RESOLUTION NO. 2015-16

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THAT CERTAIN ENGINEERING SERVICES AGREEMENT BY AND BETWEEN THE CITY OF BASEHOR, KANSAS AND SCHLAGEL & ASSOCIATES, P.A., REGARDING THE DONAHOO ROAD IMPROVEMENT PROJECT IN BASEHOR, KANSAS

WHEREAS, the City of Basehor, Kansas wishes to enter into that certain Engineering Services Agreement with Schlagel & Associates, P.A., regarding Donahoo Road improvements from approximately 200 feet West of K-7 Highway to 141st Street, attached hereto as **Exhibit A**.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF BASEHOR KANSAS:

Section 1. That the Governing Body approves and hereby authorizes the Mayor to execute the Engineering Services Agreement with Schlagel & Associates, P.A., attached as **Exhibit A**.

Section 2. That this resolution shall become effective upon passage.

PASSED by the Governing Body this 19th day of October, 2015.

APPROVED by the Mayor this 19th day of October, 2015.

[SEAL]

SEAL OF THE CITY OF BASEHOR, KANSAS
CORPORATE
SEAL

David K. Breuer, Mayor

ATTEST:

Katherine M. Renn, City Clerk

APPROVED AS TO FORM:

Shannon M. Marcano, City Attorney

Exhibit A
Engineering Services Agreement

To be attached.

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made in Leavenworth County, Kansas, by and between the City of Basehor, Kansas, hereinafter "City," and Schlagel & Associates, P.A., herein after "Consulting Engineer." City intends to construct an improvement project (hereinafter the "Project") in Basehor, Kansas, described as follows:

Donahoo Road from approximately 200 feet West of K-7 Highway to 141st Street (approximately 800 feet) as described in more detail in Exhibit A.

City hereby contracts with Consulting Engineer for the furnishing of professional engineering services in connection with the Project, for the furnishing of such engineering services more particularly described herein in consideration of the mutual covenants herein set forth. By executing this Agreement, the Consulting Engineer represents to City that Consulting Engineer is professionally qualified to do this Project and is licensed to practice engineering by all public entities having jurisdiction over Consulting Engineer and the Project.

SECTION I - DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by the Agreement, and other forms of any defined words shall have a meaning parallel thereto.

"City" means the City of Basehor, Kansas.

"Consulting Engineer" means the company identified on pg. 1. Consulting Engineer shall employ for the services rendered herein, only those engineers, architects, landscape architects, and surveyors licensed by the Kansas State Board of Technical Professions.

"Construction Cost" means and includes the cost of the entire construction of the Project, including all supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed, without deduction on account of penalties, liquidated damages or other amounts withheld from payment to the contractor or contractors, but such cost shall not include the Consulting Engineer's fee, or other payments to the Consulting Engineer and shall not include cost of land or rights-of-way and easement acquisition.

"Contract Documents" means those documents so identified in the Agreement for Construction for this Project, including all Engineering Documents. All terms defined in the General Conditions of the Agreement for Construction for this Project shall have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement shall prevail in the interpretation of

this Agreement.

"Contract Time" means time for completion which is February 28, 2016.

"Engineering Documents" means all documents required or reasonably implied by the nature of the Project, including, but not limited to, plans, specifications, drawings, tracings, designs, calculations, sketches, models and reports.

"Engineering Services" means the professional services, labor, materials, supplies, testing, surveying, title work, inspection, if applicable, and all other acts, duties, and services required of Consulting Engineer under this Agreement together with such other services as City may require pursuant to the terms of this Agreement.

"Project" is as above described.

"Project Manager" means the person employed by City and designated to act as the City's representative for the Project.

"Right-of-Way" and "Easements" means and includes street, highway, or road right-of-way and any other land dedicated to or otherwise subject to public use.

"Subsurface Borings and Testing" means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment.

"Traffic Control Plan" means a specific plan that includes but is not limited to signage; application and removal of pavement markings; construction sequencing and scheduling; methods and devices for delineation and channelization; placement and maintenance of devices; traffic regulation; and inspection.

SECTION II - COMPENSATION

1. Total Fee: City agrees to pay Consulting Engineer an amount not to exceed Forty-five thousand eight hundred forty dollars ($45,840), including reimbursables. The fee is based on the performance of the scope of services outlined in this Agreement, and shall be billed as a percentage of the maximum fee per phase and equipment charges as set forth in **Exhibit B** attached herewith, plus direct expenses, such as in-house printing, mileage, etc. Payment to Consulting Engineer shall not exceed the following percentages in each phase of the Project without prior written consent of City:

Preliminary Design	29.2%
Final Design	23.3%
Bidding	3.4%
Construction Services	6.2%
Construction Engineering	37.9%
TOTAL	100.0 %

2. Reimbursable Expenses: The Consulting Engineer shall be reimbursed at the actual cost, not to exceed a total expense of $750.00 for the following expenses: (a) expense of transportation in connection with the Project; (b) expenses in connection with authorized out-of-town travel; (c) long-distance communications; (d) expenses of printing and reproductions; (e) postage and facsimile transmissions; (f) expenses of renderings and models requested by City, (g) title company (O & Es); and (h) other costs as authorized by City.

3. Additional Services: Consulting Engineer shall provide, with City's concurrence, services in addition to those listed in Section III when such services are requested or authorized in writing by City. Prior to commencing any additional services, Consulting Engineer must submit a proposal outlining the additional services to be provided, estimation of total hours, completion date, and a maximum fee based upon the hourly rate schedule attached hereto as **Exhibit B**. Such services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by Section III, preparing changes in plans ordered by City or made necessary by causes beyond the control of Consulting Engineer, providing services necessitated in the event the Engineering Services shall be suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by the Consulting Engineer, and providing any other special services not otherwise covered by this Agreement which may be requested by City. Payment to Consulting Engineer, as compensation for these services, shall be in accordance with the hourly rate schedule attached as **Exhibit B**. Reimbursable expenses incurred in conjunction with additional services shall be paid separately and those reimbursable expenses shall be paid at actual cost. Records of reimbursable expenses and expenses pertaining to additional services shall be made available to City, if so requested.

4. Special Services: Consulting Engineer may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. Consulting Engineer shall not be paid extra by City if its appearance is to defend its professional Engineering Services. If Consulting Engineer is requested, in writing, by City, to appear as a general witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as **Exhibit B**.

5. Billing: Consulting Engineer shall bill City monthly for all completed services and reimbursable expenses. The bill submitted by Consulting Engineer shall itemize the

services and reimbursable expenses for which payment is requested. City agrees to pay Consulting Engineer within thirty (30) days of approval by the Governing Body.

6. City's Right to Withhold Payment: In the event City becomes credibly informed that any representations of Consulting Engineer provided in its monthly billing, are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consulting Engineer until the inaccuracy and the cause thereof, is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact shall be made known to Consulting Engineer immediately. Consulting Engineer will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City shall be paid to Consulting Engineer in accordance with the contract payment procedures.

7. Progress Reports: A progress report must be submitted with each monthly pay request indicating the percentage of design tasks completed to date. This report will serve as support for payment to Consulting Engineer

8. Change in Scope: For substantial modifications in authorized Project scope, and/or substantial modifications of drawings and/or specifications previously accepted by City, when requested by City and through no fault of Consulting Engineer the Consulting Engineer shall be compensated for time and expense required to incorporate such modifications at Consulting Engineer's standard hourly rates per **Exhibit B**; provided, however, that any increase in total fee or Contract Time must be approved through a written change order. Consulting Engineer shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Consulting Engineer's negligence or other actionable fault.

9. Change Orders: This Agreement may be amended to provide for additions, deletions and revisions in the Engineering Services or to modify the terms and conditions thereof by either written amendment or by change order. The total fee and Contract Time may only be changed by a written change order approved by City. If notice of any change affecting the general scope of the Engineering Services or provisions of this Agreement, including but not limited to, total fee or Contract Time, is a requirement of any insurance policy held by Consulting Engineer as a requirement of this Agreement, the giving of such notice shall be the Consulting Engineer's responsibility.

SECTION III - RESPONSIBILITIES OF CONSULTING ENGINEER/ARCHITECT

Consulting Engineer shall furnish and perform the various professional duties and services in all phases of the Project to which this Agreement applies as herein provided and

which are required for the construction of the Project which services shall include:

A. PRELIMINARY DESIGN PHASE

1. Services: The services to be provided during this phase are set out in **Exhibit A** attached hereto and incorporated by reference.
2. Preliminary Design Documents: Consulting Engineer shall furnish the City two (2) copies of the preliminary design documents, unless otherwise noted in **Exhibit A**.
3. Preliminary Cost Estimate: Consulting Engineer shall furnish City an estimate of probable Construction Cost based on the preliminary design of the Project. Consulting Engineer's estimate of probable Construction Cost is to be made on the basis of Consulting Engineer's experience and qualifications and represent Consulting Engineer's best judgment as an experienced and qualified design professional, familiar with the construction industry.
4. Budget: Consulting Engineer shall advise City if, in its opinion, the amount budgeted for construction is not sufficient to adequately design and construct the improvement as requested prior to commencement of final design phase.

B. FINAL DESIGN PHASE

1. Services: The services to be provided during this phase are set out in **Exhibit A** attached hereto and incorporated by reference.
2. Final Design Documents: Consulting Engineer shall furnish City three (3) copies, unless otherwise noted in **Exhibit A**, of the final design plans and shall also prepare the necessary plans and applications for permits for submission to and approval of local, county, state and federal authorities having proper jurisdiction as may be required for initiation, prosecution and construction of the Project.
3. Contract Documents: Consulting Engineer shall prepare contract agreement forms, final design plans, general conditions and supplementary conditions, bid forms, invitations to bid and instructions to bidders, all to be approved by the City, and assist in the preparation of other related documents, unless such documents are provided by City.
4. Final Cost Estimate: Consulting Engineer shall furnish City an estimate of probable Construction Cost based on final design. This estimate is commonly known as the "Engineer's Estimate" and will be used as the basis for construction contract award.
5. Budget: Consulting Engineer shall advise City if, in its opinion, the amount

budgeted for the Project is not sufficient to cover all Project costs, including but not limited to, construction, right-of-way and easement acquisition, inspection and testing prior to bidding phase.

C. BIDDING PHASE

1. Services: The services to be provided during this phase are set out in **Exhibit A** attached hereto and incorporated by reference.

2. Bids Exceeding Cost Estimate: If all bids exceed Consulting Engineer's Final Cost Estimate, Consulting Engineer, at the request of City and for no additional cost, will prepare a report for City identifying why all the bids exceed the estimate. The City, in its sole discretion, has four (4) options if all bids exceed Consulting Engineer's estimate:(1) consider approval of an increase in the project cost; (2) authorize rebidding of the project; (3)terminate the Project and this Agreement; or (4) cooperate in revising the Project scope or specifications, or both, as necessary to reduce the construction cost. In the case of (4), Consulting Engineer, shall consult with City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the Consulting Engineer's estimate.

D. CONSTRUCTION SERVICES PHASE

1. Services: The services provided during this phase are set out in **Exhibit A** attached hereto and incorporated herein.

2. Additional Drawings: If during construction, situations arise which require additional drawings or details, Consulting Engineer agrees to provide such additional drawings or details at no cost to City when the additional drawings or details are required to correct Consulting Engineer's errors or omissions or clarify Consulting Engineer's intent in the original design and preparation of construction drawings. If such situations occur through no fault of Consulting Engineer, or are beyond his/her control, both parties agree that hourly rates will be as stated in **Exhibit B**. Additional drawings shall be authorized through a change order.

3. Staking: Unless otherwise provided, staking shall be included in the bid specifications to be performed by the construction contractor.

4. Notice of Defects: If, based on Consulting Engineer's involvement during the construction phase, Consulting Engineer observes or otherwise becomes aware of any defect in the work, he shall give prompt written notice to City of such defects and their approximate location on the Project. However, Consulting

Engineer shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions, inspections and programs in connection with the work, since these are solely the contractor's responsibility under the contract for construction. Consulting Engineer shall not be responsible for the contractor's schedules or failure to carry out the work in accordance with the Contract Documents.

Consulting Engineer shall not have control over or charge of acts or omissions of the contractor, contractor's subcontractors, or their agents or employees.

5. Shop Drawings: Consulting Engineer shall review and take appropriate action on contractor's shop drawings and samples, and the results of tests and inspections and other data which each contractor is required to submit for the purposes of checking for compliance with the design concept and conformance with the requirements of the Contract Documents. Such review shall not extend to means, methods, sequences, techniques or procedures of construction, or to safety precautions and programs incident thereto, unless an obvious deficiency exists wherein Consulting Engineer will advise City of such defect or deficiency so the same can be prevented.

6. Record Drawings: The Consulting Engineer shall prepare final plan drawings which reflect change orders, minor design changes and which include changes made in the field and which are marked on the construction plan set provided by the City. Because some of the data contained on the "Record Drawings" may be based on unverified information provided by others, the Consulting Engineer does not warrant the accuracy of information provided by others.

E. CONSTRUCTION ENGINEERING PHASE

Services: The services provided during this phase are set out in **Exhibit A** attached hereto and incorporated herein.

F. GENERAL DUTIES AND RESPONSIBILITIES

1. Responsibilities under the General Conditions of the Contract for Construction: In addition to the responsibilities herein set forth, Consulting Engineer/Architect agrees to be responsible for those matters identified in the General Conditions (Section V of this Agreement) as being responsibilities of the Consulting Engineer. The General Conditions for the Project shall be per the Engineers Joint Contract Documents Committee current version as of the execution of this Agreement.

2. Personnel: Consulting Engineer shall assign only qualified personnel to perform any service concerning the Project. At the time of execution of this Agreement,

the parties anticipate that the following individual will perform as the principal on this Project: Mark A. Breuer. The City will be notified in writing immediately if this individual changes. As project manager on this Project, this person shall be the primary contact with the City's project manager and shall have authority to bind Consulting Engineer. So long as the individual named above remains actively employed or retained by Consulting Engineer, he/she shall perform the function of project manager on this Project.

3. Subsurface Borings & Material Testing: If tests, additional to those provided for in **Exhibit A**, are required for design, Consulting Engineer shall prepare specifications for the taking of the additional borings. Such subsurface borings and testing, as defined herein, shall be provided by Consulting Engineer or its subcontractors and compensated as an Additional Service, to be agreed upon on the Change Order.

4. Service By and Payment to Others: Any work authorized in writing by City and performed by anyone other than Consulting Engineer or its subcontractors in connection with the proposed Project shall be contracted for and paid for by City directly to the third party or parties. In addition to payments for professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other work required or requested by City or Consulting Engineer which is not defined within the scope of services of Consulting Engineer. Fees for such extra work shall be subject to negotiation between City and the third party. Fees shall be approved prior to the execution of any extra work. Although Consulting Engineer may assist City in procuring such services of third parties, Consulting Engineer shall in no way be liable to either City or such third parties in any manner whatsoever for such services or for payment thereof.

5. Subcontracting of Service: Consulting Engineer shall not subcontract any of the Engineering Services to be performed under this Agreement without first obtaining the written approval of City regarding the Engineering Services to be subcontracted and the consulting firm or person proposed to accomplish the subcontracted portion of the Project. Unless otherwise stated in the written consent to subcontracting the Engineering Services to be performed under this Agreement, no subcontract will release or discharge the Consulting Engineer from any obligation under this Agreement. Any person or firm proposed for subcontracting Engineering Services under this Agreement shall maintain

throughout the duration of the Agreement, insurance as provided in Section V. D. (8) herein, and shall additionally maintain Professional Liability insurance in a minimum amount of $1,000,000 per claim and provide the City with certification thereof.

6. Endorsement: Consulting Engineer shall sign and seal all final plans, specifications, estimates and engineering data furnished by him/her. Any review or approval by City of any documents prepared by the Consulting Engineer, including but not limited to the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent with City's construction program and intent and shall not be construed as approval of same by City. No review of such documents shall relieve Consulting Engineer of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work.

7. Inspection of Documents: Consulting Engineer shall maintain all Project records for inspection by City during the contract period and for three (3) years from the date of final payment.

SECTION IV - CITY OF BASEHOR RESPONSIBILITIES

1. Communication: City shall provide to Consulting Engineer information and criteria regarding City's requirements for the Project; examine and timely respond to Consulting Engineer's submissions; and give written notice to Consulting Engineer, who shall respond promptly, whenever City observes or otherwise becomes aware of any defect in the Engineering Services.
2. Access: City will provide access for Consulting Engineer to enter public property, and private property when the City has authority to provide access.
3. Duties: City shall furnish and perform the various duties and services in all phases of the Project which are outlined and designated in **Exhibit A** as City's responsibility.
4. Program and Budget: City shall provide full information, including a program which shall set forth City's objectives, schedule, constraints, budget with reasonable contingencies, and other necessary design criteria.
5. Project Representative: City shall designate a Project Manager to represent City in coordinating this Project with Consulting Engineer, with authority to transmit instructions and define policies and decisions of City.

SECTION V - GENERAL PROVISIONS

A. TERMINATION

1. Notice: City reserves the right to terminate this Agreement in whole or in part either for cause or for its convenience and without cause or default on the part of Consulting Engineer, by providing ten (10) days' written notice of such termination to Consulting Engineer. Upon receipt of such notice from City, Consulting Engineer shall, at City's option as contained in the notice: (1) immediately cease all Engineering Services; or (2) meet with City and, subject to City's approval, determine what Engineering Services shall be required of Consulting Engineer in order to bring the Project to a reasonable termination in accordance with the request of City. Consulting Engineer shall also provide to City copies of all drawings and documents completed or partially completed at the date of termination.

   If City defaults on its obligation under this Agreement, Consulting Engineer must give written notice to the City and give the City an opportunity to cure. If the City does not cure within ten (10) days, Consulting Engineer is entitled to terminate this Agreement by providing ten (10) days' written notice.

2. Termination for Cause: If this Agreement is terminated by the City for cause, after notice to Consulting Engineer, City may take over the Engineering Services and prosecute same to completion, by contract or otherwise. When Consulting Engineer's services have been so terminated, such termination shall not affect any rights or remedies of the City against Consulting Engineer then existing or which may later accrue. Similarly, any retention or payment of monies due Consulting Engineer shall not release Consulting Engineer from liability.

3. Compensation for Convenience Termination: If City shall terminate for its convenience as herein provided, City shall compensate Consulting Engineer for all Engineering Services completed to date of its receipt of the termination notice and any additional Engineering Services requested by City to bring the Project to reasonable termination. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

4. Compensation for Cause Termination: If City shall terminate for cause or default on the part of Consulting Engineer, City shall compensate Consulting Engineer for the reasonable cost of Engineering Services completed to date of its receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. City also retains all its rights and remedies against Consulting Engineer including but not limited to its

rights to sue for damages.

5. Incomplete Documents: Neither Consulting Engineer, nor its subconsultants shall be responsible for errors or omissions in documents which are incomplete as a result of an early termination under this Section; Consulting Engineer having been deprived of the opportunity to complete such documents and certify them as ready for construction.

B. DISPUTE RESOLUTION

City and Consulting Engineer agree that disputes relative to the Project should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, Consulting Engineer shall proceed with the Engineering Services as per this Agreement as if no dispute existed. The City shall withhold 10% of the monthly billing until the dispute is resolved, and shall continue to make the remainder of the payment for Consulting Engineer's completed Services; and provided further that no dispute will be submitted to arbitration without both parties' express written consent.

C. OWNERSHIP OF ENGINEERING DOCUMENTS

All engineering documents prepared in connection with this Project shall be the property of the City once the Consulting Engineer is paid in full for its services, whether the Project for which they are made is executed or not. The Consulting Engineer may retain a copy of all final documents, including but not limited to prints and reproductions. City does not take any responsibility for the reuse of documents by others.

D. INSURANCE

1. General

The Consulting Engineer shall maintain, throughout the duration of this Contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Professional Liability may be written on a "claims made" basis. Consulting Engineer shall provide certificates of insurance and renewals thereof on forms provided by the City or on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Consulting Engineer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

2. Notice of Claim Reduction of Policy Limits

The Consulting Engineer, upon receipt of notice of any claim in connection with the Contract, shall promptly notify the City, providing full details

thereof, including an estimate of the amount of loss or liability.

The Consulting Engineer shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) if the Consulting Engineer's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Consulting Engineer shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

3. General Liability

Limits -

General Aggregate:	$ 500,000
Products / Completed Operations:	$ 500,000
Personal & Advertising Injury:	$ 500,000
Each Occurrence:	$ 500,000

Policy MUST include the following conditions:

a. Commercial General Form
b. Explosion, Collapse & Underground
c. Broad Form Contractual / Contractually Assumed Liability
d. Independent Contractors
e. Broad Form Property Damage
f. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
g. Name City of Basehor as "Additional Insured"

4. Automobile Liability

Policy shall protect the Consulting Engineer against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle.

Limits -

Each Accident, Combined Single Limits, Bodily Injury and Property Damage:

Same as General Liability

Policy MUST include the following condition:

Name City of Basehor as "Additional Insured"

5. Workers' Compensation

This insurance shall protect the Consulting Engineer against all claims under applicable state workers' compensation laws. The Consulting Engineer

shall also be protected against claims for injury, disease or death of its employees for which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation: Statutory

Employers Liability -

Bodily Injury by Accident:	$ 100,000 Each Accident
Bodily Injury by Disease:	$ 500,000 Policy Limit
Bodily Injury by Disease:	$ 100,000 Each Employee

6. Professional Liability

The Consulting Engineer shall maintain throughout the duration of this Contract, Professional Liability Insurance in an amount not less than One Million Dollars ($1,000,000.00) per claim and annual aggregate.

7. Industry Ratings

The City will only accept coverage from an insurance carrier who offers proof that it:

a. Is licensed to do business in the State of Kansas;
b. Carries a Best's policyholder rating of A- or better; and
c. Carries at least a Class VIII financial rating.

OR

Is a company mutually agreed upon by the City and Consulting Engineer.

8. Subconsultants' Insurance

If a part of the Agreement is to be sublet, the Consulting Engineer shall either:

a. Cover all subconsultant in its insurance policies, or
b. Require each subconsultant not so covered to secure insurance which will protect subconsultant against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Consulting Engineer shall indemnify and hold harmless the City as to damages, liabilities or costs, including reasonable attorney's fees, to the extent arising out of the acts or omissions of its subconsultants.

E. INDEMNITY

1. Definition: For purposes of indemnification requirements, the term "Loss" shall have the meaning set forth as follows:

"Loss" means damage, liability or costs, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and

the cost of defense), for injury, including death, to person or persons or damages to or Loss of, property of person, firm or corporation, including the parties hereto, which to the extent arise out of or are connected with, negligent acts, errors or omissions of Consulting Engineer whether arising before or after the completion of the Engineering Services required hereunder.

2. Indemnity: For purposes of this Agreement, Consulting Engineer hereby agrees to indemnify, defend and hold harmless the City and its employees and agents from Loss, damages or alleged damages caused or incurred as a result of the negligence or other fault of the Consulting Engineer, its affiliates, subsidiaries, employees, agents and subconsultants and their respective servants, agents and employees.

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Consulting Engineer, its affiliates, subsidiaries, or subcontractor/assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Consulting Engineer, its affiliates, subsidiaries, or subcontractor/assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

F. AFFIRMATIVE ACTION/OTHER LAWS

1. During the performance of this Agreement, the Consulting Engineer agrees that:

   a. Consulting Engineer shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;

   b. in all solicitations or advertisements for employees, the Consulting Engineer shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

   c. if the Consulting Engineer fails to comply with the manner in which the Consulting Engineer reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consulting Engineer shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the

City;

d. if the Consulting Engineer is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, the Consulting Engineer shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the City; and

e. the Consulting Engineer shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by a Consulting Engineer:

- who employs fewer than four employees during the term of such contract; or
- whose contracts with the City cumulatively total $5,000 or less during the fiscal year of the City.

2. The Consulting Engineer further agrees that the Consulting Engineer shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

G. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.

H. APPLICABLE LAW

This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

I. ASSIGNMENT OF AGREEMENT

This Agreement shall not be assigned or transferred by Consulting Engineer without the written consent of the City.

J. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

K. INDEPENDENT CONTRACTOR

The Consulting Engineer is an independent contractor and as such is not an agent or employee of the City.

L. WORK DELIVERABLE FORMAT

1. Project Drawings: Project drawings which are developed by Consulting Engineer through the use of a Computer Aided Drafting (CAD) System shall be made available to City by providing a Microsoft compatible compact disc. However, due to the potential that the information set forth on the electronic media (disk) can be modified by City, or City consultants, unintentionally or otherwise, Consulting Engineer shall remove all indices of its ownership, professional corporation name, seal, and/or involvement from each electronic display. For documentation purposes, two sets of an original electronic media (disk) and two (11" x 17" size or larger) duplicate hard copy sets will be prepared. One set will be given to City and one set will be retained by Consulting Engineer. If City provides such electronic media (disk) to others for any purpose, City shall require the electronic media (disk) to be returned to City upon completion of such use. City recognizes that use of such electronic media (disk) will be at City's sole risk and without any liability risk or legal exposure by Consulting Engineer.
2. Project Documentation: All documentation provided to the City other than project drawings shall be furnished on a Microsoft compatible compact disc.

N. COVENANT AGAINST CONTINGENT FEES

Consulting Engineer warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Consulting Engineer, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

O. COMPLIANCE WITH LAWS

Consulting Engineer shall abide by applicable federal, state and local laws, ordinances and regulations applicable to the Engineering Services or the Project at the time Services are rendered. Consulting Engineer shall secure occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this

Agreement.

P. TITLES, SUBHEADS AND CAPITALIZATION

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

Q. SEVERABILITY CLAUSE

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

R. EXECUTION OF CONTRACT

The parties hereto have caused this Agreement to be executed in triplicate this 19th day of October 2015.

Schlagel & Associates, P.A.

By: _____
Authorized Signatory

Mark Breuer
Principal/Engineering Manager

CITY OF BASEHOR, KANSAS

_____
David K. Breuer
Mayor

SEAL OF THE CITY OF BASEHOR, KANSAS
CORPORATE
SEAL

ATTEST:

_____
Katherine M. Renn
City Clerk

APPROVED AS TO FORM:

_____
Shannon M. Marcano
City Attorney

EXHIBIT A
Scope of Work

Scope of project: This project includes design, plans, and specifications to be used for construction of Donahoo Road from approximately 200 feet West of K-7 Highway to 141st Street which is approximately 800 linear feet in length.

General Design Requirements:
All plan development stages shall be completed no later than the current project schedule's due dates, exclusive of delays beyond the consultant's control. The consultant shall submit to the progress reports at monthly or at mutually agreed intervals in conformity with the official project schedule.

The consultant shall design the Project in conformity with the state and federal design criteria appropriate for the Project in accordance with the current most recent version of the Manual on Uniform Traffic Control Devices (MUTCD), and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and the current version of the Basehor Technical Specifications for Public and Private Improvements with Special Provisions, and KDOT Corridor Management Construction Project Guidelines with Special Provisions.

The Design plans shall be signed and sealed by the licensed professional engineer responsible for the preparation of the design plans. Geological investigations or studies shall be signed and sealed by the licensed Geologist responsible for the preparation of the geological investigations or studies. Rights of way descriptions shall be signed and sealed by the licensed land surveyor responsible for the preparation of the rights of way descriptions.

Task I. Preliminary Design

1.01 Data Collection.

A. Attend pre-design meeting.
B. Develop design criteria for the project; prepare design memorandum for two
(2) Design concepts: one will utilize a storm drainage system and one will utilize a ditch section.
C. Develop detailed design schedule. Submit copy to City. Include at least the following benchmarks:
1. Survey complete.
2. Data collection complete.
3. Preliminary plans complete.
4. Preliminary plans to all utilities.
5. Field check complete.
6. Legal descriptions to City.
7. Public meeting.
8. All other agency permit applications submitted.

9. Final plans submitted for review.
10. Project ready for bid.

D. Schedule and coordinate project activities with KDOT and the City (where applicable).

E. Field data collection:
1. Establish land corners.
2. Field survey. Width of survey shall be 200' centered on existing roadway.
3. Contact utilities and field locate all utilities.
4. Low opening elevation of all existing structures.
5. Stream crossing elevation data, including historical high-water elevations where applicable.
6. Pictures of the project.

F. Ownership and abutting property information:
1. Secure plats
2. Obtain ownership information for up to five (5) properties. The City shall approve the title company for ownership information investigations. The costs associated with ownership information investigations shall be paid by the Consulting Engineer to the title company. This cost shall be included in the total compensation fee as outlined in Section II of the Engineering/Architectural Services Agreement.
3. Collect record drawings on abutting projects and subdivisions.

G. With the City, determine the required lane configurations and traffic control along the project. Analyze the existing geometries along the project and determine traffic control and/or geometric improvement recommendations as might be warranted.

H. Analyze the storm drainage needs along the project.
1. Determine watershed areas for all streams and basins draining onto the proposed roadway.
2. Determine ultimate development land uses for all watershed and sub-basin areas draining onto project.
3. Determine ultimate development 5-year., 25-year, and 100-year stormwater flows crossing or entering the proposed roadway.
4. Locate all storm drainage system discharges upstream from the project.

I. Prepare an analysis of the construction phasing and traffic control needs to maintain acceptable access to the existing land uses along the project corridor.

1.02 Prepare base map at a scale of 1:20 showing both contours at 1 foot intervals and property lines.

A. Develop preliminary plans:
1. Cover sheet.
2. Typical sections.
3. Pavement design

4. Subsurface drainage design
5. Surface drainage design
    a. Drainage area maps.
    b. Pavement spread calculations.
    c. Inlet and other structure design calculations.
    d. Hydraulic grade calculations.
6. Plan and Profile sheets
    a. Plan scale = 1:20
    b. Profile scale H = 1:20; V = 1:5
7. Length of tapers and storage lanes for turn lanes.
8. Driveway profiles
9. Preliminary traffic control for construction plan sheets.
10. Preliminary street lighting.
    a. Pole locations.
    b. Define design parameters.
11. Preliminary pavement marking and signing.
12. Property lines and owner information.
13. Cross sections every 25 feet
14. Preliminary retaining wall elevation views as required.

1.03 Submit preliminary plans to the City and KDOT for review.

1.04 Submit preliminary plans to utility companies for their use in preparing for relocations.

1.05 Develop preliminary opinion of probable project costs itemized by unit of work, including right-of-way and contingency.

1.06 Submit preliminary plans and opinion of probable cost to City and KDOT for review.

1.07 Communicate with the City not less than bi-weekly as necessary in connection with such preliminary work.

1.08 Field Check to be performed with representatives of the Consulting Engineer, City, and KDOT at the project site with appropriate detailed plans.

1.09 Right-of-way and easements.

A. Describe right-of-way and easements necessary to complete project.
    1. Furnish legal descriptions sealed by an RLS licensed in the state of Kansas. Legal descriptions are also to be provided in a digital format compatible with Microsoft Word 7.0.
    2. Furnish necessary title information.
    3. Maps and sketches as follows:
        a. Plan and profile pages showing all proposed takings.
        b. Individual drawings of takings for each ownership including:
            (1) Title block.
            (2) Ownership boundaries.
            (3) Existing rights-of-ways and easements.
            (4) Proposed takings identified with text and graphically.
            (5) Legend for taking type.

(6) Graphical scale and north arrow.
(7) Ownership information.
(8) Legal description of all takings.

B. The Consulting Engineer shall stake in the field the location of rights-of- way and/or easements prior to acquisition as requested by the City, and shall meet with appraisers to identify easement and right-of-way locations.

1.10 Public Information:

A. Prepare for and attend one public meeting to explain the project to residents of the project area, and to receive public comments at a time and place arranged for by the City.
1. Prepare exhibits, including preliminary plans (showing right-of-way taking and easements).
2. Have persons available to explain the proposed work and to answer questions.

B. The Consulting Engineer will be available to meet with City staff and concerned property owners as directed by the City to discuss the project at any time throughout the project.

1.11 Permitting.

A. Prepare the necessary plans and applications for permit submission to and approval of:
1. Leavenworth County.
2. State including but not limited to:
a. Division of Water Resources.
b. KDOT
3. Federal including but not limited to.
a. US Army Corps of Engineers 404
b. NPDES.
c. Section 4(f) Evaluations.
d. FEMA Map Revisions

Task II. Final Design

2.01 Prepare detailed plans and specifications.
A Cover sheet.
B. Typical sections.
C. Pavement design
D. Subsurface drainage design
E. Surface drainage design
1. Drainage area maps.
2. Pavement spread calculations.
3. Inlet and other structure design calculations.
F. Plan and Profile sheets
1. Plan scale = 1:20
2. Profile scale H = 1:20; V = 1:5
G. Length of tapers and storage lengths for turn lanes
H. Intersection details.
I. Driveway profiles.

J. Street lighting.
   1. Pole locations.
   2. Design parameters.
   3. Circuit information with includes control center locations.

K. Pavement marking and signing.
L. Existing and proposed right-of-way limits.
M. Property lines and owner information.
N. Cross sections every 25 feet
0. Retaining wall elevation views as required.
P. Traffic control plan and construction phasing including detour routing for each phase of the project.
Q. Location of existing utilities and underground facilities.
R. Stormwater Pollution Prevention Plan (SWPPP), including erosion and sediment control plans.

2.02 Schedule and attend utility coordination meetings as required. Add to preliminary plans.
2.03 Prepare a detailed opinion of probable cost.
   A. Include an appropriate contingency.
   B. Estimate time required to complete construction.
   C. Provide input to the City regarding forms for:
      1. Proposals
      2. Construction contracts.
      3. Bonds.
2.04 Submit final plans to the City and KDOT for review.
2.05 At the completion of the project, furnish to the City the CAD drawings of the project in the Consulting Engineer's digital format.
2.06 Furnish 5 copies of detailed plans and specifications.
   A. Plan sets will be prepared in:
      1. 2 full size (22" x 34")
      2. 3 half size (11"x 17")
   B. These plans are to be furnished at no additional cost, and are separate from those sold to prospective bidders.
2.07 Communicate with City not less than bi-weekly as necessary during preparation of detailed plans.

Task III. Bidding

3.01 Prepare and provide plans and specifications to bidders at cost to recover expenses of duplication and handling.
3.02 Attend bid letting.
3.03 Consult with and advise the City as to the acceptability of substitute materials and equipment when substitution prior to the award of the contract is allowed in the bidding documents.
3.04 Consult with and advise the City as to the acceptability of subcontractors and others proposed to do work by the general contractor.

3.05 Prepare written addenda to the bidding documents as required and or requested.
3.06 Assist the City in analyzing bids and making recommendation for award of the construction contract.
3.07 Prepare a bid tabulation in printed and MS Excel format.
3.08 Arrange for, attend, and prepare meeting minutes for a pre-bid conference.
3.09 Arrange for, attend, and prepare meeting minutes for a pre-construction conference with City representatives, the successful bidder, and utility companies.

Task IV. Construction Services

4.01 Be available for discussion and consultation during the construction phase.
4.02 Review shop drawings and be available for consultation with the City during construction.
4.03 Prepare plan revisions as necessitated by conditions encountered in the field during construction, with the exception of traffic control plans.
4.04 Prepare final record drawings which reflect:
A. All change orders.
B. Minor design changes.
C. Changes made in the field by City representatives and are marked on the construction plan set.
D. Submit updated CAD drawings and TIFF images of the revised sheets.
4.05 Attend weekly construction progress meetings as directed by the City.
4.06 Provide the City with Before and After pictures of the project in printed and digital format.
4.07 Provide five (5) copies of the Contract Documents (Plans and Specs) to the Contractor.
4.08 Draft Contractors Pay Estimates.

Task V. Construction Engineering

5.01 Provide qualified construction inspector to be present to observe the construction during all working hours. These have been estimated in the following table for a total of 25 working days.

PHASE	STAFF	HOURS	RATE	EXTENSION
PRE	P.M.	4	$105	$420
CONSTRUCTION	Inspector	16	$55	$880
	P.M.	8	$105	$880
CONSTRUCTION	Inspector	200	$55	$11,000
	Testing			
POST	P.M.	2	$105	$210
CONSTRUCTION	Inspector	4	$55	$220
			Estimated Total	**$13,610**

5.02 Provide material testing at intervals required by the City Engineer per KDOT. These standard services will be provided by Terracon Consultants, Inc., per Attachment C and invoiced as a direct reimbursable expense. These are estimated at $3,500.

Completion time: The Consulting Engineer hereby agrees to complete preliminary plans suitable for a public information meeting including easement and right-of-way descriptions and drawings (Task I) by December 31, 2015 and to complete all work necessary to and including preparation of final plans (Task II) by February 28, 2016.

EXHIBIT B
Professional Fee and Expense Worksheet

		Principal	Project Manager	Project Engineer	Design Engineer	Reg. Land Surveyor	Senior Engineering Technician	Engineering Technician	Survey Crew	Clerical	Construction Observation	Project Landscape Architect	
		Hourly	Hourly	Hourly	Hourly	Hourly	Hourly	Hourly	Hourly	Hourly	Hourly	Hourly	
Task	Description	$155	$105	$95	$86	$110	$85	$80	$160	$50	$55	$55	Total
1.0	Preliminary Design												$13,200.00
1.01	Data Collection			2	4				16.1				$3,106.00
1.02	Base Map/Preliminary Plans					4	24	8					$3,120.00
1.03	Submit Prel. Plans to City and KDOT						16	8					$2,000.00
1.04	Submit Plans to Utility Co			2	2								$362.00
1.05	Prel. Cost Estimate	1		2	2								$467.00
1.06	Submit Cost. Est to City and KDOT	1		2									$295.00
1.07	Bi-Weekly Coord. Meeting			2									$190.00
1.08	Field Check with City			4									$380.00
1.09	Right of Way and Easements					8			8				$2,800.00
1.10	Public Information			2									$190.00
1.11	Permitting			2						2			$290.00
2.0	Final Design												$10,500.00
2.01	Detailed Plans	1		7	10		24	31.1					$6,207.00
2.02	Utility Coordination			4	8		4						$1,408.00
2.03	Detailed Cost Estimate			4									$380.00
2.04	Final Plans to City and KDOT	1		2			8	8					$1,665.00
2.05	Furnish CAD Drawings							1		2			$180.00
2.06	Furnish Final Plans		1					2		2			$365.00
2.07	Bi-weekly meetings		1	2									$295.00
3.0	Bid Phase												$1,520.00
3.01	Prepare plans for bidding			1				2		1			$305.00
3.02	Attend bid letting			1						1.1			$150.00
3.03	Consult City on material suitability			1									$95.00
3.04	Consult City on Sub-contractors			1									$95.00
3.05	Prepare addenda			1				2					$255.00
3.06	Assist City with bid analyses			1						1			$95.00
3.07	Bid Tabulations			1									$145.00
3.08	Pre-bid meeting			2									$190.00
3.09	Pre-con meeting			2									$190.00
4.0	Construction Services												$2,800.00
4.01	Construction Phase Consultation		1	4	2								$657.00
4.02	Review shop drawings				2								$172.00
4.03	Const. plan revisions			1	2			4					$587.00
4.04	Prepare record drawings							4					$320.00
4.05	Construction Progress Meetings			2									$190.00
4.06	Before and After Pics							2					$160.00
4.07	Conctract Documents			1	2					1.6			$347.00
4.08	Pay Applications			1	2					2			$367.00
5.0	Construction Engineering												$17,070.00
5.01	Construction Inspection	14									220		$13,570.00
5.02	Materials Testing *Estimated per Terracon Prop.*												$3,500.00
6.0	Reimbursable Expenses												$750.00
6.01	Printing, Deliveries, Mileage												$750.00
7.0	Grand Total												$45,840.00