

MCCOOK CITY COUNCIL

REGULAR MEETING

**Monday, March 24, 2025
12:00 PM - City Council Chambers**

Roll Call.

Open Meetings Act Announcement.

Call to Order.

Items.

1. Approve and authorize the Mayor to sign the Procurement Procedures and Code of conduct as a condition of the receipt of State and Federal funds under the Rural Community Recovery Program.
2. Approve and authorize the Mayor to sign two Declaration of Covenants as a condition of the receipt of State and Federal funds under the Rural Community Recovery Program (RCRP).
3. Approve an Agreement for the Provision of Limited Professional Services between Miller & Associates and the City of McCook for topographic survey, platting, civil design and preparation of bidding documents for water, sanitary sewer, paving and storm sewer improvements for the Recreation-Sports Plex Subdivision in McCook, Nebraska.

Adjournment.

**CITY MANAGER'S REPORT
MARCH 24, 2025 MCCOOK CITY COUNCIL MEETING**

ITEM NO. 1

Approve and authorize the Mayor to sign the Procurement Procedures and Code of Conduct as a condition of the receipt of State and Federal funds under the Rural Community Recovery Program (RCRP).

BACKGROUND:

A Procurement Procedures and Code of Conduct must be approved by the Council before release of funds can occur for the RCRP grant that the City was awarded. This grant will be used for the Inclusive Playground, amenities at the new sports complex, and to replace outdated playground equipment at Barnett Park. It is necessary that the Council approve the Procurement Procedures and Code of Conduct to ensure that the City meets the Nebraska Department of Economic Development's current requirements. The City is working with an attorney to help finalize the Procurement Procedures and Code of Conduct and will attach to this report when they are completed.

APPROVALS:



Nathan A. Schneider, City Manager

March 20, 2025



Lea Ann Doak, City Clerk

March 20, 2025



Tera Koetter, Assistant City Manager

March 20, 2025

**CITY MANAGER'S REPORT
MARCH 24, 2025 MCCOOK CITY COUNCIL MEETING**

ITEM NO. 2

Approve and authorize the Mayor to sign two Declaration of Covenants as a condition of the receipt of State and Federal funds under the Rural Community Recovery Program (RCRP).

BACKGROUND:

On October 31, 2024 the City of McCook was awarded a RCRP grant from the Nebraska Department of Economic Development (NDED). There are two Declaration of Covenants that must be approved by the Council in order for the City to meet the NDED's current requirements and before the release of funds can occur for the RCRP grant. The NDED mailed these two covenants to the City and they will be attached to this report when we receive them. The covenants will be for the properties located at Kelley Park and Barnett Park. These covenants will then be recorded at the Red Willow County Register of Deeds. A third Declaration of Covenant will be submitted to the Council for the sports complex property once final platting has been completed.

APPROVALS:



Nathan A. Schneider, City Manager

March 20, 2025



Lea Ann Doak, City Clerk

March 20, 2025



Tera Koetter, Assistant City Manager

March 20, 2025

**CITY MANAGER'S REPORT
MARCH 24, 2025 MCCOOK CITY COUNCIL MEETING**

ITEM NO. __ Approve an Agreement for the Provision of Limited Professional Services between Miller & Associates and the City of McCook for topographic survey, platting, civil design and preparation of bidding documents for water, sanitary sewer, paving and storm sewer improvements for the Recreation-Sports Plex Subdivision in McCook, Nebraska..

BACKGROUND:

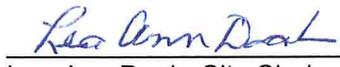
As part of the future Walters First Addition to the City of McCook, the City of McCook intends to contract for professional services with Miller & Associates, said services related to topographic surveys, platting, civil design and preparation of bidding documents for water, sanitary sewer, paving and storm sewer improvements. The project will encompass approximately 4,460 lineal feet of right-of-way including water, sanitary sewer, storm water, street paving infrastructure, and storm water detention cells. These services will incorporate the sanitary sewer trunk main extension design to Highway 83 that is being performed under a separate design contract. Sanitary sewer trunk main extension fees are provided under an existing contract and are not included in this project scope and fee. Necessary drainage studies are also included with this agreement. The Engineer's opinion of probable construction costs is in the range of \$3,200,000 to \$4,000,000. The fee arrangement includes \$12,000 for topographic and platting services; \$208,000 for design and bidding services; and a not-to-exceed provision of \$141,000 for construction phase services, for a total contract price of \$361,000.

APPROVALS:



Nathan A. Schneider, City Manager

March 17, 2025



Lea Ann Doak, City Clerk

March 17, 2025

An Agreement for the Provision of Limited Professional Services

DESIGN PROFESSIONAL FIRM: MILLER & ASSOCIATES, CONSULTING ENGINEERS, P.C.
1111 Central Avenue
Kearney, NE 68847
Attn: Craig A. Bennett
thillmer@miller-engineers.com
(hereinafter called *CONSULTANT* or *ENGINEER*)

CLIENT: CITY OF MCCOOK
505 West "C" Street
PO Box 1059
McCook, NE 69001
Attn: Nate Schneider
nschneider@cityofmccook.com
(hereinafter called *CLIENT* or *OWNER*)

DATE: February 26, 2025

PROJECT NO. 200-G1-029-25

PROJECT NAME/LOCATION: Topographic Survey, Platting, Civil Design and preparation of bidding documents for water, sanitary sewer, paving and storm sewer improvements for the Recreation-SportsPlex Subdivision in McCook, Nebraska. The project will encompass approximately 4,460 lineal feet of right-of-way including water, sanitary sewer, storm water, street paving infrastructure, storm water detention cells. Coordination with Mammoth during design is included with this scope. These services will incorporate the sanitary sewer trunk main extension design to Highway 83, that is being performed under a separate design contract. Sanitary sewer trunk main extension fees are provided under an existing contract and are not included in this project scope and fee. Services will also include preparation of SWPPP documents, SWPPP inspections and construction administration and construction observation services. Engineer's Opinion of Probable Construction Cost is in the range of \$3,200,000 to \$4,000,000.

SCOPE/INTENT AND EXTENT OF SERVICES: The following scope of services will be performed:

1.1 TOPOGRAPHIC SURVEY & PLATTING The ENGINEER shall:

1. Topographic and boundary survey of the project location.
2. Secure a title report from the Client's selected title company.
3. Applications, figures, and legal descriptions related to the Release of Easements and Lots, Preliminary Plat and Final Plat.
4. Attend meetings and presentations to the Planning Commission and the City Council.
5. Set lot pins for new lots associated with the Final Plat.

1.1.1 ENGINEER shall perform professional services as hereinafter stated which include customary civil engineering services.

1.2 PRELIMINARY DESIGN PHASE The ENGINEER shall:

1.2.1 Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications. Coordinate with Mammoth during pre-design.

1.2.2 Furnish two copies of the above preliminary design documents and present and review them with OWNER.

1.3 FINAL DESIGN PHASE After authorization to proceed with the Final Design Phase, ENGINEER shall:

1.3.1 On the basis of the accepted preliminary design documents, prepare for incorporation in the Contract Documents final drawings to show the character and extent of the Project (hereinafter called "Drawings") and Specifications.

1.3.2 Furnish to OWNER such documents and design data as may be required for and assist in the preparation of the required documents so that OWNER may apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

1.3.3 Advise OWNER of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.

1.3.4 Prepare for review and approval by OWNER, his legal counsel and other advisors, contract agreement forms, general conditions and supplemental conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.3.5 Furnish the above documents and present and review them in person with OWNER.

1.3.4 Submit Drawings and Specifications and other documentation as may be required to the Nebraska Department of Environment & Energy for review of the project water system and sanitary sewer components. Any review fees due to Nebraska Department of Environment & Energy shall be the responsibility of the OWNER.

1.4 BIDDING OR NEGOTIATING PHASE After authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

1.4.1 Assist OWNER in obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services.

1.4.2 Assist OWNER in evaluating bids or proposals and in assembling and awarding contracts.

1.5 CONSTRUCTION PHASE SERVICES During the Construction Phase ENGINEER shall:

1.5.1 Consult with and advise OWNER and act as his representative as provided in Articles 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract, No. 1910-8. All of OWNER's instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.5.1.1 Schedule, conduct and prepare minutes of pre-construction conference.

1.5.2 Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of

Contractor(s) and to determine in general if such work is proceeding in accordance with the Contract Documents.

1.5.3 Review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents; (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto) determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents.

1.5.4 Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts; such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any qualifications stated in his recommendation), and that payment of the amount recommended is due Contractor(s); but by recommending any payment ENGINEER will not thereby be deemed to have represented that continuous or exhaustive examination have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incidental thereto or that ENGINEER has made an examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that Contractor(s) have completed their work exactly in accordance with the Contract Documents.

1.5.5 Prepare and furnish to OWNER a set of Project Record Drawings showing appropriate record information based on Project documentation received from ENGINEER'S construction resident and Contractor, as required by the OWNER.

1.5.6 Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the work has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that ENGINEER may recommend, in writing, final payment to each Contractor and may give written notice to the OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in paragraph 1.5.4.

1.6 **STORMWATER POLLUTION PREVENTION PLAN (SWPPP) SERVICES:** During the Design and Construction Phase ENGINEER shall perform the following services, pertaining to this project:

1.6.1 The ENGINEER will prepare a Storm Water Pollution Prevention Plan (SWPPP) to comply with site sediment and erosion control measures, since the development area is more than 1-acre. SWPPP will be in accordance with the Nebraska Department of Environment & Energy regulations, concerning the general National Pollutant Discharge Elimination System (NPDES) permit (Number NER210000) for storm water discharge. The CONTRACTOR will be the designated operator during the construction. The CONTRACTOR, as Operator, shall be responsible for installing and maintaining any and all necessary erosion and sediment control measures, and performing all necessary work directed as a result of regular inspections of the site and all control measures, in accordance with the permit conditions. The CONTRACTOR will be designated as the party responsible for maintaining and updating the SWPPP, including conducting regular site inspections and maintaining all records, in accordance with the SWPPP and the General Permit.

EXCLUDED SERVICES: The following services are not included in the scope of work:

1. Design of lighting components and other special features, with the exception of street light conduit if required by the City.
2. Gas, Telephone, Cable TV, and Electrical Systems Design.
3. Geotechnical subsurface soil investigations and reports.
4. Assistance in connection with Bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services. Rebidding or renegotiating contracts to reduce the contract costs to funds available shall be considered Additional Services.
5. Floodplain Permits, U.S. Army Corps of Engineers Permitting, and Wetland Delineations.
6. **Any and all permit or review fees shall be the responsibility of the Owner.**

SCHEDULE:

- | | | |
|----|-----------------------------------|-----------------|
| 1. | Preliminary Design & Review | June 17, 2025 |
| 2. | Final Design & Advertise for Bids | July 7, 2025 |
| 3. | Open Bids | August 12, 2025 |
| 4. | Award Bids | August 18, 2025 |
| 5. | Substantial Completion | April, 2026 |

FEE ARRANGEMENT: Services will be invoiced as follows:

Design/Bidding Phase:

For services enumerated in **Sections 1.1 through 1.4**, the lump sum fee is as follows:

Topographic Survey and Platting Services	\$12,000
Design Phase/Bidding Services	\$208,000

Construction Phase:

Construction phase services, as outlined in **Section 1.5**, will be invoiced on an hourly basis in accordance with the schedule shown below. The hourly fee amount will not exceed the maximum of \$141,000 based on a **7-month** construction period. This fee does not include construction staking. For the purposes of this Agreement the ENGINEER and their current hourly fees are:

Employee Classification	Rate
Professional Engineer	\$ 125.00
Architectural Staff	\$ 100.00
Project Manager	\$ 100.00
Planner	\$ 110.00
Licensed Land Surveyor	\$ 95.00
Funding Specialist	\$ 75.00
Senior Technician	\$ 85.00
Technician	\$ 70.00
Survey Crew	\$ 95.00
Resident Project Representative	\$ 70.00
CADD	\$ 70.00
Clerical	\$ 50.00
Mileage	IRS Rate
Reproduction & Shipping Services	At Cost

SWPPP Phase:

For services enumerated in **Section 1.6**, the work shall be invoiced as follows:

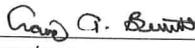
Preparation of SWPPP (1.6.1)

Lump Sum Fee of \$2,500

Should additional services be requested, they will be invoiced on an hourly basis, or a negotiated lump sum fee.

Offered by:

Accepted by:

 _____
signature *date*
 Craig A. Bennett Project Manager
 Printed name/title
 Miller & Associates,
 Consulting Engineers, P.C.
 Name of CONSULTANT

_____ *date*
signature

 Printed name/title
 City of McCook
 Name of CLIENT

The General Terms and Conditions on the following pages are a part of this Agreement

GENERAL TERMS AND CONDITIONS

Consultant Responsibilities

STANDARD OF CARE: Consultant shall perform its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Consultant makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with Consultant's services Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified.

CODE COMPLIANCE: Consultant shall review applicable laws, codes, and regulations and, in the provision of its Services, shall respond to such requirements imposed by the governmental authorities having jurisdiction over the Project and reasonably known to Consultant at the time services are provided. Client acknowledges that the requirements of the federal, state, and local laws, rules, codes, ordinances, and regulations, including the Americans with Disabilities Act, are subject to various and possible contradictory interpretations and requirements.

COST EVALUATION: Evaluations of Client's budget for the Cost of the Work, the preliminary opinions of the Cost of the Work, and updated opinions of the Cost of the Work prepared by Consultant, represent Consultant's judgment as a design professional. It is recognized, however, that neither Consultant nor Client has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from Client's budget for the Cost of the Work or from any opinion of the Cost of the Work or evaluation prepared or agreed to by Consultant.

DELIVERABLES (PER SCOPE OF SERVICES): Consultant shall provide deliverables, including drawings, specifications, reports, and studies, as defined in the Scope of Services section.

Client Responsibilities

PROJECT SCOPE AND BUDGET: Client shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the Cost of the Work. The Project budget shall include contingencies for design development and, when required by the scope of the Project, construction of the project. Client shall not significantly increase or decrease the overall Project scope, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of Consultant to a corresponding change in the Project scope, quality, schedule, and compensation of Consultant.

DESIGNATED CLIENT REPRESENTATIVE: Client shall identify an individual ("Designated Representative") authorized to act on its behalf with respect to the Project. The Client or its Designated Representative shall render decisions and approve Consultant's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Consultant's services and Project schedule.

ACCESS TO SITE: Unless otherwise stated, Consultant will have access to the site for activities necessary for the performance of the services. The Consultant will take precautions to minimize damage due to these activities, but the cost of restoration of any resulting damage has not been included in the fee.

CLIENT PROVIDED SERVICES AND INFORMATION: Client has the right to retain its own consultants and contractors ("Client's Consultants") to perform services on the Project. In addition, Client shall furnish the services of design professionals other than those designated as the responsibility of Consultant in this Agreement or authorize Consultant to furnish them as an Additional Service, when Consultant requests such services and demonstrates that they are reasonably required by the scope of the Project.

Consultant shall be entitled to rely on the accuracy, completeness, and timeliness of services and information furnished by Client, its Designated Representative, and Client's Consultants. Consultants shall have no responsibility for the technical content of Client's, its Designated Representative's, and Client's Consultants' services and information but shall provide prompt written notice to Client if Consultant becomes aware of any error, omission, or inconsistency in such services or information.

CONSTRUCTION CONTRACTS & RESPONSIBILITIES: When applicable to the scope of the Project, Client shall retain a qualified contractor, licensed in the jurisdiction of the Project ("Contractor"), to implement the construction of the Project ("Work") utilizing a construction contract based on General Conditions of the Contract for Construction. In the construction contract, Client shall require Contractor to: (1) obtain Commercial General Liability Insurance and name Client, Consultant, and Consultant's employees and subconsultants as additional insureds of that policy; and (2) indemnify and hold harmless Client, Consultant, and Consultant's employees and subconsultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorneys' fees and economic or consequential damages, arising in whole or in part out of any negligent act or omission of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them.

Client understands and acknowledges that (1) Consultant has no control over, charge of, or responsibility for construction activities or jobsite safety on the Project; (2) Contractor shall coordinate, supervise, and direct all portions of the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, jobsite safety, and security; and (3) Consultant shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

CLIENT'S REDUCTION OF SCOPE OF SERVICES: If Client elects to terminate, modify, or reduce any portion of Consultant's Services under this Agreement, Client shall indemnify and hold Consultant and its subconsultants harmless from and against damages, losses, and judgments arising from claims by Client or any third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, related to the services or activities Consultant did not provide or in which Consultant did not participate.

General Provisions

LIMITATION OF DAMAGES: The Services covered by this Agreement are of a preliminary or limited nature; therefore, neither Consultant, Consultant's subconsultants (if any), nor their agents or employees shall be jointly, severally, or individually liable to Client in excess of compensation to be paid pursuant to the Agreement, by reason of any act or omission, in tort or contract, including breach of contract, breach of warranty, or negligence.

OWNERSHIP OF DOCUMENTS: All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultants shall retain ownership and property interest therein, including all copyrights. Upon payment in full for services rendered, Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of construction, occupying, or maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, or use of documents after termination, shall be at Client's sole risk, and Client agrees to indemnify, defend, and hold Consultant harmless from all claims, damages, and expense, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

USE OF CONSULTANT-PROVIDED INFORMATION: The information provided by Consultant is intended for the exclusive use of Client for the Scope of Services defined herein and is not to be transmitted for the use of any other party nor used for any other project. Client agrees to defend, indemnify, and hold Consultant harmless from any claims, costs, and expenses, including attorneys' fees and costs of litigation, which result from any

unauthorized or unintended use of Consultant-provided information, or transmission by Client to others of the information resulting from Consultant's Scope of Services.

MUTUAL INDEMNIFICATION: The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages or liabilities, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages or liabilities, to the extent caused by the Client's negligent acts, errors or omissions in connection with the Project as well as the acts, errors or omissions of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence. Notwithstanding the foregoing agreement to indemnify and hold harmless, the parties expressly agree that both the Consultant and Client has no duty to defend the other from and against any claims, causes of action, or proceedings of any kind.

MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES: Consultant and Client waive consequential damages (such as lost profits, lost revenue, loss of use, loss of financing, and loss of reputation) for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages whether arising in contract, warranty, tort (including negligence), strict liability, or equity, or that might arise out of the parties' indemnification obligation.

DISPUTE RESOLUTION: Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to a session as a condition precedent to mediation.

Client and Consultant shall endeavor to resolve claims, disputes, and other matters in question during the meet-and-confer session. The meet-and-confer session shall be attended by Client and Consultant or their authorized representatives who shall have the authority to bind the parties. The meet-and-confer session shall take place within thirty (30) days after unless the parties mutually agree otherwise. Prior to the meet-and-confer session, the parties shall exchange relevant information that will assist in resolving the claim, dispute or controversy.

If the parties reach a mutually acceptable resolution, they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to non-binding mediation as a condition precedent to binding dispute resolution. If the parties do not resolve a dispute through mediation, The method of binding dispute resolution shall be Litigation in a court of competent jurisdiction.

HAZARDOUS MATERIALS: Consultant shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to hazardous materials or toxic substances in any form located on the Project site. If hazardous materials are present, Client shall be responsible to remove them from the Project site in the manner that will not adversely affect the health of any person and comply with applicable governmental laws and regulations. Client shall indemnify and hold Consultant harmless from any liability, loss, damage, or expense arising out of or with respect to the presence of hazardous materials on the Project site. The presence or discovery of any hazardous or toxic substance on the site shall be cause for extension of the schedule of Consultant's services and equitable adjustment of fees for Consultant as mutually agreed by the parties.

EXISTING CONDITIONS: Documents prepared by Consultant will be prepared based upon reasonable assumptions derived from existing information provided by Client and from observations of the existing conditions by Consultant without the benefit of field measurements and invasive investigation made undesirable by expense and inconvenience to Client. It is understood and agreed that unforeseen conditions uncovered during the progress of the Work may require changes in the Work resulting in additional cost and delay for which Client shall maintain sufficient contingency. Services required by such changes shall be provided as additional services per this Agreement.

DISCLAIMER OF THIRD-PARTY RELIANCE: Nothing contained in the Agreement shall create a contractual relationship or a cause of action in favor of a third party against either the Client or Consultant.

GOVERNING LAW: This Agreement for Professional Services shall be governed by, and performed in compliance with the laws of the state where the Project is located. Any mediation or litigation will reside in Nebraska.

ASSIGNMENT: Client and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the Agreement. Neither Client nor Consultant shall assign the Agreement without the written consent of the other, except that Client may assign this Agreement to a lender providing financing for the Project, provided that all monies owed Consultant are paid prior to the date of assignment.

PROJECT SCHEDULE : In the event Consultant is hindered, delayed, or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including but not limited to delays due to power or data system outages, acts of nature, public health emergencies including but not limited to infectious disease outbreaks and pandemics, governmental orders or direct failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely or approve or review Consultant's services or design documents, or delays caused by faulty performance by Client consultants, the time for completion of Consultant's services shall be extended by the period of resulting delay equitably adjusted. Client agrees that Consultant shall not be responsible for damages, nor shall the Consultant be deemed in violation of this Agreement due to such delays.

BILLING/PAYMENTS: Invoices for the Consultant's services shall be submitted, at the Consultant's option, either between completion of such services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. If the invoice is not paid within 30 days, the Consultant may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service. Retainers (if any) shall be credited on the final invoice. Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% (or the legal rate) on the then unpaid balance. In the event any portion or all an account remains unpaid 90 days after the billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

SUSPENSION AND TERMINATION: In the event of suspension of Services, as outlined above or for any other reason beyond Consultant's control, Consultant will have no liability to Client for delay or damage resulting from such suspension. Prior to resuming Services, Consultant shall be paid all fees earned prior to suspension together with all reimbursable expenses then due, along with any costs and expenses, including attorneys' fees, incurred collecting delinquent payments. In addition, Consultant's fees for remaining Services and associated time schedules will also be equitably adjusted.

The Agreement may be terminated for cause after a ten (10) day cure period by either party or for convenience with written notice by Client. Upon termination, all invoices presented by Consultant for Services provided, including reimbursable expenses then due and any costs incurred in pursuit of delinquent payments, shall become immediately due and payable. In the event of termination for convenience, Client shall pay to Consultant a termination fee of ten percent (10%) of fees not yet earned.

MISCELLANEOUS REQUESTS

In the event Consultant is requested by Client to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which Consultant is not a party, Client shall reimbursement Consultant for reasonable costs incurred in responding and compensate Consultant at its then standard rates for reasonable time incurred in gathering information and documentation and attending depositions, hearings, and trial.

PROPOSED INFRASTRUCTURE DEVELOPMENT
Walters Multi-Use Redevelopment Project

