CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: August 5, 2019

ITEM:

Motion – Approving Amendment No. 1 to Professional Services Agreement
Johnson Creek Realignment – Environmental Permitting Services

FINANCIAL IMPACT:

The original Professional Services Agreement included a maximum fee of $39,600.00 for Basic Services of the Consultant. Amendment No. 1 increases the Basic Services of the Consultant by $9,600.00. The new maximum not-to-exceed fee thus becomes $49,200.00. All costs for these services can be paid from account no. 500.000.000.5250.495 with ultimate funding intended to come from Mills TIF Subdistrict 7.

BACKGROUND:

Approval of this action authorizes Foth Infrastructure & Environment, LLC to perform the additional professional services necessary for the environmental permitting of the realignment of Johnson Creek to the west of South Grand Prairie Parkway. The City is obligated by the Raccoon River Quarries PUD to perform this permitting. This permitting will determine if Johnson Creek can be moved to provide additional mining area for Martin Marietta and a more contiguous lake after the City's reclamation plan is complete.

Amendment No. 1 includes additional Basic Services of the Consultant to accommodate the U.S Army Corps of Engineers' request for a revised alternative analysis and any supplemental information necessary to facilitate issuance of a Section 404 Permit.

The Engineering Services Department retains professional consultants based on their past work experience, qualifications of their staff, familiarity with the project, manpower availability, and past performance. Once a firm has been selected based on the above criteria, City staff then negotiates a fee with the consultant for performing the desired scope of services. City staff attempts, whenever feasible, to distribute professional services work on an equitable basis to qualified firms maintaining local metropolitan area offices who have expressed interest in working for the City of West Des Moines.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

OUTSTANDING ISSUES: None.

RECOMMENDATION:

City Council Adopt:

- Motion Approving Amendment No. 1 to Professional Services Agreement for Johnson Creek Realignment – Environmental Permitting Services.

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer BJH

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney JDS
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services		
Date Reviewed			
Recommendation	Yes	No	Split

AMENDMENT NO. 1
TO THE AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This AMENDMENT is made and entered into this ~~15th~~ 5th day of ~~July~~ August, 2019, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and Foth Infrastructure & Environment, LLC, (Fed. I.D. #20-5814224), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant", hereby amends the original Agreement dated December 26th, 2018 as follows:

1. SCOPE OF SERVICES

   The Scope of Services as described in the original Agreement for Johnson Creek Re-Location Environmental Permitting Services (Project No. 0430-028-2017), Attachment 1 is amended to add the following to the original Attachment 1:

   Prepare a revised Alternatives Analysis, as requested by the USACE in a letter dated June 17, 2019. The revised Alternatives Analysis will include and evaluation of the revised purpose of aggregate mining as well as an evaluation of alternative stream mitigation strategies.

2. SCHEDULE

   The Project Schedule of the professional services as described in the original Agreement, Attachment 2 is amended as follows: No Change.

3. COMPENSATION

   In consideration of the additional professional services provided, the City agrees to pay the Consultant the additional fees to increase the original sum NOT-TO-EXCEED, including any authorized reimbursable expenses, pursuant to the Schedule of Fees set forth in the original Agreement, Attachment 3.

	Original Fee	Additional Fee	Total Fee
I. Basic Services of the Consultant	$39,600	$9,600	$49,200

This AMENDMENT is subject to all provisions of the original Agreement. This AMENDMENT together with the Agreement represents the entire and integrated AGREEMENT between the City and Consultant, as executed on the date written above.

Foth Infrastructure & Environment, LLC

BY: _____
Patrick Kueter, PE, Director

CITY OF WEST DES MOINES

BY: _____
Ryan T. Jacobson, City Clerk

ATTACHMENT 1

SCOPE OF SERVICES

Revised Alternative Analysis

Prepare a Revised Alternative Analysis, as requested by the USACE in a letter dated June 17, 2019. The Revised Alternative Report will include the following discussions:

- Project Purpose based on aggregate mining
- Project Need
- Alternate Site Analysis
- Avoidance of Impact
- Minimization of Impact
- Compensatory Mitigation, including an evaluation of alternative stream mitigation strategies.

The Alternative Analysis will be based on the Memorandum of Agreement (MOA) between the Environmental Protection Agency (EPA) and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines, dated February 6, 1990. As indicated in the MOA, when evaluating 404 permit applications, the USACE follows the steps listed below:

- determines that potential impacts have been avoided to the maximum extent practicable;
- determines that the remaining unavoidable impacts will then be mitigated to the extent appropriate and practicable; and
- compensates for aquatic resource values.

Following submittal of the Revised Alternatives Analysis, the Consultant will coordinate with the USACE to facilitate issuance of the Section 404 Permit. The proposed fees for the alternatives analysis assume that the City, HDR, and Martin Marietta will provide the Consultant information required to generate the Alternative Analysis reports.

ATTACHMENT 2

PROJECT SCHEDULE

The time of completion of the design and engineering services under this Agreement shall be as follows:

I. Basic Services of the Consultant

A. Revised Alternatives Analysis July – August 2019

ATTACHMENT 3

SCHEDULE OF FEES

FOTH INFRASTRUCTURE AND ENVIRONMENT, L.L.C

2019 STANDARD HOURLY RATE SCHEDULE

CLASSIFICATION	HOURLY RATE
Director	$198.00
Project Manager	$165.00-$193.00
Project Scientist	$114.00-$140.00
Project Engineer	$139.00-$184.00
Staff Engineer	$112.00-$137.00
Planner	$112.00-$184.00
Technology Manager	$160.00
Technician	$78.00-$131.00
Construction Manager	$160.00
Land Surveyor	$129.00-$164.00
Project Administrator	$78.00-$98.00
Administrative Assistant	$60.00

REIMBURSABLE EXPENSES

1. All materials and supplies used in the performance of work on this project will be billed at cost plus 10%.

2. Auto mileage will be reimbursed per the standard mileage reimbursement established by the Internal Revenue Service. Service vehicle mileage will be reimbursed on the basis of $0.88 per mile.

3. Charges for outside services such as soils and materials testing, fiscal, legal and all other direct expenses will be invoiced at cost plus 10%.

ADJUSTMENTS TO FEE SCHEDULE

1. Fee schedule effective January 1, 2019. Rates subject to change annually on January 1.

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, ROCK ISLAND DISTRICT
PO BOX 2004 CLOCK TOWER BUILDING
ROCK ISLAND, ILLINOIS 61204-2004

REPLY TO
ATTENTION OF

June 17, 2019

Operation Division

SUBJECT: CEMVR-OD-P-2019-684

Mr. William Gahan
Martin Marietta Materials
11252 Aurora Avenue
Des Moines, Iowa 50322

Dear Mr. Gahan:

Our office has reviewed your application received May 23, 2019, concerning the proposed relocation of Johnson Creek for an aggregate mining operation expansion located in Sections 27, 28, 33 and 34, Township 78 North, Range 26 West, Dallas County, Iowa. Your project has been assigned the permit number 2019-684. Please refer to this number in future correspondence.

From the information submitted, it appears waters of the United States may be adversely impacted by this project. In order for us to continue processing your application you will need to submit the following additional information:

- The Corps Regulatory Branch utilizes the Applicant's stated purpose and need for a project and ultimately decides the purpose and need to develop an alternatives analysis. In the case of this project, the Corps believes that aggregate mining is the project purpose. The alternatives analysis provided did not include an analysis of other off-site and on-site methods to complete the project without a Corps permit. Please submit a new alternatives analysis that reflects a project purpose of aggregate mining instead of stream relocation.

- We have concerns about the mitigation plan as proposed. The oxbow restoration itself would require wetland mitigation as over 3-acres of mature bottomland forest would be converted and impacted. The Corps Mitigation Rule directs applicants to use existing mitigation banks when available. At this time, a stream mitigation bank is available in the service area of your project. Permittee responsible mitigation is an option, but only if it results in environmental lift. The current proposal does not.

- Impacts to bat habitat. Please describe an estimation on impacts to forested areas (in acreage). This would be forested areas to be removed and/or flooded as part of the project. Additional coordination with the US Fish and Wildlife Service will likely be required to address any removal of forested areas.

We had the minimum required to publish a Public Notice and it will be posted to the Regulatory website soon. Following the expiration of the Public Notice, we will allow 30 days to respond to these comments and other comments received during the public notice comment period. If we do not receive the required information, we will withdraw the application.

Should you have any questions, please contact our Regulatory Branch by letter, or telephone me at 309-794-5859.

Sincerely,

Mr. Albert Frohlich
Project Manager
Regulatory Branch

Copies Furnished:

Ms. Eva Moritz
FOTH Infrastructure and Environment
8191 Birchwood Court, Suite L
Johnston, Iowa 50131

PUBLIC NOTICE

US Army Corps
of Engineers
Rock Island District

Applicant: Martin Marietta — Date: June 20, 2019
Expires: July 19, 2019
CEMVR-OD-P-2019-684 — Section 404

Joint Public Notice
US Army Corps of Engineers
Iowa Department of Natural Resources

1. **Applicant:**

Martin Marietta Materials
11252 Aurora Avenue
Des Moines, Iowa 50322

2. **Project Location:**

- Wetlands and tributaries abutting the Raccoon River,
- Sections 27, 28, 33 and 34, Township 78 North, Range 26 West,
- Dallas County, Iowa near West Des Moines,
- Lat. 41.52723. Lon. -93.84699.

3. **Project Description:**

A. Martin Marietta Materials is proposing to excavate sand and gravel underneath Johnson Creek at their existing facility along the Raccoon River. The existing facility has been in operation since 2005. In 2005, the Corps authorized Martin Marietta (CEMVR-OD-P-2005-282) to impact wetlands at this location. In 2012 and 2013, the original permit was modified and Martin Marietta received authorization to open additional areas to sand and gravel mining. Johnson Creek is a perennial stream that flows to the west of their existing sand extraction site. Martin Marietta has stated that when they complete their authorized mining to the west of Johnson Creek, the creek will become unstable and will likely erode into the remaining sand pits. Martin Marietta has proposed to relocate Johnson Creek instead of stabilizing the perched stream. There are additional sand reserves under this stream and it will be extracted as part of this project. Upon completion of all sand and gravel mining, the mining area will be given (proposed) to the City of West Des Moines.

B. Martin Marietta has evaluated stream bank stabilization along the stream instead of relocation and concluded that upon completion of the mining, leaving an unstable creek in between two mining areas was not realistic. The Applicant has submitted an Alternatives Analysis and this will be used in the evaluation.

C. The relocation of Johnson Creek will result in the loss of 6,130 feet of stream. There are 0.02 acres of wetland along Johnson Creek that will be permanently impacted also. The Applicant has proposed on-site mitigation to the west by creating a two-stage channel in an oxbow of the Raccoon River. This would result in the loss of 3.19 acres of mature forested wetland. Wetland mitigation for the forested wetland, which results from the stream mitigation, would be completed through a purchase from a wetland mitigation bank at a 2:1 ratio. Additional stream mitigation would be required, however it has not been proposed at this time to compensate for the loss of 6,130 feet (31,263 Stream credits will be required).

4. **Agency Review**. The project plans have been submitted to the Iowa Department of Natural Resources for state certification of the proposed work in accordance with Section 401 of the Clean Water Act. The certification, if issued, will express the Department's opinion that the proposed activity will comply with Iowa's water quality standards (Chapter 61 IAC). The applicant has also applied for authorization of work in the floodplain pursuant to Chapter 455B of the Iowa Code and other applicable state permits. Written comments concerning possible impacts to waters of Iowa should be addressed to: Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319. A copy of the comments should be provided to the Corps of Engineers office (see paragraph 11, of this public notice for address).

5. **Historical/Archaeological.** Under CEMVR-OD-P-2005-282, the entire site has been surveyed for cultural and historical sites multiple times. Multiple sites have been found. A Phase 3 Archaeology Recovery on the Foxtail Site was completed and documented in BCA 1294 (R&C 050625073). A Phase 1 survey was completed for a separate section of the project (BCA 1899) area and no additional sites were located within the project area. The current proposal to relocate Johnson Creek is in such a landform that we will not require a Phase 1 Survey however we would require a Phase 1 Survey for the proposed mitigation site to the west and if any other off-site mitigation sites were proposed we will evaluate the need for a survey at that time.

6. **Endangered Species**. District staff has performed a preliminary review of this application for the potential impact on threatened or endangered species pursuant to Section 7 of the Endangered Species Act as amended. The following threatened or endangered species are listed by the United States Fish and Wildlife Service (FWS) as occurring in Dallas County, Iowa;

- Prairie bush clover. The threatened prairie bush clover (*Lespedeza leptostachya*) is considered to potentially occur statewide based on historical habitat. It occupies dry to mesic prairies with gravelly soil.

- Western prairie fringed orchid. The threatened western prairie fringed orchid (*Platanthera praeclara*) is considered to potentially occur statewide in Iowa based on historical records and habitat distribution. It occupies wet to mesic grassland habitats.

- Northern long-eared bat. The threatened northern long-eared bat (*Myotis septentrionalis*) is considered to potentially occur statewide. It hibernates in caves and mines and swarms in surrounding wooded areas in autumn. It roosts and forages in upland forests during late spring and summer. Suitable habitat is within the project area and nearby, a habitat and acoustic survey is being completed this summer.

- Indiana bat. The endangered Indiana bat (*Myotis sodalis*) hibernates in caves and mines and swarms in surrounding wooded areas in autumn. These bats migrate to their summer habitat in wooded areas where they usually roost under loose tree bark on dead or dying trees. There are known populations nearby, therefore we requested a habitat survey. The Applicant stated that they have recently begun working on an acoustic survey.

- Topeka shiner. The endangered Topeka shiner (Notropis Topeka) is known to be within the Raccoon River watershed, however according to a Biological Assessment conducted in 2012 for CEMVR-OD-P-2005-282, there are no known records for this species in this particular area. The respondent letter, sent by Richard Nelson dated September 24, 2012, stated that the project (2005-282) would have an extremely low likelihood of affecting this species. For this proposed project (2019-684) the Corps has made a determination of "No Effect". Topeka shiners occupy off channel oxbows and pools and Johnson Creek does not contain habitat such as this.

The Corps has made a determination of "no effect" for the two plant species and minnow listed. Habitat for these species is not present. The Corps has requested habitat surveys for the two bat species listed. Upon receipt of these surveys, we will coordinate the results with the Fish and Wildlife Service.

7. **Dredge/Fill Material Guidelines**. The evaluation of the impact of the proposed activity on the public interest will also include application of the guidelines promulgated by the Administrator of the United States Environmental Protection Agency under authority of Section 404(b) of the Clean Water Act (40 CFR Part 230).

8. **Public Interest Review**. The decision whether to issue the Corps permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

9. **Who Should Reply**. The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments

received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact

Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. These statements should be submitted on or before the expiration date specified at the top of page 1. These statements should bear upon the adequacy of plans and suitability of locations and should, if appropriate, suggest any changes considered desirable.

10. **Public Hearing Requests**. Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided.

11. **Reply to the Corps of Engineers**. Comments concerning the Corps permit should be addressed to the District Engineer, U. S. Army Corps of Engineers, Rock Island District, ATTN: OD-PP (Frohlich), Clock Tower Building - Post Office Box 2004, Rock Island, Illinois 61204-2004. For additional information contact **Albert Frohlich** at **(309/794-5859)** or email at albert.j.frohlich@usace.army.mil.

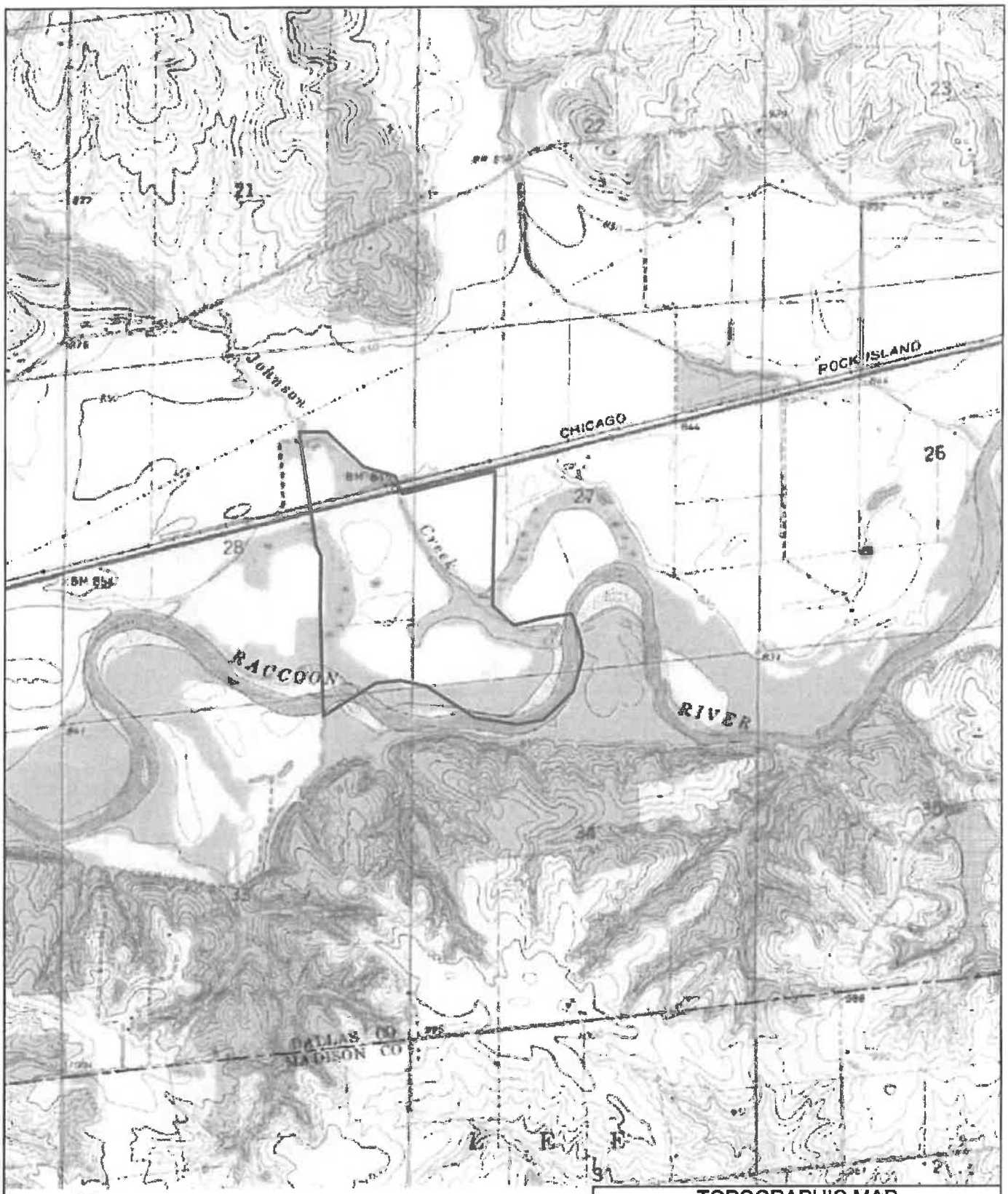
Albert J. Frohlich

Attach
Plan

Mr. Albert J. Frohlich, Project Manager
Iowa Section
Regulatory Branch

REQUEST TO POSTMASTERS: Please post this notice conspicuously and continuously until the expiration date specified at the top of page 1.

NOTICE TO EDITORS: This notice is provided as background information for your use in formatting news stories. This notice is not a contract for classified display advertising



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LEGEND

- PROJECT AREA

CEMVR-OD-P-2019-684
Sheet 1 of 2
Project Location

TOPOGRAPHIC MAP		
MARTIN MARIETTA-RACCOON RIVER SAND SECTION 404 PERMITTING 10050 RACCOON RIVER DRIVE WEST DES MOINES, IOWA		
0 APPROXIMATE DRAWING SCALE 2000 Feet	Project ID #: 18W045.00	
Date: 04/17/19 Prepared By: ESM Checked By: RPB	Foth Foth Infrastructure & Environment, LLC	1

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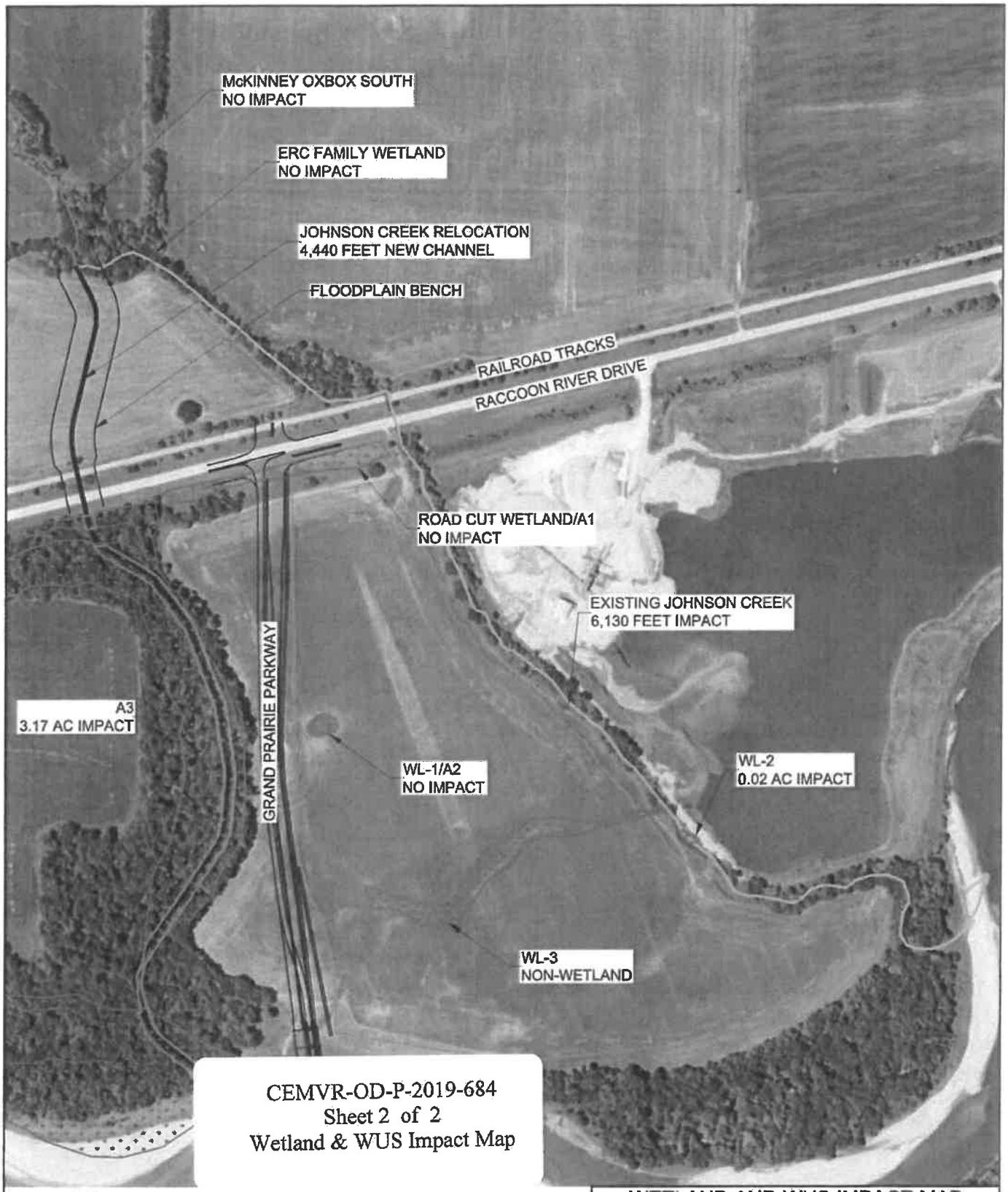

CEMVR-OD-P-2019-684
Sheet 2 of 2
Wetland & WUS Impact Map

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LEGEND

- PERMITTED DREDGING LIMITS
- WETLAND AREA
- WUS IMPACTS
- WETLAND IMPACTS
- WUS PROPOSED NEW CHANNEL

WETLAND AND WUS IMPACT MAP		
MARTIN MARIETTA-RACCOON RIVER SAND SECTION 404 PERMITTING 10050 RACCOON RIVER DRIVE WEST DES MOINES, IOWA		
APPROXIMATE DRAWING SCALE 0 600 Feet	Project ID #: 18W045.00	
Date: 04/17/19 Prepared By: ESM Checked By: RPB	Foth Foth Infrastructure & Environment, LLC	3

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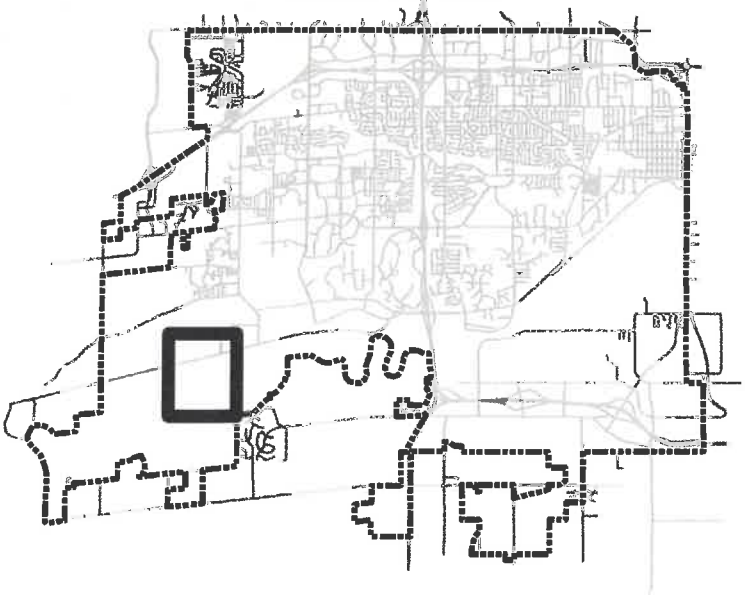
VICINITY MAP



LEGEND

PROJECT LOCATION

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W E
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THE CITY OF WEST DES MOINES

PROJECT:	**Johnson Creek**		
LOCATION:	**Raccoon River Drive, Johnson Creek**		
DRAWN BY: JDR	DATE: 6/30/2017	PROJECT: 0430-028	SHT. 1 of 1