
Engineering Technician IV	74.00	GIS Analyst V	\$125.00
Engineering Technician III	66.00	GIS Analyst IV	115.00
Engineering Technician II	60.00	GIS Analyst III	105.00
Engineering Technician I	55.00	GIS Analyst II	95.00
		GIS Analyst I	85.00
Surveyor VIII	\$133.00		
Surveyor VII	125.00	GIS Technician IV	\$85.00
Surveyor VI	115.00	GIS Technician III	75.00
Surveyor V	103.00	GIS Technician II	65.00
Surveyor IV	94.00	GIS Technician I	55.00
Surveyor III	83.00		
Surveyor II	73.00	Computer Systems Manager	\$123.00
Surveyor I	63.00	Systems Analyst	120.00
		Network Administrator	99.00
Survey Technician VI	\$81.00	IS Support Specialist	69.00
Survey Technician V	71.00	Computer Systems Technician III	79.00
Survey Technician IV	61.00	Computer Systems Technician II	69.00
Survey Technician III	52.00	Computer Systems Technician I	55.00
Survey Technician II	47.00		
Survey Technician I	42.00	Administrator V	\$110.00
		Administrator IV	95.00
Field Representative X	\$127.00	Administrator III	80.00
Field Representative IX	120.00	Administrator II	72.00
Field Representative VIII	108.00	Administrator I	64.00
Field Representative VII	98.00		
Field Representative VI	88.00	Administrative Technician V	\$65.00
Field Representative V	80.00	Administrative Technician IV	58.00
Field Representative IV	72.00	Administrative Technician III	51.00
Field Representative III	65.00	Administrative Technician II	46.00
Field Representative II	59.00	Administrative Technician I	40.00
Field Representative I	53.00		
Right-of-Way Specialist IV	\$180.00	Client Services Representative	\$75.00
Right-of-Way Specialist III	150.00		
Right-of-Way Specialist II	130.00		
Right-of-Way Specialist I	115.00		