

**Missouri Riverfront Trail (NP Dodge Park to Washington County Line)  
Ad-Hoc Consultant Selection Subcommittee Meeting  
April 13, 2004  
6:30 p.m.**

**Agenda**

Missouri Riverfront Trail (NP Dodge Park to Washington County Line):

Joe Neary, Chairperson  
Melissa Gardner  
Barb Nichols  
Rich Tesar  
Jim Thompson

Staff Liaison: Jim Becic\*  
Steve Oltmans

1. Meeting Called to Order -- Chairperson Neary
2. Quorum Call
3. Adoption of Agenda
4. Proof of Publication of Meeting Notice
5. Review and Recommendation on Professional Services Contract with HGM Associates –  
Bob Naumann, HGM Associates, Inc.; and Jim Becic
6. Other Items of Interest
7. Adjourn

# Memorandum

**To:** Missouri Riverfront Trail Ad Hoc Consultant Selection Subcommittee

**Date:** 5 April, 2004

**From:** Jim Becic

**Re:** Agreement for Professional Services

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The P-MRNRD Board at their 11 March, 2004 meeting, approved the Missouri River Trail Ad Hoc Subcommittee recommendation to select HGM Associates, Inc. to design the trail connection from N.P. Dodge Park, north to the Washington County Line.

The attached agreement was negotiated with HGM and is broken into two phases. Phase One, will be a preliminary investigation (feasibility study) into which side of the road to best locate the trail. They will look at all costs, including design, ROW, construction, etc., as well as other issues such as safety, and report these data to the Board prior to moving into Phase Two – final design and construction.

**It is the staff recommendation that the Subcommittee recommend to the Board that the General Manager be authorized to execute a Professional Services Agreement between the Papio-Missouri River Natural Resources District and HGM Associates Inc. for the Missouri Riverfront Trail (N.P. Dodge Park to Washington County Line) with a Phase One not to Exceed amount of \$83,855.91, subject to changes deemed necessary by the General Manager and approval as to form by the District Legal Counsel.**

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STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of April 16, 2004 ("Effective Date")  
between the Papio-Missouri River Natural Resources District: PMRNRD, 8901 S. 154<sup>th</sup> ,  
Omaha, NE 68138 ("OWNER") and HGM Associates Inc., 5022 S. 114<sup>th</sup> Street,  
Suite 200, Omaha, NE 68137 ("ENGINEER").

OWNER intends to retain ENGINEER for professional engineering services necessary for the  
planning, design, and construction phase services for a proposed Missouri River Trail from N.P.  
Dodge Park north to the Washington County Line. ("the Project").

OWNER and ENGINEER in consideration of their mutual covenant as set forth herein agrees as follows:

## ARTICLE 1 - SERVICES OF ENGINEER

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### 1.01 Scope

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

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

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

## ARTICLE 2 - OWNER'S RESPONSIBILITIES

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### 2.01 General

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

## ARTICLE 3 - TIMES FOR RENDERING SERVICES

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### 3.01 General

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

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

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

### 3.02 Suspension

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

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

## ARTICLE 4 - PAYMENTS TO ENGINEER

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### 4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

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

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

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

### 4.02 Other Provisions Concerning Payments

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

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted

by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

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

D. *Payments Upon Termination.*

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

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

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

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

## ARTICLE 5 - OPINIONS OF COST

### 5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

### 5.02 Designing to Construction Cost Limit

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

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### 5.03 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

## ARTICLE 6 - GENERAL CONSIDERATIONS

### 6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the

extent such action is directly attributable to deficiencies in OWNER-furnished information.

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

D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

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

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

H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

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

L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit J.

#### 6.02 Authorized Project Representatives

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

#### 6.03 Design without Construction Phase Services

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

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~~B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.~~

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#### 6.04 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 right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

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

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

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages,

operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

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

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

#### 6.05 Insurance

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

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

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C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional 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 G. 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 shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no

rights of recovery against any of the insureds or additional insureds thereunder.

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

#### **6.06 Termination**

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

1. *For cause,*

a. By either party upon 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 ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or

2) upon seven 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 as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its 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 the receipt of notice by ENGINEER.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

#### **6.07 Controlling Law**

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

#### **6.08 Successors, Assigns, and Beneficiaries**

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

#### 6.09 Dispute Resolution

A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under Exhibit H or other provisions of this Agreement, or under law. In the absence of such an agreement, the parties may exercise their rights under law.

B. If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in Exhibit H, "Dispute Resolution."

#### 6.10 Hazardous Environmental Condition

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

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

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

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an

"arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

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

#### 6.11 Allocation of Risks

##### A. Indemnification

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

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

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

4. In addition to the indemnity provided under paragraph 6.11.A.2 of this Agreement, and to the fullest

extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.11.A.4. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

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

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#### 6.12 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

#### 6.13 Survival

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

#### 6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 6.15 Waiver

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

#### 6.16 Headings

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

### ARTICLE 7 - DEFINITIONS

#### 7.01 Defined Terms

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

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2 of this Agreement.

3. *Agreement*--This "Standard Form of Agreement between OWNER and ENGINEER for Professional Services," including those Exhibits listed in Article 8 hereof.

4. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.

7. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order*--A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.

11. *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

12. *Construction Cost*--The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing 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.

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

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

15. *Contract Times*--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

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

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

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

19. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.

20. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

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

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

23. *ENGINEER's Consultants*--Individuals or entities having a contract with ENGINEER to furnish services

with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

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

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

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

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

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

29. *PCB's*--Polychlorinated biphenyls.

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

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

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

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

34. *Resident Project Representative*--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee 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 are as set forth in Exhibit D.

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

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

37. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

38. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

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

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

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

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

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

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

## ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

### 8.01 Exhibits Included

A. Exhibit A, "ENGINEER's Services," consisting of 6 pages.

B. Exhibit B, "OWNER's Responsibilities," consisting of 3 pages.

C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 1 pages.

D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative," consisting of 4 pages.

~~E. Exhibit E, "Notice of Acceptability of Work," consisting of        pages.~~

~~F. Exhibit F, "Construction Cost Limit," consisting of        pages.~~

G. Exhibit G, "Insurance," consisting of 1 pages.

~~H. Exhibit H, "Dispute Resolution," consisting of        pages.~~

~~I. Exhibit I, "Allocation of Risks," consisting of        pages.~~

~~J. Exhibit J, "Special Provisions," consisting of        pages.~~

### 8.02 Total Agreement

A. This Agreement (consisting of pages 1 to 12 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:

By: Steven G. Oltmans

Title: General Manager

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

Address for giving notice:

Papio-Missouri River NRD

8901 S. 154<sup>th</sup> Street

Omaha, NE 68138

Designated Representative (paragraph 6.02.A):

Jim Becic

Title: Environmental Coordinator

Phone Number: 402-444-6222

Facsimile Number: 402-895-6543

E-Mail Address: jbecic@papionrd.org

ENGINEER:

By: Robert A. Naumann

Title: Operations Manager

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

Address for giving notice:

HGM Associates Inc.

5022 S. 114<sup>th</sup> Street, Suite 200

Omaha, NE 68137-2330

Designated Representative (paragraph 6.02A):

Robert A. Naumann

Title: Project Manager

Phone Number: 402-346-7559

Facsimile Number: 402-346-0224

E-Mail Address: rnaumann@hgmonline.com

This is an exhibit attached to and made part of the agreement dated April 16, 2004 between: Papio-Missouri River Natural Resources District-PMRNRD (OWNER) and **HGM ASSOCIATES INC. (HGM)** (ENGINEER).

**Project Description:** Professional engineering services to plan, design, and provide construction phase services for the Missouri River Trail following the roadway north from N.P. Dodge Park to the Washington County line. Approximately 2.5 miles in length, ten feet wide, concrete surface trail with one pedestrian bridge across the Ponca Creek.

This contract will be split into two separate phases. The first phase will evaluate right-of-way and determine the best location for the trail. The second phase will be for the final design, right-of-way acquisition, and construction phase services for this project. The fees for Phase Two will be determined and authorized after the location analysis has determined the preferred location for this trail.

## **PHASE ONE**

### **TASK 1 - Project Initiation**

A project initiation meeting will be held with PMRNRD to discuss:

- the scope
- ROW issues (Douglas County will resolve right-of-way questions north of Ponca Road)
- design parameters
- Identify PMRNRD project managers
- project schedule
- administrative requirements
- design issues
- confirm NDOR consultant contact
- funding
- Discuss possible design innovations such as:
  - Interpretive points/overlooks
  - Landscape plantings to conform to adjacent land uses
  - Bridge alternatives
- Identify accessibility and trail linkage with existing parks.

PMRNRD can furnish **HGM** all applicable background information such as previous studies, maps, sample plans, and ROW information for existing facilities within the limits or adjacent to the proposed project.

### **TASK 2 – Field Inventory / Site Survey**

A field inventory and analysis of trail features, linkages, and physical characteristics will be performed. **HGM** will meet with PMRNRD for project coordination prior to initiation of topographic survey.

A site survey will be conducted to provide the topographic and elevation information needed for design of improvements. Survey limits will be approximately 80 feet in width. Where possible, the existing utilities and existing property corners will also be located at the time of topographic survey.

### **TASK 3 – Location Analysis**

This task will develop and analyze the preferred location for this trail. This analysis will consider the following:

- Trail will run through NP Dodge Park and run northerly along the east treeline up to Ponca Road.
- North of Ponca Road an evaluation of both the east side and west side of the roadway will be performed over the crest of the hill.
- North of the hill up to the Washington County connection the trail is generally considered to run on the east side and just outside of the existing county right-of-way.

This task will include coordination with Douglas County for:

- Right of Way determination (HGM will provide centerline survey of the roadway from Ponca to the Washington County line).
- Review with Douglas County Engineer and obtain approval of typical section and extent of improvements for each of the alternatives considered.
- Review with the City of Omaha Parks Department and obtain approval of trail location and concept for portion in NP Dodge Park and on City property north to Ponca Road.

Development of Opinions of Probable Construction Cost and Constructibility Review of each alternative.

Design considerations of barrier rails, fencing, screening, rest areas, maintenance, property owner impacts, and trail safety will be reviewed for each alternative.

#### **TASK 4 – Wetlands Determination**

The trail route will be evaluated by a subconsultant to determine if wetlands are present on this project. A plan indicating all wetlands encountered will be prepared and the boundaries of these wetlands surveyed for inclusion in the project construction plans.

#### **TASK 5 - Geotechnical Services**

Soil sampling and analysis will be performed to provide the information necessary for design of the trail, one pedestrian bridge, provide design information for slope stability, and review of construction documents for stability / impact to existing slope. This geotechnical information will be presented in a report and will be available for prospective bidders to review and for PMRNRD records.

#### **TASK 6 – Structural Analysis**

This task includes the TS&L determination of retaining walls on both the east side and west side, one bridge structure over Ponca Creek and the TS&L of cantilever / alternative structural support of the trail over the crest of the hill.

#### **TASK 7 – Historical / Archeological Determination**

The trail route has been partially evaluated by the Nebraska State Historical Society. Additional investigation is included to complete this evaluation for Phase One.

#### **TASK 9 – Right-of-Way Evaluation / Acquisition**

Develop opinions of probable right of way acquisition costs. This task will utilize the expertise of a subconsultant to provide a basis of anticipated acquisition costs. This will be used to determine total project costs for and determining the preferred location of the trail.

#### **TASK 8 – Public Information Meeting / Property Owner Coordination**

The preferred trail location will be presented to adjacent property owners at a Public Information Meeting. Additional coordination will be completed during the preparation of the location alternatives. Newsletters will be developed by the consultant and distributed by the NRD to inform the adjacent property owners of the progress of this project. This information will be provided to the NRD in html format for inclusion on the NRD website.



## **PHASE TWO**

**The following tasks are general descriptions of the tasks to be included in the PHASE TWO contract amendment. The scope of services will be clarified and described with the contract amendment.**

### **Preliminary Plans**

Preliminary plans will be prepared setting forth the design concepts for the project. These will be reviewed with the PMRNRD.

- Interface with NDOR consultant for design requirements
- Initiate preliminary engineering plans for trail
- Plan / Profile sheets include:
  - Existing conditions / topographic survey information
  - Trail horizontal alignment, stationing and geometrics
  - Trail vertical alignment geometrics
  - Limits of construction
  - Proposed drainage
  - Trail cross sections
  - Typical section for construction and grading
- Complete hydraulic design (1 pedestrian bridge location analyzed)
- Complete Type, Size, and Location (TS&L) plan for recommended bridge option
- Initiate design of trail amenities, 20 stall parking lot and/or landscape features ?
- Prepare preliminary quantity tabulations
- Develop preliminary statement of project cost
- Prepare preliminary Status of Utilities Report
- Review available R.O.W./Necessary acquisition
- Meeting with PMRNRD & NDOR consultant to review:
  - preliminary plans
  - property owner contacts
  - public information meeting
  - long term maintenance issues
  - finalize/confirm project budget
  - finalize/confirm construction schedule

### **Final Plans and Specifications**

Calculations required in each engineering discipline appropriate for the project will be completed. Drainage hydrology and hydraulics will be analyzed, and earthwork will be calculated. NDOR standard specifications will be used when applicable.

- Finalize design plans and specifications
  - Drainage design
  - Add construction and removal notes to plans
  - Develop details and special designs, including bridge abutments and piers
  - Include revisions from review of preliminary plans
  - Erosion control
- Submit plans for final review to PMRNRD and NDOR's consultant
- Revise and update tabulation of quantities
- Prepare final statement of project cost
- Final Status of Utilities Report
- Meeting with PMRNRD & NDOR consultant to review final plans and budget

- Finalize contract documents for bid
- PMRNRD begins acquisition of R.O.W.

#### **Landscaping Plans & Analysis**

A landscape architect will review and prepare plans for plantings for selected property along the trail. Plantings will define and separate the trail from the adjacent farmground.

#### **Right-of-Way Acquisition Services**

HGM will prepare acquisition plats for each parcel of land to be acquired. A subconsultant will negotiate on behalf of the NRD for the acquisition of these parcels.

#### **Bidding Phase Assistance**

*HGM* will assist PMRNRD during the solicitation for bids by preparing and distributing the Notice to Bidders, the plans, specifications and contract documents and by attending the bid letting. Any questions concerning interpretation of the contract documents will be handled by *HGM*.

Bids received by PMRNRD for the project will be examined for completeness and accuracy. A recommendation will be made to PMRNRD for the award of the construction contract.

*HGM* will submit a form of agreement to the successful bidder for execution. Upon return of the document, *HGM* will forward the contract, the required bonds and certificate of insurance to the PMRNRD for legal review. A Notice to Proceed will be issued to the Contractor.

- Distribute contract documents for bidding
- On-site prebid meetings
- Respond to questions during bidding
- Receive bids
- Assist in reviewing bids
- Contract award/approval

#### **Resident Engineer**

*HGM* will serve as Resident Engineer and verify the completion of the project in compliance with the plans and specifications. Weekly progress reports will be prepared to record the progress of the job. Amounts due the Contractor are computed based on observations and measurements at the site. The Contractor's request for payment is recommended for approval only after it has been thoroughly reviewed.

Prior to initiation of construction, a pre-construction conference will be held for all parties involved in the project to establish schedules, review materials, conflicts, quality assurance and other related items. *HGM* will schedule and preside over this meeting as PMRNRD authorized representative.

A review of the completed project will be conducted to verify that the work has been substantially / satisfactorily completed and to determine final project quantities. Should any portion of the work be deficient, incomplete or substandard, the Contractor will be directed to correct such defects. The final pay estimate due the Contractor will then be processed.

#### **Construction Staking Services**

*HGM* survey personnel will stake the project for the contractor to the lines and grades designed and set forth on the plans. *HGM* shall provide vertical control to Contractor during construction consisting of a maximum of two benchmarks. *HGM* shall provide horizontal control to Contractor during construction consisting of offset stakes for paving, culverts, and bridge construction.

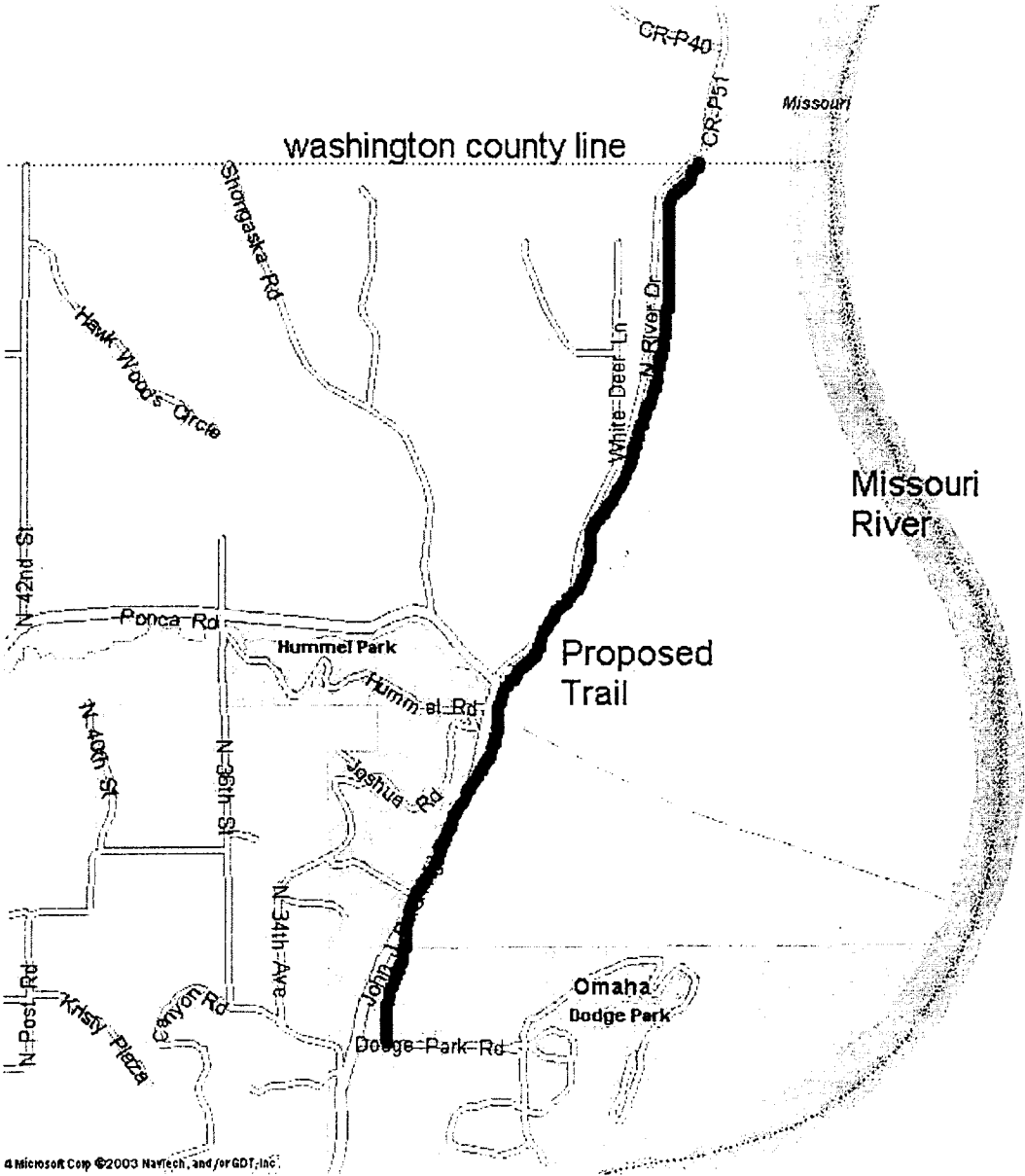
**Resident Project Representative**

A Resident Project Representative (RPR) will be at the construction site full time during construction. The RPR will make measurements required to determine the work completed by the contractor for the purpose of progress payments. Construction is estimated to take 18 weeks with the RPR onsite for 50 hours per week for trail construction. In addition, a second RPR to monitor bridge construction has been included, and is estimated to take 9 weeks at 50 hours per week. See Exhibit D for additional information on duties and responsibilities.

**Quality Control**

The necessary materials sampling and testing will be performed to ensure that the material used in the job meets the specified quality. *HGM*'s sub-consultant to perform required construction phase materials testing services for density tests and concrete testing.

# Location Map for Exhibit A



**SUGGESTED FORMAT**  
(for use with 1910-1, 1996 Edition)

This is **EXHIBIT B**, consisting of 3 pages, referred to in and  
part of the Agreement between **OWNER** and **ENGINEER** for  
Professional Services dated April 16, 2004

Initial:  
**OWNER** \_\_\_\_\_  
**ENGINEER** MAN

**OWNER's Responsibilities**

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

**B2.01** In addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:

A. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirement, flexibility, and expandability, and any budgetary limitation; 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 reasonable required to enable ENGINEER to complete its Basic 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.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

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

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

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

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

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

I. Provide, as required for the Project:

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

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

3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the 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 for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

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

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

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

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

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

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

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

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

R. Perform or provide the following additional services:

**CONSULTANT'S HOURS and FEES EXHIBIT C**  
Missouri River Trail  
N.P. Dodge Park North to Douglas/Washington County Line

DESC. OF WORK ITEMS/TASKS	Principal	Prof. Mgr.	Design Eng.	CADD Tech.	CADD Tech.	Const. Obs.	Land Serv.	SC Mem. 1	SC Mem. 2	Steno.	TOTAL
<b>PHASE ONE</b>											
Project Initiation		4	8								12
Field Inventory			16	16							32
Site Survey							34	172	172		378
<b>Location Analysis</b>											
Typical Section (two required)			8		16						24
Horizontal Alignment			24	40							64
Vertical Alignment			24	40							64
Driveway Relocation			8		16						24
Rest Areas			8		8						16
Opinion of Cost			24		40						64
<b>Structural Analysis</b>											
Ponca Creek Bridge (T&L)			24								24
Retaining Walls			24								24
Alternatives			32								32
Barrier Rail			8								8
Pedestrian Railing			4								4
Opinion of Cost			8								8
<b>Geotechnical (Direct Expense)</b>											
Landscape Architect (Direct Expense)											
Wetlands (Direct Expense)											
Historical / Archeological (Direct Expense)											
ROW (Direct Expense)			24	40							64
Public Information Meeting			8								16
Property Owner Coordination		8									8
Project Management		56									56
<b>PHASE TWO</b>											
Preliminary Plans											
Landscape Plan & Analysis											
Geotechnical											
Wetlands											
Final Plans and Specifications											
Bidding Phase											
Resident Engineer											
Construction Staking											
On Site Project Observation											
Quality Control											
Subtotal M.H.	0	68	252	136	80	0	34	172	172	0	914
Subtotal M.D.	0.0	8.5	31.5	17.0	10.0	0.0	4.3	21.5	21.5	0.0	114

Base Rate :  
Base Rate \$ :  
(0.4176) Payroll Additives (%) :  
(1.1324) Indirect Costs (%) :  
Subtotal :  
(12%) Profit :  
Subtotal :  
Direct Costs :

Base Rate : \$12.05  
Base Rate \$ : \$24,284.28  
Payroll Additives (%) : \$0.00  
Indirect Costs (%) : \$2,992.80  
Subtotal : \$27,499.52  
Profit : \$3,355.91  
Direct Costs : \$30,855.43

Base Rate : \$12.05  
Base Rate \$ : \$24,284.28  
Payroll Additives (%) : \$0.00  
Indirect Costs (%) : \$2,992.80  
Subtotal : \$27,499.52  
Profit : \$3,355.91  
Direct Costs : \$30,855.43

Base Rate : \$12.05  
Base Rate \$ : \$24,284.28  
Payroll Additives (%) : \$0.00  
Indirect Costs (%) : \$2,992.80  
Subtotal : \$27,499.52  
Profit : \$3,355.91  
Direct Costs : \$30,855.43

Total :

\$83,855.91



SUGGESTED FORMAT  
(for use with No. 1910-1, 1996 Edition)

This is **EXHIBIT D**, consisting of 4 pages, referred to in and part of the Agreement between **OWNER** and **ENGINEER** for Professional Services dated April 16, 2004.

	Initial:
OWNER	
ENGINEER	<u>RAN</u>

**Duties, Responsibilities, and Limitations of Authority  
of Resident Project Representative**

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

*D6.02 Resident Project Representative*

A. ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist ENGINEER in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.

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

C. The duties and responsibilities of the RPR are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents, and are further limited and described 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 of and under the direction of ENGINEER.
2. *Schedules:* Review the progress schedule, schedule of Shop Drawings and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
3. *Conferences and Meetings:* Attend meeting 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 and assist in understanding 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 with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as used 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 prejudice 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 requirement of any inspection, test or approval required to be made: and advise ENGINEER or that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observations, 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 startups.

- 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 Directive, 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, 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 Drawings 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 startup reports.
  - d. Report immediately to ENGINEER the occurrence of any Site accidents, and Hazardous Environmental Conditions, emergencies, or acts of god endangering the work, and property damaged by fire or other causes.
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 installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment of that part of the Work.

14. *Completion:*
- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
  - b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be 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 or corrected.
  - d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. 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 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.

**PROJECT SCHEDULE**  
**HGM ASSOCIATES INC.**  
**Missouri River Trail (NP Dodge Park North to Washington County)**

**EXHIBIT E**  
**DESIGN SCHEDULE**

[illegible]

This is **EXHIBIT G**, consisting of 1 page, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated April 16, 2004.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER RAJ

## **Insurance**

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

The Engineer shall purchase, and maintain until the expiration of two years after completion of the work, the following policies of insurance with minimum requirements as shown:

- a) Workmens Compensation and Employers Liability
  - i) Workers' Compensation: statutory minimum
  - ii) Longshore and Harbor Workers' Compensation Act endorsement and Admiralty Law endorsements (required if the work involves maritime operations)
  - iii) Employer's Liability: \$100,000.00 per accident
- b) Professional malpractice
  - i) \$1,000,000.00 each claim
  - ii) \$2,000,000.00 aggregate
- c) Commercial General Liability – ISO Occurrence Form
  - i) \$1,000,000.00 each occurrence
  - ii) \$2,000,000.00 general aggregate
  - iii) \$2,000,000.00 products – completed operations aggregate
  - iv) \$1,000,000.00 personal & advertising injury
  - v) \$300,000.00 fire damage
  - vi) \$5,000.00 medical expense
- d) Business Auto Liability – Owned, Non-Owned & Hired Vehicles \$1,000,000.00 combined single limit
- e) General Provisions:
  - i) All policies other than the Engineer's Commercial General Liability policy shall be endorsed to have any annual aggregate apply on a per-project basis and to provide 30 days written notice to the OWNER prior to termination or change in the coverage provided.
  - ii) The NRD reserves the right to approve the ENGINEER's insurers.
  - iii) Workers Compensation and Commercial General Liability policies shall be endorsed to provide Waiver of Subrogation in favor of the NRD
  - iv) The Commercial General Liability policy shall be endorsed to include the NRD as Additional Insured (form CG 20 10).

Prior to commencement of the work, and from time to time thereafter at the OWNER's Reasonable request, the ENGINEER shall submit certificates in form acceptable to the OWNER evidencing that all the above insurance policies are in effect.

This is **EXHIBIT J**, consisting of 2 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services** dated April 16, 2004.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER RAN

### **Special Provisions**

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Paragraphs of the Agreement are amended to include the following agreements of the parties:

- ☐ Paragraph 1.01 shall be amended as follows:

- A. ENGINEER shall provide the Basic Services set forth herein and in Exhibit A, attached hereto and incorporated herein by reference.

- ☐ Paragraph 3.01 shall be amended to provide a new subparagraph 3.01 D., as follows:

- D. The Engineer's services under this Agreement shall be performed in accordance with the time schedule provided in the document entitled "Project Schedule," attached hereto as Exhibit E and incorporated herein by reference.

- ☐ Paragraph 8.01 shall be amended to provide a new sub-paragraph E, providing as follows:

- E. Exhibit E, "Design Schedule," consisting of one page.

- ☐ Paragraph 4.01 shall be amended as follows:

- 4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER**

- A. *For Basic Services.* Owner shall pay ENGINEER for Basic Services performed or furnished under this Agreement an amount equal to ENGINEER'S hourly salary base rates shown on Exhibit C, attached hereto and incorporated herein by reference, times a factor of 2.8, plus reimbursable expenses for all basic services performed or furnished by principals and employees engaged directly on the Project, plus 1.0 times ENGINEER Consultants' billings to ENGINEER for Consultants' basic services and expenses incurred on the Project, provided, however, the total payments by OWNER to engineer for Basic Services shall not in any case exceed a total of \$83,855.91 for Basic Services, reimbursable expenses and Consultants' billings incurred on the Project under this Agreement.

- B. *For Additional Services.* Owner shall pay ENGINEER for Additional Services performed or furnished under this Agreement an amount equal to ENGINEER'S hourly salary base rates shown on Exhibit C, attached hereto and incorporated herein by reference, times a factor of 2.8, plus reimbursable expenses.

- ☐ Paragraph 4.02.A shall be amended as follows:

- 4.02 Other Provisions Concerning Payments**

- A. *Preparation of Invoices.* Invoices will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed.

- Paragraph 8.01 shall be amended to provide a new sub-paragraph E, providing as follows:

E. “Exhibit E – Project Schedule,” consisting of one page.