

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

PRELIMINARY DESIGN

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

- **Intersection of 148th Street and US-6 (Project 1)**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – SERVICES OF ENGINEER	2
1.01 Scope.....	2
ARTICLE 2 – OWNER’S RESPONSIBILITIES.....	2
2.01 General	2
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES.....	2
3.01 Commencement	2
3.02 Time for Completion	2
ARTICLE 4 – INVOICES AND PAYMENTS	3
4.01 Invoices	3
4.02 Payments	3
ARTICLE 5 – OPINIONS OF COST	3
5.01 Opinions of Probable Construction Cost	3
5.02 Opinions of Total Project Costs	4
ARTICLE 6 – GENERAL CONSIDERATIONS	4
6.01 Standards of Performance	4
6.02 Design Without Construction Phase Services	5
6.03 Use of Documents	5
6.04 Insurance	6
6.05 Suspension and Termination	7
6.06 Controlling Law	8
6.07 Successors, Assigns, and Beneficiaries.....	8
6.08 Dispute Resolution.....	9
6.09 Environmental Condition of Site.....	9
6.10 Indemnification and Mutual Waiver	10
6.11 Miscellaneous Provisions	11
ARTICLE 7 – DEFINITIONS.....	11
7.01 Defined Terms	11
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS.....	13
8.01 Exhibits Included.....	13
8.02 Total Agreement	13

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

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

The City of Waverly (“Owner”) and

The Schemmer Associates Inc. (“Engineer”).

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

Intersection of 148th Street and US-6. This intersection improvement project shall (“Project”). consist of an alternatives analysis to consider alternatives for an intermediate improvement project and a long range improvement project that eliminates the railroad crossing on 148th Street or 162nd Street.

The preliminary design will include a geometric layout, preliminary roadway modeling, drainage analysis, and cost estimate for comparison purposes between the identified options. The long range options will include railroad coordination, some structural analysis, and preliminary ROW design.

Owner and Engineer agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 General

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

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

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

3.02 Time for Completion

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

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

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

4.02 *Payments*

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

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

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

5.02 *Opinions of Total Project Costs*

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

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

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

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

6.02 *Design Without Construction Phase Services*

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

6.03 *Use of Documents*

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

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

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

6.04 *Insurance*

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

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

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

6.05 *Suspension and Termination*

A. Suspension.

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

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

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

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

- b. By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

- 3) Engineer shall have no liability to Owner on account of such termination.

- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform

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

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

6.06 *Controlling Law*

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

6.07 *Successors, Assigns, and Beneficiaries*

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

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

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

6.08 *Dispute Resolution*

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

6.09 *Environmental Condition of Site*

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

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

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

6.10 *Indemnification and Mutual Waiver*

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

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

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

6.11 *Miscellaneous Provisions*

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

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

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

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

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

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

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*

- A. Exhibit A, "Engineer's Services, Compensation and Schedule" consisting of 19 pages.
- B. Exhibit B, "Owner's Responsibilities," consisting of 3 pages.
- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 2 pages.
- D. Exhibit D, "Insurance," consisting of 2 pages.
- E. Exhibit E, "Dispute Resolution," consisting of 1 pages.

8.02 *Total Agreement*

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

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

Owner:

City of Waverly

Engineer:

The Schemmer Associates Inc.

By: _____

By: Douglas G. Holle

Title: _____

Title: Executive Vice-President

Date: _____

Date: April 24, 2026

Signed: _____

Signed:  _____

Address for giving notices:

Address for giving notices:
333 South 21st Street
Suite 102
Lincoln, NE 68510

This is **EXHIBIT A**, consisting of 19 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated ____.

Owner's Consultant's Services

ARTICLE A.1 – BASIC SERVICES

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Basic and Additional Services as set forth below.

**CITY OF WAVERLY – 148th STREET AND US HIGHWAY 6
PRELIMINARY ALTERNATIVE ANALYSIS**

Scope of Work

Task 1. Project Management Plan and General Project Management

The consultant shall develop and maintain a Project Management Plan (PMP) for the 148th Street and U.S. Highway 6 intersection reconstruction project. In the PMP, the consultant shall outline items including but not limited to: project team organization, roles and responsibilities; scheduling expectations; coordination and communication procedures; formatting protocols; filing protocols, project close-out procedures, and other important operational information pertaining to project team. The consultant shall develop and maintain a Quality Management Plan (QMP) to document the quality control processes to be implemented by the project team as part of the PMP.

1.2.1	Kickoff Meeting
1.2.2	Project Coordination Meeting
1.2.3	Meeting with NDOT Traffic / Lancaster County Alternatives Presentation
Public Open House	
1.2.4	Project Coordination Meeting
1.2.5	Meeting with BNSF
1.2.6	Utility Coordination Meeting
1.2.7	Meeting with NDOT Preferred Alternative
1.2.8	Meeting with Private Developer
Public Open House #2	
1.2.9	Constructability Review Meeting
1.2.10	Presentation to City Council

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

Lump Sum Costs 1.1 = \$8,200

1.2 General Project Meetings

The consultant shall schedule and conduct an estimated 10 general project meetings during the design of the project from

April 2026 and April 2027 (note all public engagement meetings are covered elsewhere in the scope). It is anticipated that several meetings will occur in conjunction with design review meetings for the 5

percent plan submittal. In addition to design review meetings there will be utility coordination meetings, a constructability review meeting and coordination meetings with BNSF, NDOT, Lancaster County, and Private Developers. The remaining meetings will be scheduled between the kick off to the preliminary plan set submittal or as necessary to facilitate coordination and communication on the project. A listing of anticipated general meetings is listed to the right, from the project schedule.

Lump Sum Costs 1.2 = \$12,000

Assumptions Task 1	Deliverables Task 1
<p>It is anticipated that all meetings will be held at the City of Waverly City Hall or other locations approved by the City.</p> <p>QA/QC hours shall be included in the project management plan.</p>	<p>Develop and maintain a PMP and QMP in electronic format, accessible to the city and other designated key stakeholders</p> <p>Develop and maintain a project schedule utilizing Microsoft Project</p> <p>Schedule status to be included in Invoice Progress Report</p> <p>Meeting agendas and minutes shall be prepared and submitted to meeting attendees</p>

Task 2. Existing Conditions Understanding

2.1 Site Inspections

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

2.2 Data Collection and Review

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

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

2.3 Survey

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

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

A Utility-One-Call and mapping request shall be made for the project area. Utilities that are marked shall be surveyed. Above-ground visible utilities shall be surveyed. The consultant shall not be responsible for underground utilities not marked by the utility locate, or underground structures or tanks that are not visible on the surface of the site. An attempt shall be made to obtain utility maps from the utilities listed on the Utility-One-Call ticket. If maps are provided those utilities shall be placed on the survey cadd file. Manholes shall be opened and surveyed to obtain pipe sizes and flow line elevations.

2.3.1 Topographical Survey

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

2.3.2 Digital Terrain Model.

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

2.3.3 Base Map Preparation.

Consultant will create the base maps in Microstation ORD format using the topographic survey data.

Lump Sum Costs 2.3.1 + 2.3.2 + 2.3.3 = \$18,400

2.4 Right-of-Way Analysis

2.4.1 Right-of-Way Base Map

The consultant shall prepare an existing right-of-way base map depicting all right-of-way and easements in the project area. Information shall be obtained through plats, title reports, surveyed property pins, and/or other means to depict a complete base map. The surveyor shall be responsible for the research necessary to build parcels. Plats, parcels, or land lot along the right-of-way need to be geometrically

closed with parcel reports available upon the City’s request. Enough corners need to be located to accurately locate lot lines per the practice and principles for licensing in the state of Nebraska. All obtained information shall be rectified to the surveyed section lines and local project coordinates. All adjustments to obtained information for the creation of the base map shall be documented. Work shall be performed by a registered land surveyor in the state of Nebraska.

2.4.2 Right-of-Way Alternatives

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

Lump Sum Costs 2.4.1 + 2.4.2 = \$5,400

2.5 Preliminary Drainage Study

Hydrologic & Hydraulic Analysis

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

The existing storm sewers and roadway ditches along 148th Street and U.S. Highway 6 shall be analyzed for time of concentration and peak discharge for the 10-year event. The existing major crossroad structures/culverts shall be analyzed to approximate their existing maximum capacities. These capacities shall be evaluated for 10, 50, and 100-year flood events to determine how increased impervious area from the proposed improvements and future development might affect drainage.

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

Lump Sum Costs 2.5 = \$5,100

Assumptions Task 2	Deliverables Task 2
<p>It is anticipated that all meetings will be held at the City of Waverly City Hall or other locations approved by the City.</p> <p>QA/QC hours shall be included in the project management plan.</p>	<p>Develop and maintain a PMP and QMP in electronic format, accessible to the city and other designated key stakeholders</p> <p>Develop and maintain a project schedule utilizing Microsoft Project</p> <p>Schedule status to be included in Invoice Progress Report</p> <p>Meeting agendas and minutes shall be prepared and submitted to meeting attendees</p> <p>Preliminary Drainage Study</p>

Task 3 Traffic Operations Analysis

3.1 Existing Traffic Analysis

The consultant team will perform a comprehensive multimodal traffic analysis to support the evaluation of intersection alternatives at N. 148th Street and U.S. Highway 6. This effort will be coordinated closely with the City of Waverly, NDOT, and BNSF Railway, with particular emphasis on the operational and safety implications associated with the adjacent railroad crossing. The traffic analysis will inform alternative development, public engagement, and selection of a preferred alternative.

As part of the existing conditions assessment, the consultant team will review and evaluate the most recent five years of crash data provided by the city and NDOT. The analysis will summarize crash history by year, severity, collision type, and contributing factors. Crash rates will be calculated and compared to city and statewide averages to determine whether the intersection functions as a high crash location. Potential safety improvement strategies will be identified using methodologies from the Highway Safety Manual (HSM) and applicable crash modification factors.

3.2 Traffic Forecasting

Traffic operations and forecasting will include a review of available traffic count data to determine whether supplemental data collection is required. Future traffic volumes will be developed using the local travel demand model, with adjustments coordinated and approved by the City to reflect anticipated development and corridor growth. These forecasts will serve as the basis for evaluating the operational performance of intersection alternatives.

3.3 Intersection Analysis

The consultant team will evaluate multiple intersection control alternatives, including stop control, traffic signal control, roundabout, and RCUT configurations. Operational performance will be assessed using methodologies from the Highway Capacity Manual (HCM), and traffic signal warrant analyses will be performed in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).

Given the proximity of the BNSF railroad crossing, the traffic analysis will include an evaluation of the interaction between railroad operations and proposed intersection alternatives. This will include an assessment of vehicle storage requirements, queuing behavior during train events, and the potential for queue spillback into the intersection or circulatory roadway. Appropriate railroad gate treatments, detection strategies, and traffic control measures will be identified consistent with MUTCD requirements and ITE best practices. Preliminary queuing analysis will be performed, and advanced microsimulation will be recommended where additional refinement is needed.

Lump Sum Costs 3.1 + 3.2 + 3.3 = \$23,200

Assumptions Task 3	Deliverables Task 3
<p>The City shall complete/update traffic counts for the intersections of 148th Street and U.S. Highway 6 if existing data is determined to be outdated or inadequate by the consultant and the city. The counts shall include data as needed to support the alternatives analysis that shall be completed for the project. Counts shall be completed on a Tuesday, Wednesday, or Thursday, or as recommended for the AM, Midday, and PM peak hours.</p> <p>The consultant shall provide flag or signal men and/or traffic control. The intent is to maintain at least one open lane or turnout for through traffic during the drilling operation.</p> <p>Five-year crash data provided by the city and NDOT.</p>	<p>Traffic Analysis Existing Conditions Assessment</p> <p>Traffic Forecasting Present Year and Design Year</p> <p>Signal Warrant Analysis</p>

Task 4 Alternatives Analysis Report

4.1 Development of Alternatives Evaluation Matrix

The consultant team will develop an alternatives evaluation matrix to support a transparent and defensible decision-making process. The evaluation criteria will be developed collaboratively with the City and may include considerations related to traffic operations, safety, constructability, accommodation of multimodal users, right-of-way impacts, public input, and cost. The agreed-upon criteria will be used to consistently evaluate and compare intersection alternatives and determine which options should be advanced for further development.

4.2 Draft Alternatives Report

The consultant team will document the analyses, coordination efforts, and public engagement activities associated with each alternative in a Draft Alternatives Analysis Report. The report will include a description of each alternative, traffic and safety findings, conceptual layouts, and preliminary cost estimates as defined elsewhere in the scope of work. The draft report will be submitted to the City for review and comment prior to dissemination to the public or other stakeholders.

4.3 Final Alternatives Report

Following receipt of City comments, the consultant team will revise and finalize the Alternatives Analysis Report. The final report will document the evaluation process, summarize public and agency input, and identify the preferred alternative to be advanced into preliminary design.

Assumptions Task 4	Deliverables Task 4
<p>The City shall approve one preferred alternative concept for development in the preliminary design portion of the contract.</p>	<p>Draft and final alternatives reports that document the information, analyses, coordination, and public input developed throughout the process.</p> <p>Alternatives evaluation matrix.</p> <p>Project Initiation Checklist, Scoping Checklist.</p> <p>Draft design criteria memorandum for each alternative.</p>

Lump Sum Costs 4.1 + 4.2 + 4.3= \$4,000

Task 5. Removed

Task 5. Conceptual Design

5.1 5 Percent Roadway Design Concept Near Term (5-year) Time Frame (Five Alternatives)

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

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

These five alternatives are identified below

- 5.1.1 Realigned at grade intersection for 148th Street with capacity improvements
- 5.1.2 Realigned at grade intersection for 148th Street with a warranted traffic signal and capacity improvements
- 5.1.3 Realigned at grade intersection for US-6 with a warranted traffic signal and capacity improvements
- 5.1.4 Realigned US-6 south and roundabout at the intersection of US-6 and 148th Street
- 5.1.5 R-Cut intersection along US-6

The Consultant shall prepare a conceptual plan layout for each of the five (5) alternatives in accordance with the City’s preferred CADD standards for the construction of the proposed project improvements. The five alternatives for the intermediate time frame shall be presented to the City with a brief discussion of the positives and negatives of each conceptual design. The City working with the Consultant team shall narrow the alternatives list down to 2 preferred alternatives to carry forward

with more detailed information and a very preliminary cost estimate and limits of construction. The two alternatives moving forward shall be developed to include a feature file with geometrics, horizontal and vertical alignment information, ADA pedestrian facilities, a topo base file, and an existing ROW base file.

5.2 Preferred alternative Intermediate Design Option (Two Alternatives)

The submittal package for the two alternatives will include the following information:

- 1) Schemmer will develop a concept display for the intersection showing curb returns and a general footprint for the grading and paving that would be involved in an intersection improvement for 148th Street and US-6. These improvements will focus on traffic capacity and improving safety based on the traffic analysis completed as part of this scope.
- 2) FHU will review the signal warrant analysis completed earlier and recommend a traffic signal if it meets a warrant with the present-day traffic volumes. Schemmer will layout a preliminary traffic signal and calculate a cost estimate for the traffic signal. If a traffic analysis shows a signal is not warranted, Schemmer will document this as part of the report for this alternative.
- 3) Schemmer will create a grading model for the two intersection improvement alternatives to develop conceptual limits of construction and calculate earthwork volumes for grading the intersection. The limits of construction will be used to identify preliminary right of way impacts.
- 4) Schemmer will review the completed drainage study and identify potential drainage improvements associated with the larger intersection footprint.
- 5) Schemmer will calculate quantities for the intersection based on the conceptual design and develop a cost estimate based on these quantities and a contingency factor.
- 6) Schemmer will develop a report that outlines the conceptual design and the impacts from the design on the surrounding properties for the two alternatives. This report will incorporate the completed traffic analysis and the preliminary concept to develop a cost estimate and a summary of benefits and impacts to be presented at the end of the concept phase.
- 7) Schemmer will present the two alternatives to the City staff and the council and select a preferred alternative based on the information presented.

5.3 5% Roadway Design Concept Design (Long Term Alternative)

The second alternative approach shall review the feasibility of constructing a railroad viaduct to address the city's long-term growth and pedestrian connectivity for the east side of the City of Waverly between the intersection of 148th Street and US-6 and the intersection of 162nd and US-6. This alternative will look at a grade separated structure over US -6 and the BNSF Railroad. The base files will include a paving file with roadway geometrics and ADA pedestrian facilities as appropriate, a topo base file based on the latest aerial photo and LIDAR available (no survey), a horizontal alignment and vertical profile, and an existing ROW base file based on Lancaster County GIS parcel data. The submittal package for the long term alternative will include the following information:

- 1) Schemmer will develop a concept display for the viaduct alignments containing a general footprint for the grading and paving that would be involved. Schemmer will provide horizontal and vertical alignments that meet standards for this structure.
- 2) Schemmer will create a grading model for the two viaduct alternatives planned over the US-6 and BNSF railroad to develop rough construction limits and calculate earthwork volumes for grading the bridge. Schemmer will incorporate an approximate location of needed retaining walls along 148th Street and 162nd Street to limit impacts to ROW and calculate the cost estimate. Limits of

construction will be used to identify preliminary right of way impacts. One of the alignment alternates will consider a connection between 148th Street and 162nd Street south of I-80 .

- 3) Schemmer will calculate quantities for the two concepts based on the conceptual design and develop a cost estimate based on these quantities.
- 4) Schemmer will develop a report that outlines the conceptual design of the two viaducts and the impacts from the design on the surrounding properties for each one. This report will incorporate the preliminary concept to develop a cost estimate and a summary of benefits and impacts to be presented at the end of the concept phase for both alternatives.
- 5) NO TRAFFIC ANALYSIS FOR THE TWO VIADUCT ALTERNATIVES IS INCLUDED WITH THIS SCOPE OF SERVICES.

5.4 Structural Design

The consultant shall prepare plan and elevation drawings with span arrangements for the railroad viaducts for each alternative.

5.5 Right-of-Way Plans

The consultant shall provide preliminary right-of-way plans showing existing right-of-way, ownership, and preliminary limits of construction. An estimate of permanent acquisitions and temporary or permanent easements will be calculated.

5.6 Cost Estimate

Opinions of probable construction cost (OPCC) shall be completed for each of the two alternatives.

Assumptions	Deliverables
Design criteria will be based on the preferred alternative	Design Criteria Form (to be approved prior to proceeding with future design plans)
5 percent plan submittal is based on deliverables matrix	5 percent Conceptual Drawings Package (PDF two alternatives)
	5 percent Construction Cost Estimate (two alternatives)
	Final Submittal Package for preferred alternative
	Long Term viaduct exhibits (two alternatives)
	Long Term Viaduct Cost Estimate (two alternatives)

Lump Sum Costs 5.1 Alternative Intermediate Design – (5 Alternatives) = \$20,000

Lump Sum Costs 5.2 Preferred Alternative Intermediate Design – (2 Alternatives) = \$16,000

Lump Sum Costs 5.3 Alternative Future Viaduct (2 Alternatives) - \$28,000

Lump Sum Costs 5.4 – 5.6 Support Information for Future Viaduct Alternatives - \$9,000

Task 6. Project Coordination

6.1 Utility Coordination (Near Term Alternatives Only)

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

Conceptual Design (to 5 percent)

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

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

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

Lump Sum Costs 6.1 = \$6,000

6.2 Public Agency Coordination (Near Term Alternatives Only)

The consultant shall coordinate with NDOT and Lancaster County for the proposed near term alternatives.

Lump Sum Costs 6.2 = \$8,000

6.3 Wetland Delineation (Near Term Alternatives Study Area Only)

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

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

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

Lump Sum Costs 6.3 = \$15,400

6.4 Railroad Coordination

RailPros crossing design team will coordinate closely with BNSF Railway to support the safe, compliant, and efficient design of vehicular and pedestrian crossings. Our approach emphasizes early coordination, risk reduction, and alignment with federal, state, and railroad-specific requirements to streamline approvals and support project delivery.

RailPros will evaluate existing conditions and projected traffic demands to identify necessary improvements to the rail crossing for both vehicular and pedestrian movements at the railroad crossing. This effort will include a review of roadway geometry, sight distance, warning devices, pedestrian treatments, and accessibility features. Recommended improvements will be consistent with BNSF standards, MUTCD guidance, and applicable state and local criteria, with the goal of enhancing safety while minimizing operational impacts to rail service.

Our team will prepare design content submittals and supporting materials for the near term alternatives that affect the railroad . This includes conceptual design plans, narratives, and technical exhibits required by BNSF for review and concurrence. All submittals will be coordinated to align with project milestones.

As a value-added service, RailPros will perform early technical coordination with BNSF Railway to confirm applicable railroad design criteria, submittal requirements, and review protocols prior to advancing design.

Lump Sum Costs 6.4 = \$11,200

6.5 Private Development

The consultant will work with local developers who own parcels of land at or near 148th Street and U.S. Highway 6 and their representatives to better understand future plans for the corridor and define a schedule for these improvements.

The consultant will meet with developers and their representatives along with City of Waverly staff and planning personnel to share preliminary plans, update access locations for the project corridor, and identify commercial impacts to 148th Street and U.S. Highway 6.

Lump Sum Costs 6.5 = \$4,000

Assumptions	Deliverables
<p>The City of Waverly will work with the consultant to identify utilities in the area and local representatives for the utility.</p> <p>NDOT will be involved in the decision-making process for the preferred alternative.</p> <p>Wetland Investigation, and delineation if required, will be performed between May 1st and October 31st.</p> <p>Developers who own parcels of land in the project area will have plans for development.</p>	<p>Master list of contact information for utilities and log of communication with the representatives.</p> <p>List of potential utility conflicts.</p> <p>Meeting agendas and meeting notes with NDOT personnel.</p> <p>Wetland Delineation report and a recommendation on the 404 Permit Application (if required).</p>

Task 7. Public Involvement

7.1 Public Involvement Plan

The consultant shall develop a Public Involvement Plan (PIP) for review and approval by the City. The plan should include dates of anticipated meetings, anticipated forms of communication with the public (i.e. website, newsletter, door hangers, etc.), and a database of adjacent property owners and other project stakeholders. The consultant shall analyze the project demographic area to determine if translation services are required. If required the consultant shall coordinate these efforts. All information to be sent to the public or posted online shall be reviewed by the city prior to distribution. This information shall be updated as needed.

The consultant shall collaborate with the City to develop, update, and maintain a Public Involvement Plan (PIP) for project development activities and procedures. The PIP may include the following:

- Project Schedule and Key Public Involvement Schedule
- Engagement Strategy
- Communications Tools
- Media Relations/Scheduled Project Updates
- Comment Management
- Public Involvement Reporting

Lump Sum Costs 7.1 = \$2,000

7.2 Open House/Public Meetings

The consultant shall schedule, arrange, and facilitate two public meetings/open houses with the first to be held in conjunction with the two concepts for the near term intersection alternatives followed by a second open house to present the preferred final alternative. The consultant shall draft a newspaper

notice for each public meeting to be reviewed by the City. The notice shall be concise and in accordance with an example provided by the City. The consultant shall supply the final notice to the City 21 days prior to the event. The City shall be responsible for publishing the notice in accordance with local publishing and posting requirements. The consultant shall prepare mailers or door hangers prior to each meeting and distribute them no less than 10 business days prior to the meetings.

During the public meeting, the consultant shall be available to answer questions and receive comments. The consultant shall provide and maintain a sign-in list and comment forms for the public meetings and prepare a written summation of the oral and written comments received. The consultant shall coordinate necessary follow-up after each of the public meetings.

Lump Sum Costs 7.2 = \$8,000

7.3 Key Stakeholder Outreach

The consultant shall work with the City to identify key project stakeholders for participation in focus group meetings prior to public meetings. Key stakeholders for this project shall include individual property owners near the intersection of 148th Street and U.S. Highway 6 and business owners in the same intersection location as well as business leaders in the community. The consultant shall develop and distribute an initial introduction letter to key stakeholders and adjacent properties to introduce the project and to communicate that work on the project will be proceeding.

The consultant shall be responsible for distributing meeting invitations, coordinating meeting locations, facilitating, and preparing meeting minutes. It is anticipated that key stakeholders shall be engaged prior to each public meeting to obtain feedback, measure project and alternative acceptance, and build support prior to full public release. It is anticipated that two meetings shall be held prior to the two open house meetings.

The consultant shall be responsible for distributing meeting invitations, coordinating meeting locations, facilitating, and preparing meeting minutes. It is anticipated that key stakeholders shall be engaged prior to each public meeting to obtain feedback, measure project and alternative acceptance, and build support prior to full public release.

Lump Sum Costs 7.3 = \$3,800

7.4 Database and Comment Response Facilitation

The consultant shall develop and maintain a database of project stakeholders to include residents, property owners, organizations, agencies, city officials, project team members, and other parties who may be interested in or impacted by the project. The database shall identify stakeholder names, telephone numbers, addresses, tract numbers, conversation dates and other pertinent information. A copy of the database shall be provided to the City, if requested. The consultant shall also serve as the point of contact for public involvement and information and shall keep a record of public contacts and inquiries regarding this project. The consultant shall develop a protocol that identifies policies and procedures for project-related communication. The consultant shall prepare a comment matrix for comments received and provide the City with draft responses for review and approval.

Lump Sum Costs 7.4 = \$4,600

7.5 Visualization Materials Development

The consultant shall prepare visualization materials for use in presentations to the public and stakeholders. This can include aerial mosaics with alternatives on boards and a 3D rendering of a preferred alternative.

Lump Sum Costs 7.5 = \$18,000

Assumptions	Deliverables
<p>The City shall provide an example public notice.</p> <p>The City shall be responsible for the posting of public notices in the local newspaper.</p> <p>The City shall be responsible for the coordination and posting of DMS's prior to each of the public meetings.</p>	<p>Public Involvement Plan.</p> <p>Visualization boards and 3D renderings.</p> <p>Minutes for key stakeholder meetings over the course of the project.</p> <p>Informational brochures/handouts for the public meetings.</p> <p>Talking points and frequently asked questions documents for all staff attending the public meetings.</p> <p>Public notices for each public meeting.</p> <p>Contact/comments database and coordinate responses.</p>

TOTAL COSTS ALL TASKS 1.1 – 7.5 - \$232,500

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

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

**Project Schedule City of Waverly
148th Street & US-6 Intersection Improvement
Intermediate Approach
April 2026**

<u>Milestone</u>	<u>Completion Date</u>
Notice to Proceed	May 15 th , 2026 (Assumed)
Kick-Off Meeting	May 20 th , 2026
Topographic Survey	May 27 th – August 5 th , 2026
Existing ROW Research	May 27 th – July 25 th , 2026
Traffic Analysis	June 3 rd – July 16 th , 2026
Begin Alternative Analysis (Intermediate Approach)	June 15 th , 2026
1 st Progress Meeting	July 10 th , 2026
Drainage Study	July 20 th – September 20 th , 2026
Wetland Delineation	June 1 st – September 15 th , 2026
Meeting with BNSF	October 25 th , 2026
Complete Initial Alternative Analysis (Cut from 5 alternatives to 2 alternatives)	December 5 th , 2026
2 nd Progress Meeting	December 14 th , 2026
Open House	January 10 th , 2027
Complete Initial Alternative Analysis (Cut from 2 Alternatives to 1 alternative)	February 3 rd , 2027
Present Report on Intermediate Approach to City Staff	February 10 th , 2027
City Council Approval of preferred Alternative	
Intermediate Design	February 23 rd , 2027

**148th Street and 162nd Street Viaduct Study
Long Term Approach**

<u>Milestone</u>	<u>Completion Date</u>
Notice to Proceed	May 15 th , 2026 (Assumed)
Kick-Off Meeting	February 28 th , 2027
Begin Conceptual Analysis (Long Term Approach)	March 3 rd , 2027
Open House	June 10 th , 2027
Complete Conceptual Analysis (Long Term Approach)	July 15 th , 2027
Present Report on 2 Viaduct Options to City Staff	July 30 th , 2027

This is **EXHIBIT B**, consisting of 19 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated ____.

Owner's Responsibilities

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

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

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.

5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas, if not part of Engineer's services.
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
 - E. Furnish as appropriate other services or authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
 - F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
 - G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
 - H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
 - I. Provide, as required for the Project:
 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
 4. Placement and payment for advertisement for Bids in appropriate publications.
 - J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
 - K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

- L. If Resident Project Representative services are not to be provided pursuant to paragraph A.1.05.A.2 or otherwise, provide a qualified representative to observe the progress and quality of the Work.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory during construction to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- P. Provide inspection or monitoring services by an individual or entity other than Engineer (and disclose the identity of such individual or entity to Engineer) as Owner determines necessary to verify:
 - 1. that Contractor is complying with any Laws or Regulations applicable to Contractor's performing and furnishing the Work; or
 - 2. that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to paragraphs B.2.01.O and P.
- R. Owner designates _____ as their Project Manager who Schemmer shall coordinate all contractual matters with.

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

Payments to Engineer for Services and Reimbursable Expenses

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C.2.01 [Not Used]

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

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

1. The Lump Sum compensation of Two hundred thirty-two thousand five hundred dollars (\$232,500.00) for services performed in Exhibit A shall be payable as follows:
 - a. A sum which equals 30 percent of the Lump Sum compensation payable, after the Survey and Traffic analysis are completed
 - b. A sum which, together with the compensation provided under paragraph C.2.02.A.1.a, equals 50 percent of the Lump Sum compensation, after the alternative analysis has been started along with the conceptual design.
 - c. A sum which, together with the compensation provided under paragraph C.2.02.A.1.a and b, equals 80 percent of the Lump Sum compensation, after completion of the alternative analysis for the intermediate approach has been completed
 - d. A sum which, together with the compensation provided in paragraphs C.2.02.A.1.a, b, and c, equals 90 percent of the Lump Sum compensation, after the alternative has been selected and presented to the City Council.
 - e. A sum which, together with the compensation provided in paragraphs C.2.02.A.1.a, b, c and d equals 100 percent of the Lump Sum compensation, after the long term alternative has been studied and presented to the City of Waverly.
2. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

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

EJCDC E-510 Standard Form of Agreement Between Owner and Engineer for Professional Services, Funding Agency Edition
Copyright © 2002 National Society of Professional Engineers for EJCDC. All rights reserved.

B. Period of Service. The compensation amount stipulated in paragraph C.2.02.A.1 is conditioned on a period of service not exceeding 12 months. Should such period of service be extended, the compensation amount for Engineer's services shall be appropriately adjusted.

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

EJCDC E-510 Standard Form of Agreement Between Owner and Engineer for Professional Services, Funding Agency Edition
Copyright © 2002 National Society of Professional Engineers for EJCDC. All rights reserved.

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

Insurance

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

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

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

Dispute Resolution

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

H6.09 Dispute Resolution

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

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

Allocation of Risks

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

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

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