

**PROFESSIONAL SERVICE AGREEMENT
LANCASTER COUNTY AND SEACREST & KALKOWSKI**

1. **Introduction.** This Agreement is made as of April ____, 2019, by and between Lancaster County, Nebraska (“**County**”) and Seacrest & Kalkowski, PC, LLO (“**Service Provider**”) for services as outlined below.
2. **Services.** Service Provider and County entered this Agreement for Service Provider to provide the following facilitation and legal services in regard to: (i) First Stage – determine if there is consensus on the 80% Outline on a wheel tax by May 27, 2019; and (ii) Second Stage – if there is consensus on the First Stage, then proceed to drafting and seeking approval of a written wheel tax agreement (e.g., JPA Agreement) by July 15, 2019.

First Stage—Develop an 80% Consensus Wheel Tax Outline:

1. Establish Working Committee:
 - a. County:
 - i. Jennifer Brinkman
 - ii. Pam Dingman
 - b. City of Hickman
 - i. Mayor Doug Hanson
 - ii. Silas Clarke, City Administrator
 - c. City of Waverly
 - i. Mayor Mike Werner
 - ii. Stephanie Fisher, City Administrator
 - d. Staff: Kent Seacrest
2. Working Committee and Staff identifies potential key issues:
 - a. Reviews the Joint Public Agency Act, other key state statutes and County and City ordinances
 - b. Coordination of different governmental needs and efforts
 - c. Define potential and eligible infrastructure needs and costs, e.g.,
 - i. 148th Street Corridor
 - ii. 68th Street Corridor
 - iii. Improvements within the extraterritorial jurisdictions of cities and villages
 - iv. Improvements in the villages (that are part of a County road project)
 - v. Other areas of need
 - d. Define potential and eligible wheel tax revenues
 - i. Determine the key dates to implement a wheel tax (e.g., January 1, 2020)
 - ii. Determine the amount of a potential wheel tax
 - iii. Determine how the potential wheel tax is charged
 1. In other Nebraska governmental jurisdictions (e.g., Lincoln, Grand Island, etc.)

- 2. By unit
 - 3. By axle
 - e. Monitor LB 412 legislation potential impact—requires a vote of the people
3. Staff and Working Committee prepares Outline of the key elements for a wheel tax agreement:
 - a. Governing board, including composition, procedures, number of members, terms and voting procedures
 - b. Budgeting and taxing provisions
 - c. Powers, limitations and reporting
 - d. Bidding procedures
 - e. Whether to allow bonding
 - f. Dissolution and withdrawal of public agency
 4. Community briefings, review and discussion of the Outline:
 - a. Task Force Committee
 - b. County and City Attorneys
 - c. Other key stakeholders
 - d. County Board of Commissioners
 - e. Waverly City Council
 - f. Hickman City Council
 5. S & K Deliverables:
 - a. Written Wheel Tax Outline
 6. S & K Bill Hourly wages \$281; First Stage cost: \$11,240

Second Stage—Written Wheel Tax Agreement

1. Staff prepares first draft of a written wheel tax agreement
2. Working Committee and Staff continues to meet to work on a draft written wheel tax agreement
3. Governmental Attorneys meet with Working Committee to review draft written wheel tax agreement
4. Community briefings, review and discussion of the Outline:
 - a. Task Force Committee
 - b. County and City Attorneys
 - c. Other key stakeholders
 - d. County Board of Commissioners
 - e. Waverly City Council
 - f. Hickman City Council
5. Four public quadrant meetings:

- a. NE-Waverly
 - b. SE-Hickman
 - c. SW-Denton
 - d. NW-Raymond
6. Working Committee reviews public comments and makes final recommendation of the draft written wheel tax agreement to County, City of Hickman and City of Waverly
 7. Governmental public hearings
 - a. County Board of Commissions
 - b. Hickman City Council
 - c. Waverly City Council
 8. S & K Deliverables:
 - a. Written JPA Agreement
 9. S & K Bill Hourly wages \$281; Second Stage total cost: \$17,422
 10. Timeline

First Stage:

1. **April 10:** County completes its review of the draft scope of engagement
2. **April 17:** Draft engagement contract by County Attorney's Office
3. **April 23:** Discussion engagement contract with County Commissioners
4. **April 30:** Engagement contract on County Commissioners Agenda
5. **April 30:** Meet County's insurance requirements
6. **May 1:** Notice to proceed on Engagement Contract
7. **May 2, 9, and 16:** Weekly discussion with two representatives from the County, City of Waverly and City of Hickman ("Working Committee") regarding an 80% outline for wheel tax agreement
8. **May 20–May 27:** Briefings with County Commissioners, Waverly City Council, Hickman City Council and other key stakeholders to determine if there is First Stage consensus

Second Stage:

1. **May 30, June 6 and 13:** **Second Stage:** Weekly discussion with the Working Committee regarding a 100% wheel tax agreement
2. **June 13 –June 26:** Review by County Attorney's Office, City of Waverly City Attorney, City of Hickman City Attorney and Working Committee
3. **June 27–July 9:** Community, four quadrants and stakeholder meetings
4. **July 9:** Waverly City Council public hearing
5. **July 9:** Hickman City Council public hearing
6. **July 15:** County Board public hearing

11. Seacrest & Kalkowski legal fees:

First Stage	Quantity	Hours	Total Hours	Total
Organization		4	4	
Working Committee meetings	3	6	18	
Draft Outline		5	5	
Briefings	4	2	8	
Contingency		5	5	
Hourly Rate	\$281			
Total for First Stage			40	\$11,240
Second Stage				
Draft Wheel Tax Agreement		5	5	
Working Committee meetings	3	6	18	
Governmental Attorneys review of draft Agreement	3	2	6	
Briefings	5	2	10	
Four public quadrant meetings	4	3	12	
Governmental Public Hearings	3	2	6	
Contingency		5	5	
Hourly Rate	\$281			
Total for Second Stage			62	\$17,422
Grand Total				\$28,662

3. **Term.** The term of this Agreement shall commence as of the date written above and shall continue until completion of all of the obligations of this Agreement or until terminated as provided herein.

4. **Compensation.** For the services provided pursuant to this Agreement, County agrees to pay Service Provider at an hourly rate of \$281 for Kent Seacrest’s legal services, plus normal out-of-pocket expenses (photocopying, telephone and postage), with the total compensation to Service Provider not to exceed \$30,000. Additional compensation beyond this limit must be approved in writing by the parties before any work will be approved and compensated. Service Provider shall submit itemized billing statements to the County at least every ninety (90) days detailing the services provided, the out-of-pocket expenses incurred, and the charges for such services and expenses. Payment for such services and expenses shall be made no later than thirty (30) days following the County’s receipt of Service Provider’s billing statements. The Parties agree that this Agreement does not provide compensation in the form of a retainer and that Service Provider shall be paid only for services actually rendered and expenses actually incurred in the performance of this Agreement.

5. **Common Representation; Informed Consent.** While this Service Agreement is with the County, our firm would concurrently represent the County, the City of Waverly and the City of Hickman. Despite any potential, actual or perceived conflict of interest which may exist now or in the future, the County hereby consents to the Service Provider’s simultaneous representation of the County, City of Hickman and City of Waverly with respect to the Services described above and based upon the Disclosure shown on Exhibit “A”.

6. **Termination.** Either party has the right to terminate this Agreement if the other party materially breaches this Agreement. Termination of this Agreement for such a material breach shall become effective only after the non-breaching party notifies the breaching party of the material breach in writing and after giving the breaching party 30 days to cure such material breach. If the breaching party does not cure the material breach within 30 days, the Agreement shall terminate. County also has the right to terminate this Agreement for any reason for its own convenience with thirty (30) days written notice of the termination. County may terminate this Agreement immediately, without penalty or expense, in whole or in part, when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of County. Upon termination, County shall pay Service Provider for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

7. **General Duties.** Service Provider agrees as follows: (a) To timely and professionally complete the services as described above, and to furnish their labor and pay all their own costs, including any taxes, required to complete their services; (b) To furnish everything reasonably necessary to complete the services unless specifically provided otherwise in this Agreement; (c) To conduct all activities related to the services in a lawful manner; and (d) To provide and perform all necessary labor in a professional and workmanlike manner and in accordance with the provisions of this Agreement.

8. **Independent Contractor.** County is interested only in the results produced by this Agreement. Service Provider has sole and exclusive charge and control of the manner and means of performance. Service Provider shall perform as an independent contractor and it is expressly understood that neither Service Provider nor any of its staff are employees of County and, thus they are not entitled to any County benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, or injury leave.

9. **Insurance.**

A. The Service Provider shall have, maintain, and provide proof of Commercial General Liability Insurance with a minimum limit of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. These minimum limits can be met by primary and umbrella liability policies. Coverage shall include: Premises-Operations, Products/Completed Operations, Contractual, and Personal Injury. The Service Provider shall name the County of Lancaster as additional insured on Service Provider's Commercial General Liability Insurance policy and shall provide an Additional Insured Endorsement form showing the County of Lancaster as additional insured on Service Provider's Commercial General Liability Insurance policy. The form shall be as is reasonably acceptable to the County Attorney.

B. The Service Provider shall have, maintain, and provide proof of workers' compensation insurance of not less than minimum statutory requirements under the laws of the State of Nebraska and any other applicable State. Employers' Liability coverage with limits of not less than \$500,000 each accident or injury shall be included. The Service Provider shall also be responsible for ensuring that all subcontractors, if any, have workers'

compensation insurance for their employees before and during the time any work is done pursuant to this Agreement.

C. Service Provider shall have, maintain, and provide proof of Professional Liability Insurance, covering damages arising out of negligent acts, errors, or omissions committed by Service Provider in the performance of this Agreement, with a liability limit of not less than \$1,000,000 each claim. Service Provider shall maintain this policy for a minimum of two (2) years after completion of the work performed pursuant to this Agreement or shall arrange for a two (2) year extended discovery (tail) provision if the policy is not renewed.

D. The Service Provider shall provide the following to the County and shall attach the following to this Agreement:

1. A Certificate of Insurance for Service Provider's General Liability Insurance and the additional insured endorsement form required by this Agreement.
2. A Certificate of Insurance for Service Provider's Professional Liability Insurance.
3. Proof of Workers' Compensation Insurance.

E. Service Provider is required to provide County with thirty (30) days' notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement.

F. County's failure to object to the form of a certificate of insurance or an endorsement or to demand such proof as is required herein shall not constitute a waiver of any of the insurance requirements set forth in this Agreement.

G. Nothing contained in this Agreement shall be construed to waive the County's sovereign immunity.

10. **Fair Employment.** Service Provider shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, or national origin pursuant to the requirements of Neb. Rev. Stat. § 48-1122, as amended.

11. **Fair Labor Standards.** Service Provider shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

12. **Integration, Amendments, Assignment, Severability, Nebraska Law.** This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party. Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.

13. **E-Verify.** In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Service Provider agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Service Provider shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. § 1324b. The Service Provider shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

14. **Capacity.** The undersigned person representing Service Provider does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind Service Provider to this Agreement.

IN WITNESS WHEREOF, Service Provider and County do hereby execute this Agreement.

Service Provider Signature: Seacrest & Kalkowski, PC, LLO

By: Kent Seacrest
Kent Seacrest, President
For the Firm

Name and Address: Kent Seacrest, President
Seacrest & Kalkowski, PC, LLO
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508
402.435.6000
kent@sk-law.com

County Signature: Lancaster County Board of Commissioners
Lancaster County, Nebraska

By: _____
Title: _____

Name and Address: Lancaster County Board of Commissioners
Lancaster County, Nebraska
555 South 10th Street
Lincoln, NE 68508

Exhibit "A"

Seacrest & Kalkowski, PC, LLO Disclosure

The purpose of this Disclosure is to advise the County, City of Waverly and the City of Hickman (collectively "Clients") of the actual and potential consequences of such simultaneous representation, and to explain the circumstances under which Seacrest & Kalkowski, PC, LLO, as the Service Provider, would be willing to represent all the Clients simultaneously if, after full consideration of the consequences, the Clients wish us to do so.

Simultaneous representation of parties with adverse interests by the same law firm involves a number of departures from professional norms, and should not be undertaken by any such party without careful consideration. In particular, the Service Provider want the Clients to be aware of the following:

1. Under applicable rules of professional conduct, a law firm owes each of its Clients a duty of loyalty, which would normally preclude any attorney within the firm from undertaking a representation adverse to any Client of the firm without the affected Client's informed consent. In addition, each Client has the right to discharge our law firm. Other rules generally prohibit a firm from undertaking any representation involving an actual or future conflict of interest. Such a situation exists whenever a firm represents two or more Clients simultaneously in a situation in which their interests are actually adverse or in the future could be adverse. In limited circumstances involving concurrent conflicts of interest that immediately exist or may exist in the future, a lawyer may represent a Client with the informed consent of all affected parties so long as: (i) the lawyer reasonably believes the lawyer will be able to provide competent and diligent representation to each affected Client; (ii) representation is not prohibited by law; and (iii) the common representation by the lawyer does not involve litigation or a claim by one Client against another Client.

2. Common representation has the potential to save time and money and/or increase facilitation, coordination and communications. At the initiation of the proposed process, the initial three interested partners—County, City of Waverly and the City of Hickman—agree reaching consensus and crossing the finish line (i.e., potential approval by the County Board of Commissioners Council, Waverly City Council and Hickman City Council) would be difficult unless the interested partners worked in a collaborative fashion to reach common consensus. The County, City of Waverly and City of Hickman officials have stated that their vision and interests are closely aligned and thus a concurrent conflict of interest would be unlikely. Each Client has developed process safeguards to assure that the vision and interest stay closely aligned at each stage of project development, including retaining separate legal counsel.

3. Based upon the shared vision, closely aligned interests, and built-in safeguards, our law firm is not aware of any actual or likely future concurrent conflicts of interest. Based upon our knowledge of the parties' shared interests, our firm reasonably believes it can provide competent and diligent representation to each Client, while striving to achieve the collective Clients' goals of saving time, money and/or increasing facilitation, coordination and communications. Assuming each Client gives informed consent, our firm is unaware of any law that would prohibit common

representation, and the common representation would not involve litigation or a claim by one Client against any other Client.

5. However, potential conflicts of interest, actual or perceived, and the need for informed consent exist no matter how strong the shared goals, vision, aligned interests or safeguards appear to be on the undertaking or how cordial the community spirited relationship between the parties currently is or is anticipated to be. It may not be possible for our firm to represent all the parties in the same aggressive manner as would three separate and independent law firms. The parties acknowledge that common representation prevents our firm from looking to better the deal for the benefit of one Client over the interest or the expense of the other Clients, which often can occur with separate legal counsel. By granting the consent herein, the Clients are, in effect, waiving that kind of potential zealous or partisanship representation with the other parties.

6. Moreover, regardless of the terms upon which the matters between the Clients are concluded, the fact that one law firm has been involved in the representation of multiple parties may give rise to a perception on the part of the County, City of Waverly, City of Hickman or other third parties that different terms might have been arrived at had each of the Clients had separate representation by an independent law firm.

7. If a material dispute should arise in the future between the parties concerning undertaking or any other aspect of the Clients' dealings with each other, and such dispute cannot be timely and satisfactorily resolved by the parties, we would have to withdraw, or would be disqualified, from representing any party with regard to that dispute or any other relationship said party might then have with each other. Each party would likely use the services of their respective legal counsel and/or seek new outside counsel. A similar problem is created if one of the parties withdraws the consent to common representation after the representation has commenced. Our firm's withdrawal or disqualification could result in additional expense and inconvenience that a Client might not have otherwise incurred had the Client continued separate representation and not engaged in common representation.


8. The traditional ethical rules of confidentiality and attorney-client privilege that normally would apply to our firm and each of our Clients will need to be modified in this case. One Client could not ask our firm to keep information confidential from the other Client that is relevant to the common representation. The ethical rules in very limited circumstances could allow a lawyer to proceed with certain information kept confidential from one of the Clients, if all the Clients have agreed after being properly informed. We are assuming that this limited circumstance is not being sought by any of the Clients.

9. Instead, if we receive such a request from one Client to keep some matter material to the common representation from the other Clients, we would need to withdraw. If our firm learns of information that could be detrimental to the parties' interests when working on behalf of one of the Clients, we would immediately assess the detrimental information, outline reaction strategies on potential solutions and jointly present the detrimental information and reaction strategies to all Clients as soon as reasonably possible, but no later than forty-eight (48) hours after discovering the detrimental information.

10. The prevailing attorney-client rule is that, as between dual or common represented clients, the privilege does not attach. Based upon this proposed approach, there will be no material confidentiality and attorney-client privilege among our firm, the County, City of Waverly and the City of Hickman, though there will be confidentiality and attorney-client privilege between the three parties and the outside world.

11. We never recommend simultaneous representation of adverse parties. We have recommended that each party seek the advice of independent counsel of their own choice regarding common representation and this disclosure and the Client's consent hereunder. If it is the wishes of the three Clients that we undertake the simultaneous representation of the parties with respect to the undertaking based upon the shared goals, vision, aligned interests, and existing safeguards, we will undertake to do so under the terms described above.

Seacrest & Kalkowski, PC, LLO

By: 
Seacrest & Kalkowski, PC, LLO
Kent Seacrest, President
For the Firm

