

Linn Mar Community School District Excelsior Middle School Parking Lot and Access Improvements, Marion, Iowa
 HHE File No. _____

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of August 9, 2021 ("Effective Date") between Linn Mar Community School District ("Owner") and Hall & Hall Engineers Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Site Surveying and Civil Engineering Professional Services for the proposed Excelsior Middle School parking lot and access improvements. The proposal includes survey, conceptual and final design, preparation of construction plans and specifications, facilitating bidding process and full construction administration. ("Project").

Engineer's Services under this Agreement are generally identified as follows:

- A. Topographic Survey
 1. Complete topographic survey of the Project site.
 2. Collect surface features (structures, paving, trees, utility fixtures, existing property monuments, etc.) and horizontal locations of underground facilities (Design One-Call).

- B. Schematic Design
 1. Conduct an on-site traffic flows study for Staff and parent/bus drop-off operations to improve site traffic functionality, including a new access connection to Winslow Road.
 2. Prepare Schematic level plans showing the conceptual layout and circulation of the new parking lot, parent and bus drop-off facilities and access connection to Winslow Road. SD level plans also to include preliminary storm water management and utility layout concept.
 3. Meeting with Owner to review SD level plans.
 4. Revise SD level plans, if required, based on Owner input and facilitate a pre-application meeting with the City of Marion Engineering and Planning Departments.

- C. Design Development
 1. Prepare DD level Plans and Specifications for the proposed Project. Improvement plans to include demolition, grading, utilities, site layout and paving plans, soil/erosion sediment control plan and associated details and specifications relating to Project. All design shall be in accordance with Statewide Urban Design and Specifications (SUDAS) and City of Marion Supplemental Design Standard Specifications.
 2. Prepare storm water management and water quality calculations and report in accordance with Statewide Urban Design and Specifications (SUDAS) and City of Marion Supplemental Design Standard Specifications.
 3. Attend up to 3 Owner review meetings.

- D. Cost Estimating
 1. Prepare quantity tables and estimate of proposed improvements to be used during bidding phase of Project.

- E. Final Design Plans
 1. Generate final project drawings and specifications.

2. Submit the design plan documents to the City of Marion for review and final approval.
 3. Provide stamped drawings for permit and construction.
- F. Bidding Documents and Assistance
1. Prepare project manual.
 2. Facilitate bidding process. Owner to advertise and solicit bids for construction.
 3. Facilitate and lead pre-bid meeting and provide meeting summary.
 4. Provide PDF files of construction plans and specifications to Rapids Reproductions to assist in facilitation of the bidding process.
 5. Answer Contractor questions during bidding process
 6. Prepare addenda, if required
 7. Attend bid opening
 8. Review bids, prepare bid table and make recommendation for concurrence by the Owner.
- G. Landscape Planting Plan
1. Complete code minimum landscape design plans per City of Marion Design Guidelines.
- H. Storm Water Pollution Prevention Plan (SWPPP) and NPDES Permit
1. Prepare and submit NPDES General Permit No. 2 and gain NPDES Permit Authorization from the Iowa DNR.
 2. Prepare SWPPP (Storm water Pollution Prevention Plan). The Owner or General Contractor will be responsible for implementing, maintaining and updating the SWPPP as necessary. The SWPPP will be prepared for the entire site.
 3. Prepare Major Erosion Control Permit and submit to the City of Marion.
- I. Construction Administration (Assumes 4-month construction window)
1. Attend a preconstruction conference with the contractor and Owner to review project requirements.
 2. Review site civil shop drawings during construction.
 3. Review or prepare site civil RFI's and change orders during during construction.
 4. Review pay applications from Contractor
 5. Complete site visit with punch list at substantial completion of project.
 6. Complete follow-up visit to confirm punch list items are addressed.
 7. Issue letter stating site improvements are in compliance with project specifications.
 8. Attend 8 construction meetings.
 9. Complete 5 site visits during construction for construction observation and coordination of unforeseen conditions.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period.
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding N/A months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

- A. The obligation to continue performance 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 Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- 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 for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.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 of notice; 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, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer 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.

- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the 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, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. 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.

5.01 *General Considerations*

- 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. Subject to the foregoing standard of care, 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.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. 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) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the

construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.

- F. 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 (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and 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, on any other project, or for any other use or purpose, 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 its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) 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, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), 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.

7.01 *Basis of Payment—Lump Sum, (unless otherwise noted below), Plus Reimbursable Expenses*

A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

SERVICE	FEE
A. Topographic Survey	\$3,500
B. Schematic Design	\$8,500
C. Design Development	\$16,000
D. Cost Estimating	\$3,500
E. Final Design Plans	\$9,000
F. Bidding Documents and Assistance	\$5,000
G. Landscape Planting Plan	\$2,000
H. Storm Water Pollution Prevention Plan (SWPPP) and NPDES Permit	\$1,500
I. Construction Administration (Assumes 4-month construction window)	\$8,000
Fee Total	\$57,000
Estimated Expenses	
Cost for bidding, printing from Rapids Reproductions	\$800-\$1,200
Electrical Subconsultant Fee	\$4,000
Mileage, submittal fees, permit fees, etc.	\$600

**Expenses will be tracked separately per Note #2 below.*

1. Printing and office materials shall be considered incidentals and will be included in the fixed fee.
2. Owner to pay all fees and expenses for the project with no mark up. Fees shall include permits, submittal fees, mileage, etc. These costs are estimated in the above costs and shall be clearly identified on the invoice.

7.02 *Additional Services:* For additional services of Engineer’s employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer’s consultants’ charges, if any. Engineer’s standard hourly rates are attached as Appendix 1.

The following services are not included in the scope of services at this time:

- Any off-site improvements, such as roadway improvements to N 10th Street, Tower Terrace Road or Winslow Road
- Preliminary/Final Platting
- Boundary Retracement Survey
- Acquisition Plat for right of way dedications for Tower Terrace Road and Winslow Road

- Easement dedications or vacations
- Construction Staking
- Traffic Impact Study/Analysis
- Tree Mitigation
- Wetland Mitigation
- Environmental permitting or geotechnical design and/or coordination
- Site layout revisions after Plan of Improvements are approved at Design Development phase
- Lighting and Photometrics Plan
- Hardscape Design
- Structural design of retaining walls, seat walls, masonry fencing and dumpster enclosure by others

7.03 *Assumptions:*

- Owner to coordinate private utility locates at project site.
- Existing tennis court and track and field facilities will remain undisturbed

Attachments: Appendix 1, Engineer's Standard Hourly Rates, Appendix 2, Special Provisions

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

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OWNER:

By: _____

Title: _____

Date Signed: _____

ENGINEER:

By: Brent Jackman, P.E.

Title: Project Manager

Date Signed: August 9, 2021

Engineer License or Firm's Certificate
Number: 421308857

State of: Iowa

Address for giving notices:

Linn Mar Community School District

2999 North Tenth Street

Marion IA 52302

Address for giving notices:

Hall & Hall Engineers Inc.

1860 Boyson Road

Hiawatha IA 52233

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated Aug. 9, 2021

Engineer's Standard Hourly Rates

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. Hourly rates for services performed on or after the Effective Date are:

POSITION	LEVEL		
	I	II	III
Team Leader	\$133/hour	\$138/hour	\$148/hour
Project Manager	\$123/hour	\$128/hour	\$138/hour
Associate Team Leader	\$103 /hour	\$113/hour	\$123/hour
Project Coordinator	\$83/hour	\$98/hour	\$113/hour
Project Engineer	\$108/hour	\$113/hour	\$123/hour
Design Engineer	\$93/hour	\$98/hour	\$108/hour
Civil Engineering Technician	\$83/hour	\$93/hour	\$103/hour
Project Landscape Architect	\$108/hour	\$113/hour	\$123/hour
Design Landscape Architect	\$93/hour	\$98/hour	\$108/hour
Landscape Architect Technician	\$83/hour	\$93/hour	\$103/hour
Project Surveyor	\$120/hour	\$125/hour	\$135/hour
Lead Field Surveyor	\$100/hour	\$110/hour	\$120/hour
Design Surveyor	\$80/hour	\$95/hour	\$110/hour
Field Surveyor	\$85/hour	-----	-----
Construction Administrator	\$108/hour	\$118/hour	\$128/hour
Construction Observer	\$83/hour	\$98/hour	\$113/hour
Administrator	\$63/hour	\$78/hour	\$93/hour
Intern	\$50/hour	\$60/hour	-----
Expert Witness	\$185/hour		
Traffic Data Collector	\$80/hour for staff & \$40/hour for intern		
Mileage – Personal Vehicle	\$0.58/mile		
Mileage - Company Truck	\$0.79/mile		
Install and monitor sewer flow meter	\$150/week		

This is **Appendix 2, Special Provisions**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated Aug. 9, 2021

Special Provisions to this Agreement

Modify paragraph 2.01A as follows:

Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% (or the maximum rate of interest permitted by law, if less). If any portion or all of an account remains unpaid 90 days after the invoice date, the Owner shall pay all costs of collection, including reasonable attorney's fees and said accounts may be assigned to a credit agency, be the basis of mechanics liens, or any and all other debt collection remedies available. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal. Invoices paid by credit card will be charged an additional 4% service charge.

Additional Terms and Conditions

Access to Site: Unless otherwise stated, the Engineer will have access to the site for activities, but has not included in the fee the cost of restoration of any resulting damage.

Information Provided By Others: Owner shall furnish at the Owner's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Engineer may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The Engineer shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Owner and/or the Owner's consultants and contractors.

Hazardous Materials: The Owner agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer and its sub-consultants from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under

breach of contract or warranty, tort, including negligence, strict liability or statutory liability, regulatory or any other cause of action, except for the sole negligence or willful misconduct of the Engineer.

Certifications, Guarantees and Warranties: The Engineer shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence the Engineer cannot ascertain.

Fiduciary Responsibility: The Engineer shall not offer any fiduciary service to the Owner and no fiduciary responsibility shall be owed to the Owner by the Engineer or any of its sub-consultants, as a consequence of the Engineer entering into this Agreement with the Owner.

Opinions of Probable Construction Cost: In providing opinions of probable construction cost, the Owner understands that the Engineer has no control over the cost or availability of labor, equipment or materials, or over market conditions or the method of pricing, and that the Engineer's opinions of probable construction costs are made on the basis of the Engineer's professional judgment and experience. The Engineer makes no warranty, express or implied, that the bids or the negotiated cost of Project construction will not vary from the Engineer's opinion of probable construction cost.

Validity of Pricing for Services: The scope, schedule and compensation listed for services in this Agreement shall be valid for 30 days from the date Engineer has signed the agreement. Scope, schedule and compensation are subject to change after the above 30 days have expired.

Mutual Indemnification

The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its officers, directors and employees against damages arising directly from the Engineer's negligent performance of the services under this Agreement and that of its sub-consultants or anyone for whom the Engineer is legally liable. Notwithstanding the foregoing agreement to indemnify and hold harmless, the parties expressly agree that Engineer has no duty to defend the Owner from and against any claims, causes of action, or proceedings of any kind.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors and employees against damages arising directly from the Owner's negligence of the services under this Agreement and that of its contractors, subcontractors or consultants or anyone for whom the Owner is legally liable. Notwithstanding the foregoing agreement to indemnify and hold harmless, the parties expressly agree that Owner has no duty to defend the Engineer from and against any claims, causes of action, or proceedings of any kind.

Neither the Owner nor Engineer shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or the negligence of others.

Clarification to the Definition of Engineer

For the purposes of this Agreement, services provided by the Engineer may include land surveying, landscape architecture, and environmental services in addition to civil engineering.

Clarification to the Definition of Owner

For the purposes of this Agreement, the Owner may be a general contractor, sub-contractor, individual, corporation, non-profit, consultant, and any other type of entity for which the Engineer is providing services.

Electronic Data Release

The owner exercises the right to request that the Engineer provide a copy of their electronic survey, design and/or data file(s) pertaining to this project. Said electronic file(s) may be preliminary and may not be complete or in final form and shall not be intended for construction use. Owner's use or reuse, reproduction, dissemination, and/or review (both internally and externally) shall be at the Owner's risk and full legal responsibility. Owner shall be fully and solely responsible for reconciling of said electronic files with final certified hard copies produced by the Engineer. Only the final certified hard copies of the survey, design and/or data files shall be the official plans and documents for the project.

By signing this agreement the Owner does hereby agree to indemnify and hold the Engineer, it's manager(s), member(s), officers, agents and employees harmless from any claims, suits, damages, liability, demands or costs, including attorney fees resulting from or arising out of the use or misuse of said electronic survey, design and/or data file(s) by Owner. In the event of suit for breach and/or enforcement of this agreement, Owner agrees to pay all attorney fees incurred by Engineer.

The Engineer retains ownership and a property interest in all electronic data prepared to complete the Engineer's services, including AutoCAD Drawing files ("CAD Data"). Upon Owner's request for CAD Data and signing Engineer's release form, Engineer will furnish CAD Data to Owner or others designated by the Owner. CAD Data will include two-dimensional horizontal line data needed to establish horizontal alignments and control. The furnished data, along with control points, elevations and grades shown on Engineer's plans can be used by others for construction

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surveys. Engineer will not provide construction survey support to others using
Engineer's CAD Data.