

**CHAPTER 28E AGREEMENT
FOR
TRESTLE TO TRESTLE MULTI-USE RECREATIONAL TRAIL BRIDGE CONSTRUCTION,
FUNDING AND MAINTENANCE
BETWEEN
POLK COUNTY, IOWA
AND
THE CITY OF DES MOINES
AND
THE CITY OF JOHNSTON
AND
THE POLK COUNTY CONSERVATION BOARD**

This Chapter 28E Agreement is made and entered into by and between Polk County, Iowa, a governmental subdivision of the State of Iowa, the City of Des Moines, a municipal corporation located within Polk County, Iowa, the City of Johnston, a municipal corporation located within Polk County, Iowa, and the Polk County Conservation Board.

DEFINITIONS:

"Cities" shall mean the Cities of Des Moines and Johnston.

"County Conservation Board" shall mean the Polk County Conservation Board.

"Parties" shall mean the Polk County, Iowa, the City of Des Moines, the City of Johnston and the Polk County Conservation Board.

"Polk County" shall mean Polk County, Iowa.

"Polk County Public Works" shall mean the Polk County Department of Public Works under the direct supervision of the Public Works Director.

"Trail" shall mean the Trestle to Trestle Multi-Use Recreational Trail, a multi-use recreational trail connecting the City of Des Moines Inter-Urban Trail to the City of Johnston trail system.

"Bridge Project" shall mean the joint undertaking to replace the bridge over Beaver Creek that is connected to the Trail, as described in Attachment A and the location of which is shown in Attachment E.

1. This Agreement is entered into pursuant to the Provisions of Chapter 28E, Code of Iowa. This Agreement shall consist of 25 pages and Attachments A, B, C, D, E, F and Exhibit 1, which shall be considered a part of this Agreement.
2. The purpose of this Agreement is listed in Attachment A.
3. Duties of Polk County are listed in Attachment B.
4. Duties of the Cities and the County Conservation Board are listed in Attachment C.
5. Detailed cost estimate is listed in Attachment D.
6. Attachment E is a map showing the location of the project.
7. Exhibit 1 is a conceptual drawing of the Bridge.
8. No separate legal or administrative entity is created by this Agreement. No real or personal property will be purchased in the performance of this Agreement.
9. Polk County, through its Public Works Department, shall be the lead agency for carrying out the terms of this Agreement.
10. The Polk County Director of Public Works shall administer performance of this Agreement for Polk County. The City of Des Moines City Engineer shall administer performance of this Agreement during the construction phase. The City of Des Moines Parks and Recreation Director shall administer performance of this Agreement for the City of Des Moines after completion of the construction stage. The City of Johnston Public Works Director shall administer performance of this Agreement for the City of Johnston. The Polk County Conservation Board Deputy Director shall administer performance of this Agreement for the County Conservation Board.
11. The parties shall approve the Agreement by resolution or motion of their respective Board or Council, which shall authorize the execution of the Agreement. It will then be filed by Polk County in the office of the Iowa Secretary of State, in accordance with Chapter 28E of the Code of Iowa. The Agreement shall become effective when recorded in the Iowa Secretary of State Office and shall remain in effect unless terminated as provided herein.
12. Except for maintenance and Bridge replacement responsibilities to be undertaken by Polk County Conservation Board, this Agreement shall be in effect until final inspection

of the Bridge Project and acceptance by Polk County. The Bridge replacement and maintenance responsibilities of Polk County Conservation Board shall be in effect in perpetuity. Any Party to this Agreement may notify the others of its desire to terminate this Agreement by sending written notice of such desire to terminate, specifying the reasons for termination at least sixty-days prior to the effective date of such requested termination. All Parties must concur to the termination in order for it to be in effect. Notice shall be sent to the governing body of the other Parties at their principal place of doing business by registered mail. The termination of this Agreement shall not relieve any Party to this Agreement or any obligations or liability arising during the term of this Agreement.

13. In the event of a breach by any entity of this Agreement, that breach shall not be considered to affect any remaining terms or conditions of this Agreement. If any terms or conditions of this Agreement are held to be invalid or illegal, those remaining terms or conditions shall not be construed to be affected.
14. This is the entire Agreement between all duly recognized parties and it may be amended only upon the agreement of all parties and only in writing. All Parties must consent to any amendment in writing.
15. The Parties shall not, by reason of this Agreement, be obligated to defend, hold harmless or indemnify the other from any liability to third parties, from any injury liability, loss, damage, claim or lawsuit asserted against them arising out of or in any way connected with this Agreement. Polk County agrees to require all contractors working on the Trail Project to provide the insurance coverages and indemnification requirements described in Attachment F.
16. Except as otherwise specified, all notices, consents, approvals, requests and other communications (hereinafter referred to as "Notices") required or permitted under this Agreement shall be given in writing and mailed by certified mail, return receipt requested, addressed as follows:

If to the City of Des Moines:

City of Des Moines

Parks and Recreation Department

1551 MLK Jr. Pkwy.

Des Moines, IA

Attn: Ben Page, Parks and Recreation Director

If to the Des Moines City Engineer:

City of Des Moines

Engineering Department

400 Robert D. Ray Drive

Des Moines, IA 50309

Attn: Steve Naber, City Engineer

If to the City of Johnston:

Johnston City Hall

6221 Merle Hay Road

Johnston, IA 50131

Attn: Matt Greiner, Public Works Director

If to Polk County:

Department of Public Works

5885 N.E. 14th Street

Des Moines, IA 50313

Attn: Robert Rice, Public Works Director

If to the Polk County Conservation Board:

Polk County Conservation

12130 NW 128th Street

Granger, IA 50109

Attn: Douglas C. Romig, Deputy Director

All Notices shall be deemed given on the day of mailing. Any party to this Agreement may change its address for the receipt of Notices at any time by giving notice thereof to the others as herein provided. Any Notice given by a party hereunder must be signed by an authorized representative of such party.

EXECUTION OF AGREEMENT

IN WITNESS THEREOF, Polk County has caused this Agreement to be executed in five (5) separate counterparts, each of which shall be considered an original.

Executed by Polk County, Iowa

_____ day of _____, 2021

Attest

Polk County, Iowa

Jamie Fitzgerald, Auditor

Angela Connolly, Chairperson

STATE OF IOWA)

) ss:

COUNTY OF POLK)

On this _____ day of _____, 2021, before me, a Notary Public in and for said County, personally appeared Angela Connolly and Jamie Fitzgerald to me personally known, and who being duly sworn, did say that they are the Chairperson and Auditor respectively of the Board of Supervisors of Polk County, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said County, and that said instrument was signed and sealed on behalf of said County by authority and resolution of its Board of Supervisors as contained in Resolution No. _____ adopted on _____, 2021, and said Chairperson and Auditor acknowledged said instrument to be the free act and deed of said County by it voluntarily executed.

Notary Public for Iowa

EXECUTION OF AGREEMENT

IN WITNESS THEREOF, the City of Johnston has caused this Agreement to be executed in five (5) separate counterparts, each of which shall be considered an original.

Executed by the City of Johnston, Iowa

_____ day of _____, 2021

Attest

City of Johnston

Cyndee Rhames, City Clerk

Paula Dierenfeld, Mayor

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this _____ day of _____, 2021, before me, a Notary Public in and for said County, personally appeared ____ and ____ to me personally known, and who being duly sworn, did say that they are the Mayor and City Clerk respectively of the City of Johnston, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said City, and that said instrument was signed and sealed on behalf of said City by authority and resolution of its City Council as contained in Resolution No. _____ adopted on _____, 2021, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said City by it voluntarily executed.

Notary Public for Iowa

EXECUTION OF AGREEMENT

IN WITNESS THEREOF, City of Des Moines has caused this Agreement to be executed in five (5) separate counterparts, each of which shall be considered an original.

Executed by the City of Des Moines, Iowa

_____ day of _____, 2021

Attest

City of Des Moines

P. Kay Cmelik, City Clerk

TM Franklin Cownie, Mayor

Approved as to Form:

Ann DiDonato, Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this _____ day of _____, 2021, before me, a Notary Public in and for said County, personally appeared TM Franklin Cownie and P. Kay Cmelik to me personally known, and who being duly sworn, did say that they are the Mayor and City Clerk respectively of the City of Des Moines, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said City, and that said instrument was signed and sealed on behalf of said City by authority and resolution of its City Council as contained in Resolution No. _____ adopted on _____, 2021, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said City by it voluntarily executed.

Notary Public for Iowa

EXECUTION OF AGREEMENT

IN WITNESS THEREOF, Polk County Conservation Board has caused this Agreement to be executed in five (5) separate counterparts, each of which shall be considered an original.

Executed by the Polk County Conservation Board, Iowa

_____ day of _____, 2021

Attest

Polk County Conservation Board

Katie Stoklasa, Board Clerk

Ryan Crane, Chairperson

STATE OF IOWA)
) ss:

COUNTY OF POLK)

On this _____ day of _____, 2021, before me, a Notary Public in and for said County, personally appeared Ryan Crane and Katie Stoklasa to me personally known, and who being duly sworn, did say that they are the Chairperson and Clerk respectively of the Polk County Conservation Board, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said County, and that said instrument was signed and sealed on behalf of said County Conservation Board by authority and resolution of its Board as contained in Resolution No. _____ adopted on _____, 2021, and said Chairperson and Clerk acknowledged said instrument to be the free act and deed of said County Conservation Board by it voluntarily executed.

Notary Public for Iowa

ATTACHMENT A

BRIDGE PROJECT IMPROVEMENTS AND JOINT RESPONSIBILITIES

The purpose of this Agreement is to establish the terms and conditions of the relationship between the Parties for the construction, funding of such construction, and maintenance of the Bridge, as more fully hereinafter described, which location is shown in Attachment E (the "Bridge") which replaces the trestle bridge over Beaver Creek connected to the Trail. Such prior trestle bridge was destroyed by floods in 2019 and was removed by Polk County Conservation Board. The Bridge Project will construct a bridge that connects on both sides to the "Trestle to Trestle Multi-Use Recreational Trail" (the Trail). The Bridge will not be part of the Trail upon its completion and acceptance by Polk County.

The Trail was constructed pursuant to the Trestle to Trestle Multi-Use Recreational Trail Construction and Maintenance Chapter 28E Agreement Between Polk County, the City of Des Moines, the City of Johnston, and the Polk County Conservation Board approved by the Polk County Board of Supervisors on January 16, 2007, by the Polk County Conservation Board on January 10, 2007, by the City of Des Moines on January 22, 2007, and by the City of Johnston on February 5, 2007 ("the Agreement"). The Trail was constructed on portions of: 1) the abandoned Des Moines to Johnston railroad bed owned by the City of Des Moines ("the Railroad Bed"); 2) the State of Iowa right-of-way for interstate 80/35 (the "IDOT R-O-W"); and 3) the Beaver Creek crossing.

The City of Des Moines owns real property abutting both ends of the Bridge Project and the Trail adjacent to and connecting to the Bridge Project. Polk County shall pay all standard fees for and obtain all necessary access agreements and temporary easements to use the Trail and City real property adjacent to the Bridge Project for access to the Bridge Project site pursuant to City of Des Moines standard agreements and easements for same, including site restoration and all required insurance and indemnification terms.

The design of the Bridge Project, shown in Exhibit 1, has been prepared by a professional engineering consultant under direction of the Polk County Conservation Board.

The total estimated cost for the Bridge Project (as listed and described in Attachment D) is approximately \$2,000,685.00. The total estimated cost includes the cost of removal of the collapsed existing trestle bridge, engineering design services, construction of the new Bridge, adjacent Trail improvements, and Aesthetic Improvements, including overlook, monuments and lighting. Funding for the Bridge Project currently includes \$400,000 in Federal Surface Transportation Block Grant funding from the Des Moines Area Metropolitan Planning Organization, \$241,400 in funding from FEMA and the State of Iowa as a part of DR-4421 disaster declaration, and \$198,010 spent to date by Polk County Conservation Board for demolition and design services. Pursuant to IDOT Agreements, Polk County through its Public Works Department is designated to act as the lead organization in contracting for construction of the Bridge Project and shall ensure that all IDOT requirements are met.

Costs for the Bridge Project shall be shared in the following manner with the proposed contributions by each Party based on the following percentages after the Aesthetic Improvements are subtracted from the overall project cost.

Budget Source commitments

Source	Amount	Percentage
Total Project Costs	2,000,685.00	
Aesthetic Improvements	up to 375,000.00	City of Johnston
Budget after Aesthetics	1,625,685.00	100%
MPO	400,000.00	25%
Polk County	400,000.00	25%
FEMA DR-4421 Funding	241,400.00	15%
City of Johnston	200,000.00	12%
City of Des Moines	up to 200,000.00	12%
Polk County Conservation Board	200,000.00 (\$198,010 previously expended)	12%

If additional Federal funds are obtained for the Bridge project, or if the actual Bridge Project costs are less than the total cost of \$2,000,685.00, the parties agree that the reduction in funding or reimbursement of transferred funds shall be proportioned as described in the above table.

The City of Des Moines share of costs shall not exceed \$200,000, even in the event that the actual costs of the Bridge Project exceeds the estimated cost of \$2,000,685.00.

Subject to the City of Johnston cap of \$375,000 for Aesthetic Improvements, the City of Johnston, Polk County, and Polk County Conservation Board agree that such three Parties will provide funding in excess of the above funding amounts only in the event of their respective prior written approval as follows: . Change orders of 5% or less of the above funding amounts shall be approved by Polk County only upon written approval of the City of Johnston, Polk County Conservation Board and Polk County administrators of this Agreement. Any change order requests in addition to this 5% amount shall require the approval of such three Party's respective Council or Board. Additional costs from such approved change orders shall be shared by the parties as follows.

Polk County – 40%;

City of Johnston – 30%

Polk County Conservation – 30%.

If the costs of the Bridge Project come in below the engineer's estimate, each Party, including the City of Des Moines, shall be refunded in proportion to their percentage in the Budget Source Commitments table above within 15 days of final acceptance of the Bridge Project.

The Parties agree that upon execution of this Agreement, Polk County will be required to advertise for competitive bids utilizing the Iowa Department of Transportation's letting process for the construction of the Bridge Project, receive and open bids, and award the contract for construction of the Bridge Project to the lowest responsible bidder in conformance with IDOT public improvement policies. Polk County agrees that bidding and construction of the Bridge Project shall be conducted in compliance with and pursuant to Iowa Code Chapters 26, 331, 384 and 350, including holding a public hearing regarding the approval of: (1) the plans, specifications, form of contract documents and the engineer's estimate of the cost for the improvements and bid security; (2) the designation of the lowest responsible bidder and cost; (3) bid acceptance; and (4) award of the contract for the Bridge Project.

Upon completion of the Bridge Project, Polk County shall accept ownership of the Bridge Project improvements and the Polk County Conservation Board shall assume all responsibility, including costs thereof, for management and maintenance of the Bridge Project improvements.

ATTACHMENT B

Duties of Polk County

- 1) In exchange for the Cities and Polk County Conservation contributing funds to the Bridge Project, the County shall act as the lead agency for this project and shall provide all contract administration, construction administration and construction inspections for the Bridge Project at no cost with an in-kind value estimated at \$112,000. This shall be completed through its Public Works Department.
- 2) Notify the Parties of the bid opening date for the Bridge Project, such notices to be given not less than two business days prior thereto.
- 3) Advertise for competitive bids, receive and open bids, utilizing the Iowa Department of Transportation's letting process for the construction of the Bridge Project, and award the contract for construction of the Bridge Project to the lowest responsible bidder in conformance with IDOT procurement policies.
- 4) Pursuant to Iowa Code Chapters 26, 331, 384 and 350, hold a public hearing regarding the approval of: (1) the plans, specifications, form of contract documents and the engineers estimate of the cost for the improvements and bid security; (2) the designation of the lowest responsible bidder and cost; (3) bid acceptance; and (4) award of the contract for the Trail project.
- 5) Notify the City of Johnston and Polk County Conservation Board in regard to any additional up front funding needed to award the contract in the event the lowest responsible bid received is greater than the estimate contained in Attachments A and D.
- 6) Make payment for its respective cost share of the final contract price at \$400,000.
- 7) Invoice each Party for their respective cost share of the final contract pursuant to Attachments A and C.
- 8) Assure compliance with the terms of the Iowa Department of Transportation development process.
- 9) Enter into access agreements and temporary easement with the City of Des Moines, as approved by the City of Des Moines, for use of the Trail and adjacent City of Des Moines real property as access to construction of the Bridge Project pursuant to the City of Des Moines

usual agreements and easements for same, including all required site restoration and insurance and indemnification terms.

- 10) Require the contractor to obtain and to maintain in continuous effect, the insurance coverages described in Attachment F and the performance, maintenance and payment bond as specified by Iowa law and the terms of any contract.
- 11) Process payments for all permits, fees, and costs. Provide qualified personnel and inspection testing, process progress payment requests, and withhold therefrom the 5% retainage required pursuant to Iowa Code Chapter 573.
- 11) Review contractor requests for change orders and time extensions to determine the appropriateness thereof for approval by the Parties pursuant to Attachment A of this Agreement.
- 12) Ensure that the Bridge Project design is in compliance with the requirements of the Americans with Disability Act (ADA) and require contractors to construct the Trail Project in compliance with the ADA.
- 13) Arrange for a final inspection of the improvements and inform the Parties of the date and time thereof in writing.
- 14) Conduct a final inspection and develop a punch list of items for completion, if any, and have the County Engineer certify that the Bridge Project improvements have been constructed in conformance with the plans and specifications, design documents and contract documents.
- 15) Inform the Parties in writing of the date and time of the final inspection at least seven-days prior to the inspection.
- 16) Be solely responsible for developing the punch list work for completion and in its sole discretion determine when such items have been completed.
- 17) Upon determination that construction of the improvements have been completed, give written notice of project completion to the Parties, therein declaring that the improvements have been completed and constructed in substantial conformance with the plans and specifications.
- 18) Upon completion of the Bridge Project, accept ownership of the Bridge Project Improvements.

ATTACHMENT C

DUTIES OF THE CITIES AND COUNTY CONSERVATION BOARD

DUTIES OF THE CITY OF DES MOINES:

In exchange for Polk County, Iowa providing \$400,000 for the Bridge Project and being responsible for administration and construction of the Bridge Project, the City of Des Moines, shall:

- 1) Upon award and execution of the contract and after receiving an invoice from Polk County, Iowa, pay to Polk County, Iowa up to \$200,000 for the Bridge Project. Payment shall be made within 30 days of receipt of invoice from Polk County, Iowa.
- 2) Subject to the City of Des Moines cap of \$200,000 in funding for the Bridge Project costs, provide an administrator with authority to act on behalf of the City of Des Moines to approve change orders of less than 5% pursuant to Attachment A.
- 3) Provide necessary and reasonable access to Polk County and its general contractor to use of the Trail and City real property abutting the Bridge Project pursuant to the City's usual access agreements and temporary easement, including insurance and indemnification requirements.
- 4) The City of Des Moines shall have no responsibility for management, control, maintenance, repair, resurfacing, rehabilitation, or replacement of the Bridge Project improvements, including funding thereof.

DUTIES OF THE CITY OF JOHNSTON

In exchange for Polk County, Iowa providing \$400,000 for the Bridge Project and being responsible for administration and construction of the Bridge Project, the City of Johnston, shall:

- 1) Upon award and execution of the contract and after receiving an invoice from Polk County, Iowa, pay to Polk County, Iowa \$200,000 for the Bridge Project, plus \$375,000 for the Aesthetics Improvements including overlook, monuments and lighting, as listed under Item 17 in Attachment D. Payment shall be made within 30 days of receipt of invoice from Polk County, Iowa.

- 2) Take action through its council within 30 days of being noticed to determine whether to make additional contributions in the event that the lowest responsible bid for the Bridge Project exceeds the engineering estimates in Attachments A and D.
- 3) Provide a qualified representative to attend and participate in the final inspections of the Bridge Project improvements.
- 4) Provide an administrator with authority to act on behalf of the City of Johnston to approve change orders of less than 5% pursuant to Attachment A.

DUTIES OF THE POLK COUNTY CONSERVATION BOARD

In exchange for Polk County, Iowa providing \$400,000 for the Bridge Project and acting as the lead agent for the Bridge Project, the Polk County Conservation Board, shall:

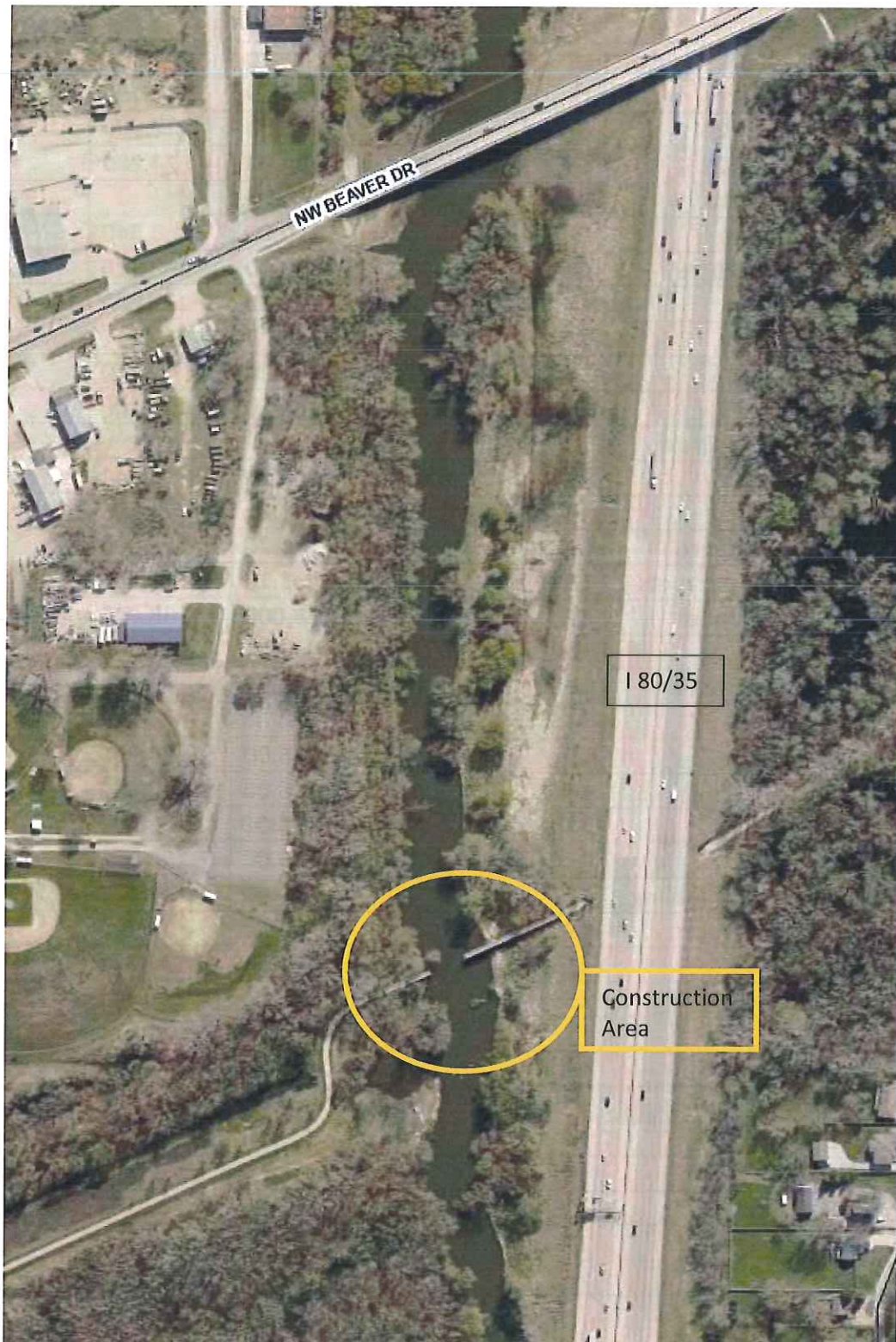
- 1) Receive approval of all appropriate permits for the Bridge Project.
- 2) Maintain all project documents and records for the mandatory 3-year retention period from the date of the final payment for inspection and auditing by the Parties and any other authorized entity.
- 3) Be responsible for any additional design services to ensure the final plans and specifications are completed for bid letting.
- 4) Upon completion of the Bridge Project, assume all responsibility, including costs thereof, for management and maintenance, rehabilitation, reconstruction, in perpetuity for the Bridge Project improvements in perpetuity. The pedestrian and bike travel portion of the Bridge surface shall be maintained, resurfaced, and replaced to the same standards as the abutting Trail.

ATTACHMENT D

DETAILED ESTIMATE OF COSTS FOR PROJECT IMPROVEMENTS

Item	Item	Unit	Quantity	Unit Cost	Cost	Item Cost
0	Removal of existing bridge	LS	0	0	91,760	91,760
1	A/E Design Services	LS	0	0	106,250	106,250
2	Excavation, Class 20	CY	116	25.00	2,900	2,900
3	Excavation, Class 21	CY	742	100.00	74,200	74,200
4	Structural Concrete					332,360
	Abutments	CY	14	610.00	8,540	
	Superstructure	CY	162	610.00	98,820	
	Piers	CY	300	750.00	225,000	
5	Reinforcing Steel					50,340
	Abutments	LB	200	1.20	240	
	Piers	LB	41,750	1.20	50,100	
6	Reinforcing Steel, Epoxy					94,860
	Abutments	LB	8,620	1.20	10,344	
	Wings	LB	1,330	1.20	1,596	
	Superstructure	LB	60,000	1.20	72,000	
	Concrete parapets	LB	9,100	1.20	10,920	
7	Beams, Pretensioned	EA	6	28,000	168,000	168,000
8	Structural Steel	LB	3,000	5.00	15,000	15,000
9	Concrete Barrier Railing	LF	670	70.00	46,900	46,900
10	Piles, Steel HP 10x57					96,960
	Abutments	LF	720	48.00	34,560	
	Piers	LF	1,300	48.00	62,400	
11	Engineering Fabric	SY	2,200	3.00	6,600	6,600
12	Revetment, Class E	TON	2,000	65.00	130,000	130,000
13	Ornamental Metal Railing	LF	670	200.00	134,000	134,000
14	Construction Survey	LS	1	8,000	8,000	8,000
15	Mobilization	LS	1	124,758	124,758	124,758
16	Contingency	LS	1	168,423	118,447	118,447
17	Aesthetics					375,000
	Overlook	EA	1	25,000	25,000	
	Monuments	EA	2	125,000	250,000	
	Lighting	EA	8	12,500	100,000	
	Trail Items					24,350
	Trail grading	CY	1,100	16.00	17,600	
	Trail paving	SY	135	50.00	6,750	
	Total estimated cost					2,000,685

ATTACHMENT E
CONSTRUCTION SITE MAP



ATTACHMENT F

STANDARD INSURANCE AND INDEMNIFICATION REQUIREMENTS

REQUIREMENTS.

The contractor shall secure and maintain throughout the duration of this contract, insurance of such types and not less than the amounts specified herein. The Contracting Authority (**POLK COUNTY**), shall be named as "Additional Insured," using the following language: "**POLK COUNTY, IOWA**, its Elected and appointed Officials, Directors, Employees, Agents, their predecessors, successors and Assigns."

Insurance coverage will be considered acceptable when provided in one of the following methods:

The Contractor shall furnish the Contracting Authority with a proper Certificate of Insurance or affidavits executed by representatives of duly qualified insurance companies, doing business in IOWA for approval by the Contracting Authority.

The Certificate shall identify the following: the insurance company firm name and address; contractor firm name and address; insurance policy(s) number(s); policy period; type of policy and coverage; limits of coverage; description of operations covered; certificate holder/"Additional Insured"; and cancellation clause.

All certificates submitted for the purpose of complying with these specifications shall identify as the "Named Insured" the Contractor; and the Contracting Authority, its agents and representatives, as "Additional Insureds."

This requirement shall apply with equal force, whether the work is performed by (1) persons employed directly by the Contractor, (2) by a subcontractor, or (3) by an independent contractor.

Regardless of such approval by the Contracting Authority, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times, and failure to do so shall not relieve the Contractor of any contractual obligation or responsibility. Failure on the part of the Contractor to maintain this insurance in full effect will be treated as such by the Contracting Authority. Failure on the part of the Contractor to comply with the requirements of this article will be considered sufficient cause to suspend the work, withhold payment(s), and/or be disqualified from receiving further contract awards.

Insurance policies filed with the Contracting Authority shall state that thirty (30) calendar days prior written notice will be given to the Contracting Authority before any policy covered thereby is changed or canceled.

Evidence of insurance coverage as identified and stipulated by these specifications shall be approved by the Contracting Authority prior to any work being performed by the Contractor, subcontractor(s), or agents of the Contractor.

TYPES OF INSURANCE

- A. **Workers' Compensation and Employers' Liability.** This insurance shall protect the Contractor against all claims under Iowa Workers' Compensation Law. The Contractor shall also be protected against claims for injury, disease, or death, or employees which for any reason, may not fall within the provisions of the Workers' Compensation Law.

The insurance requirements shall not be less than the following:

1. Workers' Compensation – Statutory
2. Employers' Liability
 - a. \$500,000 Per Accident
 - b. \$500,000 Disease, Policy Limit
 - c. \$500,000 Disease, Each Employee

- B. **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the Contracting Authority against all claims arising from injuries to any person or damage to property of others arising out of any negligence of the Contractor.

The Contractor shall provide and maintain insurance coverage to protect the Contracting Authority against any and all claims for damages for personal injury, including accidental death, as well as from claims under this contract, whether such operations be performed by the Contractor or any subcontractors, or by one directly or indirectly employed by the Contractor or any subcontractors.

The liability limits shall not be less than the following:

General Aggregate	\$ 2,000,000
Products-Completed Operations Aggregate	2,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one Fire)	100,000
Medical Expenses (Any One Person)	5,000

- C. **Professional Liability (Errors & Omissions).** Contractor will maintain, at its expense: Professional Liability Insurance in the amount of **\$2,000,000** including coverage for errors and omissions caused by Contractor's negligence in the performance of its duties under this agreement. **(WHEN APPLICABLE)**

- D. **Automobile Liability.** This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for the operation of motor vehicles, whether they are owned, non-owned, or hired, by or on behalf of the Contractor. The liability limits shall not be less than the following:
- \$1,000,000 Combined Single Limit per accident**
- E. **Excess Liability Umbrella.** The Contractor shall procure and maintain, during the life of this contract **\$5,000,000 Excess Liability Coverage (Umbrella)**. This coverage is over and above the underlying coverage of **\$2,000,000** the General Liability and Automobile & Employers Liability.
- F. **Builder's Risk Insurance.** Coverage must be equal to 100 percent replacement cost of all proposed construction.
- G. **Subcontractors.** The contractor shall require that any of its agents and / or subcontractors, who perform work and/or services pursuant to the provisions of this contract, meet the same insurance requirements as are required of the prime contractor.
- H. **Performance Bond.** A bond for the faithful and timely completion of the entire proposal must be provided with a limit of 100 percent of the contract sum and must remain in effect for a period of two years thereafter.
- I. **Liquor Liability.** Comprehensive liquor liability coverage shall be purchased With limits **not less than \$1,000,000**. **This coverage is mandatory only when the contractor/vendor will be serving alcohol of any kind for consumption.**
- J. **Deductibles.** Deductible shall **not exceed \$25,000 for damage due to earthquake or flood and shall not exceed \$5,000 for damage due to any other cause.**

MISCELLANEOUS.

- A. **Cost of Insurance.** The Contracting Authority shall make no direct payments to the Contractor for any costs associated with securing, maintaining, and/or providing the insurance coverage required by the Contract Department. All costs of such coverage shall be included in the prices bid and no additional payments for such costs shall be made.
- B. **Personal Liability of Public Officials.** In carrying out any of the provisions of the contract, or in exercising any power or authority granted to any agent or representative of the County Board thereby, there shall be no liability upon such agent or representative, including the engineer or authorized assistants, either personally or as an official of the County Board, it being understood that in such matters they act as the agent and representative of the County Board.
- C. **Non-Waiver of Legal Rights.** The Contracting Authority shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the

completion and acceptance of the work and payment thereof, from showing the true amount and character of the work performed and the materials furnished by the Contractor, or from showing that such measurement, estimate, or certificate is untrue or incorrectly made or that the work or materials do not in fact conform to the contract.

The Contracting Authority shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and Surety such damages as it may sustain by reason of failure to comply with the terms of the contract. Neither the acceptance by the Contracting Authority, nor any representative(s), nor payment for acceptance of the whole or any part of the work, nor any extent of time, nor any possession taken place by the Contracting Authority shall operate as a waiver of any portion of the contract, or any powers herein reserved, or any right to damages herein provided. A waiver of any breach of the contract shall not be held to be a waiver of any other subsequent breach.

- D. Litigation for Claims and Save Harmless Clause.** The Contractor shall indemnify and hold harmless the Contracting Authority, Board of Supervisors, Elected and Appointed Officials, Directors, Employees, Agents, their predecessors and Assigns from all suits, actions, or claims of any character brought because of any injuries or damages received or sustained by any person(s), or property because of any act, omission, or neglect in safeguarding or performing the work, or through use of unacceptable materials in constructing the work.

The Contractor shall also hold the Contracting Authority, Board of Supervisors, Elected and appointed Officials, Officers, Directors, Employees, Agents, their predecessors, successors and Assigns harmless from all claims for damages arising from any negligence, default, or mismanagement or omission of the Contractor, any subcontractor(s), agent, or employee in the performance of any duties imposed by this contract, or by law. If any litigation on account of such claims shall be commenced against the Contracting Authority, Board of Supervisors, Elected and Appointed Officials, Directors, Employees, Agents and their predecessors, successors and Assigns, the Contractor, upon notice thereof from the Contracting Authority, shall defend the same at their cost and expense; and the record of any judgement rendered against the Contracting Authority, Board of Supervisors, Elected and Appointed Officials, Directors, Employees, Agents, their predecessors, successors and Assigns to recover the full amount thereof, with interest and costs, and attorney's fees incurred by said Contracting Authority. The right of action therefore shall accrue to the Contracting Authority as soon as judgement shall have been rendered, whether the Contracting Authority shall have paid the amount or not.

THE CONTRACTOR IS REQUIRED TO BE IN ACCORDANCE WITH ALL O.S.H.A. SAFETY GUIDELINES AND REGULATIONS AT ALL TIMES DURING THE CONTRACT PERIOD.

POLK COUNTY, IOWA
CERTIFICATE OF INSURANCE

REQUIREMENTS.

Certificates of Insurance are required on every contract to show proof of adequate insurance. A Certificate shall be submitted with each set of contract documents to the Risk Manager for review. Contract documents will not be submitted to the Polk County Board of Supervisors for execution until the Certificate of Insurance is correct and has received staff approval. The Certificate(s) must specifically identify the project (No yearly or all – project certificates will be accepted), and show **POLK COUNTY \, IOWA, its Elected and Appointed Officials, Directors, Employees, Agents, their predecessors, successors, and Assigns** as “Additional Insured.”

The following statements are requirements and should aid in the preparation of an acceptable certificate. The statement numbers refer to the circled numbers on the sample certificate.

1. The name of the producer with complete address, zip code, and telephone number.
2. The Name of the Insured with complete address, zip code, and telephone number.
3. The issue date must be complete.
4. The insurance companies affording coverage must be named and approved by the Insurance Commission of the State of Iowa. The Company letters (4a) must be placed along the corresponding insurance coverages (4b).
5. All Certificates shall state that XCU Coverage is included. (If applicable)
The limits listed below are minimum acceptable limits. The Insurance Agent should review the Contract Special Provisions for each project, and verify with **POLK COUNTY RISK MANAGEMENT** that the insurance requirements have not been changed, as limits may vary from project to project.
6. General Liability:

General Aggregate	\$2,000,000
Product Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$100,000
Medical Expense (Any one person)	\$5,000
7. Professional Liability (When Applicable) **\$2,000,000**
8. Automobile Liability: **\$1,000,000**

Each Accident	Combined Single Limit
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9. Workers' Compensation:
Statutory Benefits

- | | | |
|-----|---|-------------|
| | Employers' Liability (Coverage B) | \$500,000 |
| 10. | Excess Liability Umbrella | \$5,000,000 |
| 11. | Builder's Risk Insurance | |
| | a. Equal to 100 percent of replacement cost of all construction | |
| 12. | Performance and Maintenance Bond | |
| | a. For the faithful and timely completion of the entire proposal with a limit of 100 percent of the contract sum | |
| 13. | Liquor liability | \$1,000,000 |
| | a. Mandatory for contractors/vendors who serve alcohol | |
| 14. | Policy numbers for all policies must be included | |
| 15. | Policy effective dates for all policies must be included | |
| 16. | Policy expiration dates must be included. | |
| 17. | Description of Operations: The Project Name and Work Order Number must be shown. All contracts require <u>"POLK COUNTY, Iowa, its Elected and Appointed Officials, Directors, Employees, Agents, their predecessors, successors or Assigns"</u> to be additionally insured. | |
| 18. | POLK COUNTY, IOWA must clearly and explicitly shown as the Certificate Holder. | |
| 19. | The Cancellation Clause must read exactly as follows: | |
| | "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the certificate holder named to the left." | |
| 20. | All certificates of insurance must be signed by an authorized representative. | |
| 21. | In order to preserve the governmental immunities available as defenses to Polk County and its officials and employees, any insurance policy must contain an endorsement with the following language: | |

"The Company and the Insured expressly agree and state that the purchase of this policy of insurance by the Insured does not provide coverage for torts specified in Iowa Code 670.4, and that the Insured does not waive any of the defenses of governmental immunity available to the Insured under Iowa Code 670.4 as it now exists and as it may be amended from time to time. The Company and the Insured further expressly agree and state that the Insured may, at any time, assert any of the governmental immunity defenses available to it without affecting the coverage afforded under this policy."

EXHIBIT 1



BRIDGE CONCEPT

Trestle to Trestle Trail Bridge, Polk County, Johnston, Iowa

RIVER ACCESS VIEW - VIEW G

September 26, 2019



BRIDGE CONCEPT

Trestle to Trestle Trail Bridge, Polk County, Johnston, Iowa

NORTH ENTRANCE - VIEW A

September 26, 2019

