

BARTLETT & WEST, INC.

AGREEMENT FOR PROFESSIONAL SERVICES

This is an agreement effective as of August 8, 2016 between Jackson County, Missouri (“CLIENT”) located at 415 East 12th Street, Kansas City, Missouri and Bartlett & West, Inc. (“CONSULTANT”) located at 228 NW Executive Way, Lee’s Summit, Missouri, 64063.

WHEREAS, the CLIENT intends to complete a boundary and topographic survey of the 17.7-mile corridor of the Rock Island Railroad beginning at MP270.6 and ending at MP 288.3, as further described in the Scope of Work in Exhibit A.

WHEREAS, the CLIENT intends to engage the CONSULTANT to perform certain professional services with regard to such work, which is hereinafter called the PROJECT.

The CLIENT and CONSULTANT therefore agree as follows:

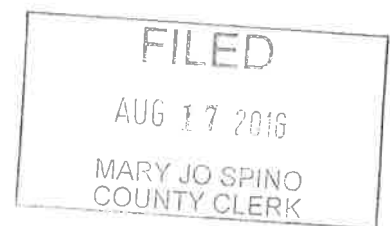
ARTICLE I – DEFINITIONS AND RULES OF INTERPRETATION

- A. The agreement between the CLIENT and the CONSULTANT consists of this Agreement for Professional Services, the Standard Provisions of Agreement for Professional Services attached as Exhibit B, and the following exhibits and addenda:
 - 1. Exhibit “A” Scope of workAll such items together shall be referenced herein as the “Agreement.”
- B. In the event of any conflict in the language of this Agreement for Professional Services with the Standard Provisions of Agreement attached hereto, the language of the Standard Provisions of Agreement shall control.
- C. This Agreement represents the entire and integrated agreement between the CLIENT and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the CLIENT and the CONSULTANT.
- D. This Agreement shall be governed by the laws of the state of Missouri.

ARTICLE II – SCOPE OF WORK

- A. See Exhibit “A”

ARTICLE III – NOT USED



ARTICLE IV – TIME OF PERFORMANCE FOR SERVICES

- A. The services under this Agreement have been agreed to in anticipation of the orderly progress of the PROJECT through completion. Unless a specific time of performance for services is specified in this Agreement, CONSULTANT'S obligation to render services hereunder will be for a period which may be reasonably required for the completion of said services. If a specific time of performance is provided herein and if the CLIENT has requested changes in the scope or character of the PROJECT, the time of performance shall be extended to accommodate such changes.

ARTICLE V – PAYMENT PROVISIONS

- A. CLIENT shall pay the CONSULTANT for services described in the Scope of Work, as a Lump Sum fee of \$575,000 as defined in Exhibit "A". Lump Sum shall be invoiced as partial payments during the contract as described in Article V, C., below.
- B. The Lump Sum includes compensation for CONSULTANT'S services and services of CONSULTANT'S sub-consultants, if any. The Lump Sum includes labor and direct expenses associated with providing the services as defined.
- C. The portion of the Lump Sum amount billed per month for CONSULTANT'S services will be based upon the CONSULTANT'S estimate of the percentage of completion accomplished during the billing period.
- D. Additional services, if necessary, shall be agreed upon in advance of the services being provided. The additional services will be billed in the same manner as above unless otherwise stated in this Agreement.

ARTICLE VI – INSURANCE

- A. CONSULTANT shall purchase and maintain insurance as set forth below:
 1. Commercial General Liability insurance with a limit of \$1,000,000 for each occurrence and \$2,000,000 general aggregate.
 2. Automobile Liability insurance with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
 3. Workers Compensation and Employer's Liability insurance in accordance with statutory requirements, with a limit of \$1,000,000 for each accident.
 4. Professional Liability insurance on a claims made basis in the amount of \$5,000,000 per claim and \$10,000,000 annual aggregate.
 5. Technology E&O with a limit of \$1,000,000 each claim and aggregate.

Certificates of insurance evidencing the coverages indicated above will be provided to CLIENT upon request.

ARTICLE VII – DISPUTE RESOLUTION

- A. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration if it involves a total claim amount and anticipated costs including attorney's fees and expenses of less than \$200,000. Claims in excess of \$200,000 shall be brought only in the circuit court of Jackson County, Missouri and the parties agree to this venue and to jurisdiction by this court. Prior to arbitration or litigation, the parties shall endeavor to resolve disputes by mediation in accordance with paragraph 10 of the standard provisions of agreement attached as Exhibit B.
- B. Unless the parties mutually agree otherwise; arbitration shall be in accordance with the construction industry arbitration rules of the American Arbitration Association then in effect. The demand for arbitration shall be filed in writing with the other party to the agreement and with the American Arbitration Association.
- C. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- D. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in the state having jurisdiction thereof.

ARTICLE VIII – ALLOCATION OF RISKS

- A. Percentage Share of Negligence. To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damage caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of the CLIENT, CONSULTANT, and all other negligent entities and individuals.

ARTICLE IX – INDEMNITY

- A. Indemnity by CONSULTANT. The CONSULTANT agrees to indemnify and hold harmless the CLIENT from and against damages, losses, costs or expenses (including reasonable attorney's fees) actually incurred by CLIENT but only to the extent caused by the negligent performance of the CONSULTANT. In the event that the CLIENT and CONSULTANT are both at fault for certain damages, then each party shall bear liability for its own respective percentage of fault.
- B. CONSULTANT will not be required to indemnify the CLIENT for claims caused or alleged to be caused in whole or in part by the acts or omissions of the CLIENT or other third parties for whom the CONSULTANT is not responsible.

D. Under no circumstances shall the CONSULTANT be required to pay the defense costs of the CLIENT, unless the CONSULTANT is adjudged to be negligent by a court of law, and such defense costs are included as damages in the award.

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

CLIENT:
JACKSON COUNTY, MISSOURI

CONSULTANT:
BARTLETT & WEST, INC.

By: 

By: 

Print name: Frank White, Jr.

Print name: Kelly S. Sunderland

Title: County Executive

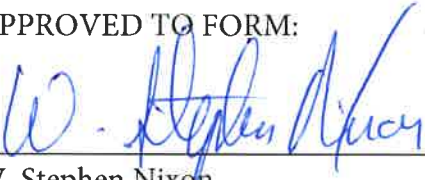
Title: Vice President


Date Signed: 8/02/16

Date Signed: 7/28/16

APPROVED TO FORM:

ATTEST:


W. Stephen Nixon
County Counselor


Mary Jo Spino
Clerk of the Legislature

REVENUE CERTIFICATE

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of \$575,000.00 which is hereby authorized.

August 16, 2016
Date


Chief Financial Officer
Account No. 014-3601-56790
36012016007

Exhibit A Scope of Work

CONSULTANT's Scope of Work

Consultant shall perform the following tasks needed to complete a survey of an approximate 17-mile corridor of the Rock Island Railroad extending from MP270.6 to MP288.3:

Task 1 Survey Research and Communication

- 1) CLIENT shall provide to CONSULTANT digital copies of all subdivision plats, recorded boundary surveys and current warranty deeds for the properties that are adjacent and adjoining the approximate 17-mile corridor of the Rock Island Railroad.
- 2) CONSULTANT shall give weekly updates to the CLIENT regarding project status.

Task 2 Field locate property corners

- 1) CONSULTANT shall utilize the Missouri Department of Transportation GPS Real Time Network for horizontal control for this project. The coordinate system shall be Missouri State Plane (West Zone).
- 2) CONSULTANT shall field locate and verify the outboundary corners of the recorded subdivision plats and unplatted tracts adjacent to the Rock Island Railroad corridor.

Task 3 Boundary Calculations

- 1) CONSULTANT will review the warranty deeds, subdivision plats, and MoDOT highway plans for the project corridor
- 2) Download survey data and perform survey calculations to define the boundary of the Rock Island Railroad property.

Task 4 Monumenting the Boundary

- 1) CONSULTANT shall set a 5/8" rebar with aluminum cap at all corners of the boundary, unless an existing monument is found.

Task 5 Plat of Survey

- 1) CONSULTANT shall draft a Plat of Survey of the Rock Island Railroad boundary. A metes and bounds description shall be written of the property for each quarter section that it passes through. The project corridor passes through approximately 40 quarter sections.
- 2) CONSULTANT shall locate and identify encroachments within the boundary of the Rock Island Railroad corridor of man-made features such as: buildings, fence lines, walls, etc. CONSULTANT shall draft an exhibit for each parcel with identified encroachments showing the locations of the encroachments in relation to the railroad right-of-way. The exhibit's will be signed and sealed by a Professional Land Surveyor.
- 3) CONSULTANT shall conduct quality reviews prior to submitting documents to CLIENT.
- 4) The Plat of Survey shall be signed and sealed by a Professional Land Surveyor.
- 5) The Plat of Survey shall be recorded at the Jackson County Recorder of Deeds Office. CLIENT shall pay for any fees associated with recording of the Plat of Survey.
- 6) CONSULTANT shall provide to CLIENT digital and paper copies of the CAD drawing and shape file of the Rock Island Railroad boundary.

Task 6 Topographic Survey

- 1) CONSULTANT shall perform a topographic survey for the 17-mile Rock Island Railroad corridor. This topographic survey will be performed in conjunction with the boundary survey to help expedite the final deliverables. The topo will overlap onto adjoining property by a minimum of 25 feet. Ground elevation shots will be taken at intervals sufficient to develop 1 foot contours.
- 2) Communicate and coordinate field schedules to confirm that CLIENT will have the corridor cleared ahead of the survey crews being in the field.
- 3) CONSULTANT shall arrange a utility coordination meeting to notify utility companies of the impending survey, and that we will be notifying Missouri One Call to get their utility locations marked in the field so that our surveyors may locate the existing utility lines to aid in the design of this project.
- 4) CONSULTANT shall utilize the Missouri Department of Transportation GPS Real Time Network for horizontal and vertical control for this project. The horizontal coordinate system shall be Missouri State Plane (West Zone). The vertical coordinate system shall be NAVD 88. Geoid shall be Geoid Model 12A. Horizontal and Vertical Benchmarks will be set along the project corridor, approximately 1 per mile.
- 5) Topographic features to be picked up include the following: top and toes of slopes, ditches, creeks, edge of timber, utilities as located by the Missouri One Call tickets, storm and sanitary sewer structures, invert elevations, pipe sizes and material, edge of pavements, signs, buildings, fences, and utility poles. This does not include moveable items such as debris, abandoned cars, etc.
- 6) CONSULTANT'S survey crews shall identify, mark the location of and report to CLIENT'S personnel any areas that are of safety concerns. By doing so, CONSULTANT accepts no responsibility for noting all safety concerns that may be identified by CLIENT'S personnel and further, does not accept responsibility for any injuries or damages resulting from identified or non-identified safety concerns.
- 7) Bridge structures over roadways, and the existing tunnel under Bannister Road will be surveyed using LiDAR survey equipment.
- 8) CONSULTANT shall use CONSULTANT survey codes, line work and layer format in AutoCAD Civil 3D 2015.
- 9) CONSULTANT shall conduct quality reviews prior to submitting documents to CLIENT
- 10) Deliverables will consist of the following: paper copies of the topographic survey, digital drawing of the topographic features as listed above in AutoCAD Civil 3D 2015 format, text file of the survey data, copies of field notes and field sketches.

Time of Performance

CONSULTANT shall commence our efforts within 3 calendar days of receipt of written notice-to-proceed and shall complete our services by December 6, 2016.

CLIENT'S Responsibility

To meet your needs and schedule, we request that you provide the following to us beginning within 5 calendar days of receipt of written notice-to-proceed.

EXHIBIT B
STANDARD PROVISIONS OF AGREEMENT FOR PROFESSIONAL SERVICES

The Client and Bartlett & West, Inc. (referred to as the Consultant), agree that the following provisions shall be part of this Agreement.

1. Payment. Unless stated otherwise in this Agreement, fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing. In the event Client fails to pay the Consultant within ninety (90) days after invoices are rendered, then Client agrees that the Consultant shall have the right to consider such failure as a substantial breach of this Agreement and the duties of the Consultant under this Agreement may be terminated at the election of the Consultant upon five (5) days written notice. Interest not exceeding the maximum rate allowable by law will be payable on any amounts not paid within 30 days of the billing date, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. If Client fails to pay Consultant the amount due under this Agreement in a timely manner pursuant to this section, Client shall be liable for and shall reimburse Consultant for expenses incurred by Consultant in connection with or in any way relating to Client's failure to pay. Such expenses shall include, without limitation, reasonable attorneys' fees, legal expenses, and court costs.
2. Taxes. Compensation payable to the Consultant pursuant to this Agreement shall be in addition to taxes that may be assessed against the Consultant by any state or political subdivision directly on services performed or payments for services performed by the Consultant. Such taxes that the Consultant may be required to collect or pay shall be added by the Consultant to invoices submitted to the Client pursuant to this Agreement.
3. Suspension. In the event all or any portion of the work prepared or partially prepared by the Consultant is suspended, abandoned, or terminated, the Client shall pay the Consultant for the work performed on an hourly basis, not to exceed any maximum contract amount specified herein.
4. Termination. This Agreement may be terminated by either Client or the Consultant upon thirty (30) days written notice in the event of substantial failure of the other party to perform in accordance with the terms of this Agreement. Client expressly agrees to hold the Consultant harmless from any liability arising out of the Consultant's termination of its services hereunder due to Client's failure to perform and/or pay in accordance with the provisions of this Agreement. In the event of termination of this Agreement, Client shall then

promptly pay the Consultant for all of the fees, charges and services performed by the Consultant in accordance with the compensation arrangements under this Agreement or on an agreed hourly basis. If the Consultant files suit for breach of contract, all attorney fees, court costs, and other related costs will be paid by the Client if a Court finds the Client has breached its contract with the Consultant.

5. Delay. All agreements on the Consultant's part are contingent upon, and Consultant shall not be responsible for damages or be in default, or be deemed to be in default, by reason of delays in performance of others by reason of strikes, lock-outs, accidents, acts of God and other delays unavoidable or beyond Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rate or delays caused by failure of Client or Client's agents to furnish information or to approve or disapprove Consultant's work promptly, or due to late or slow, or faulty performance by Client, other contractors or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of Consultant's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.
6. Client Changes. In the event that any changes are made in the work to be performed hereunder, by the Client or persons other than the Consultant, and which affect the Consultant's work, any and all liability arising out of such changes is waived as against the Consultant and the Client assumes full responsibility for such changes unless Client has given the Consultant prior notice and has received from the Consultant written consent for such changes.
7. Third Party Information. The Consultant is not responsible, and liability is waived by Client as against the Consultant, for use by Client or any other person of any data, reports, plans or drawings not prepared by the Consultant.
8. Waiver of Consequential Damages. In no event shall the Consultant be liable for consequential damages, including lost profits, loss of investment or other incidental damages.
9. Completion. In no event shall any statute of limitations commence to run any later than the date when the Consultant's services are substantially completed and any cause of action against the Consultant arising from or pertaining to this Agreement must be initiated no later than two (2) years after the date

when the Consultant's services are substantially completed.

10. Disputes. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of litigation. The mediator shall be jointly selected by the Client and the Consultant. If the parties are unable to agree, the Consultant shall present a list of three prospective mediators to the Client, who shall choose the mediator. In the event of failure on the part of the Client to do so within ten (10) days of receipt of the list, the Consultant shall choose the mediator. The mediator's fees shall be shared equally and shall be held at the offices of the Client or the Consultant as selected by the mediator.

11. Waiver of Subrogation. To the extent any damage or claim is covered by property insurance during construction, the Client and the Consultant waive all rights against each other and against the contractors, consultants, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Client or the Consultant, as applicable, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

12. Standard of Care. The Consultant's services shall be performed in a manner consistent with that degree of skill and care exercised by practicing professionals performing similar services under the same or similar circumstances and conditions. The Consultant makes no other representations or any warranties, whether expressed or implied, with respect to the services rendered hereunder.

13. Consultant Data. All reports, plans, specifications, computer files, data resulting from laser scanning, tracings, survey notes, and other original documents are instruments of service and shall remain the property of the Consultant. Consultant may sell said instruments of service to third party sources.

14. Ownership. Consultant has and will retain all ownership rights in any software developed under this agreement, including all patent rights, copyrights, trade secrets, trademarks, service marks, related goodwill and confidential and proprietary information, except as explicitly stated in this agreement.

15. Ownership. Products of work shall be defined as any deliverable provided to the Client as a result of services under this agreement, including but not limited to software applications, databases, specifications, and documentation. All products of work delivered are proprietary to the Consultant and contain trade secrets,

inclusive of unpublished specifications. The products of work are owned by Consultant and are protected by United States copyright laws, trademark laws and applicable international treaties and/or conventions. In consideration of the rights granted herein, Client agrees to retain all software, related materials, and information delivered or provided to it in strict confidence. All rights, title, and ownership in patents, trademarks, copyrights, trade secrets, know-how, or any other proprietary rights in the products of work remains exclusively with Consultant. Client shall not sell, transfer, lease, lend, assign, time-share, sublicense, publish, disclose, display, or otherwise make available the products of work in any form, including, but not limited to, flowcharts, logic diagrams, executable code, object code, source code, or technical documentation, to any other person or entity without the express written permission of Consultant. Client shall secure and protect the products of work in the same manner and to the same degree it protects its own proprietary information, using no less than a reasonable standard of care. Client shall not decompile or reverse engineer any of Consultant's software. Client shall not make any modifications or derivative works to the products of work.

16. Ownership. All error corrections, enhancements, new releases, and any other products of work created by Consultant in connection with the services provided under this agreement are and shall remain the exclusive property of Consultant, regardless of whether the Client, its employees, or agents may have contributed to the conception, joined in its development, or paid Consultant for the development or use of said products of work.

17. Confidentiality. All information relating to the Client that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by Consultant and shall not be disclosed or used by Consultant except to the extent that such disclosure or use is reasonably necessary to the performance of Consultant's Work. Subject to the provisions of the Missouri Open Records Act, all information relating to Consultant that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by Client. These obligations of confidentiality shall extend after the termination of this agreement, but shall not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

18. Fees. When applicable to the project(s), the Client shall pay the costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial photography fees, and all other fees, permits, bond premiums, title company charges, and reproductions,

and all other charges not specifically covered by the terms of this Agreement.

19. Construction Costs. If any opinion is prepared by the Consultant as to anticipated construction costs, such opinion represents a judgment as a professional and is supplied for the general guidance of the Client. Since the Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, the Consultant does not guarantee the accuracy of such opinion as compared to contractor bids or actual cost to the Client.

20. Job Site. If the work involves construction services, the Client agrees that in accordance with generally accepted construction practices, the construction contractor will be required by the Client to assume sole and complete responsibility for job site conditions during the course of construction of the project(s), including safety of all persons and property and that this requirement shall be made to apply continuously and not be limited to normal working hours. The Consultant does not assume responsibility for the safety of persons or property on or about the project site(s).

21. Construction Site Visits. If applicable, the Consultant shall make periodic visits to the project site(s) to observe the progress and quality of the executed work and to generally review whether the work is proceeding in accordance with plans and specifications. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work and does not assume responsibility for construction techniques, procedures, sequences and schedules or for the conduct, action, errors or omissions of any construction contractor, subcontractor, or material supplier, their agents or employees.

22. Resident Project Representation. When applicable, and by separate attachment executed by the Client and the Consultant, the Consultant may provide resident project representation under the Consultant's supervision that will be paid for by the Client as indicated in such separate agreement and that will be intended to give the Client further assurance with regard to the finished work but will not involve the Consultant in the construction means, methods, techniques, sequences or procedures or safety precautions or programs nor provide to the Client any guarantee by the Consultant of the accuracy, quality or timeliness of performance by any contractor, subcontractor, or material supplier.

23. Hazardous Materials. When applicable, and unless otherwise provided by specific agreement, the Consultant and the Consultant's consultants shall have no responsibility for the discovery, presence, handling,

removal or disposal of or exposure of persons to hazardous materials or toxic substances at the project site(s).

24. Assignment/Third Party Reliance. Neither the Client nor the Consultant shall assign its interest in this Agreement without the written consent of the other. The services to be provided pursuant to this Agreement are being performed solely for the benefit of the Client, and no benefit is meant to be conferred upon any person or entity not a party to this Agreement, and no such person or entity should rely upon Consultant's performance of those services to the Client; and no claim against Consultant shall accrue to, any contractor, subcontractor, consultant, engineer, supplier, fabricator, manufacturer, lender, tenant, surety, home-owner's association or any other third-party as a result of this Agreement or the performance or non-performance of services on the project(s).

25. Client Representative. The Client shall designate an individual with authority to act on behalf of the Client as to all aspects of the project(s), shall examine and respond promptly to submissions from the Consultant, shall give prompt written notice to the Consultant if the Client becomes aware of any defect in the project(s), and shall otherwise fully cooperate as may be required or appropriate in connection with the project(s).

26. Equal Opportunity. The Consultant shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

27. Severability. Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.