



# City of Grand Island

Tuesday, August 8, 2017

Council Session

## Item G-3

**#2017-210 - Approving Amendment No. 1 for Engineering Consulting Services Related to Sycamore Street Underpass Rehabilitation**

Staff Contact: John Collins, P.E. - Public Works Director

# **Council Agenda Memo**

**From:** Keith Kurz PE, Assistant Public Works Director

**Meeting:** August 8, 2017

**Subject:** Approving Amendment No. 1 for Engineering Consulting Services Related to Sycamore Street Underpass Rehabilitation

**Presenter(s):** John Collins PE, Public Works Director

## **Background**

On February 14, 2017, via Resolution No. 2017-31, City Council approved an agreement for engineering consulting services related to Sycamore Street Underpass Rehabilitation with Alfred Benesch & Company of Lincoln, Nebraska in the amount of \$70,912.00.

The Sycamore Street underpass was built in 1950 and engineering analysis has identified a number of repairs and replacements which must be implemented to extend the life of the structure. This includes a number of issues related to the retaining walls, the South Front Street Bridge, and the storm sewer pumping system. The initial phase of this contract focused geotechnical and structural analysis necessary to develop the most cost effective design. Several alternatives were considered for the South Front Street Bridge, including:

Removal without replacement	\$2,238,000
Replace with narrower, higher bridge	\$2,380,000
Reconstruct existing bridge	\$2,575,000

## **Discussion**

An amendment to the original agreement with Alfred Benesch & Company is necessary to allow for the final design phase of the Sycamore Street Underpass Rehabilitation project. Such amendment will include data collection, groundwater analysis, storm water drain system investigation and analysis, final structural design of a replacement bridge and abutment as detailed in the scope of services, remediation of the existing remaining traffic bridge, abutments and retaining walls, pump replacement and relocation, and final roadway design and utility coordination. Amendment No. 1 is for an amount not to exceed \$214,210.00, resulting in a revised agreement total of \$285,122.00. The higher effort structural analysis and data collection may impact the costs if conditions are not as anticipated.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council approve Amendment No. 1 to the original agreement for engineering consulting services related to Sycamore Street Underpass Rehabilitation with Alfred Benesch & Company of Lincoln, Nebraska in the amount of \$214,210.00.

## **Sample Motion**

Move to approve Amendment No. 1.

## CONSULTING SERVICES AGREEMENT

CLIENT	City of Grand Island	Project Name	Sycamore St Underpass
Address	100 E. 1st Street		
	PO Box 1968		
	Grand Island, NE 68802-1968	Project Location	City of Grand Island
Telephone	402-363-2600		
Client Contact	Tim Golka	Consultant PM	Jay Bleier
Client Job No.		Consultant Job No.	00111567.00

This AGREEMENT is made by and between City of Grand Island, hereinafter called "CLIENT," and Alfred Benesch & Company, hereinafter called "CONSULTANT", for professional consulting services as specified herein. CONSULTANT agrees to provide CLIENT with requested consulting services more specifically described as follows (or shown in Attachment A):

This contract includes final design services for the Sycamore Street Underpass as defined in Attachment A

The GENERAL CONDITIONS and the following Attachments are hereby made a part of the AGREEMENT:

☒  
☒  
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Attachment A: Scope of Services and Fee Estimate

Attachment B: Schedule of Unit Rates

Attachment C: \_\_\_\_\_

or

☐

Exhibit A: Work Authorizations specifying Method of Payment, Scope, and Fee

By signing this AGREEMENT, CLIENT acknowledges that it has read and fully understands this AGREEMENT and all attachments thereto. CLIENT further agrees to pay CONSULTANT for services described herein upon receipt of invoice by CLIENT for the CONSULTANT's estimated fee as described below:

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BY LUMP SUM: \$ \_\_\_\_\_

BY TIME AND MATERIALS: \$ Not to exceed \$214,210.

BY OTHER PAYMENT METHOD (See Attachment \_\_\_\_\_): \$ \_\_\_\_\_

AS SHOWN ON SERIALLY NUMBERED WORK AUTHORIZATIONS USING EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT:

**CLIENT**

**ALFRED BENESCH & COMPANY**

BY: \_\_\_\_\_

AUTHORIZED REPRESENTATIVE

BY: Anthony Dirks

AUTHORIZED REPRESENTATIVE

PRINT NAME: \_\_\_\_\_

PRINT NAME: Anthony Dirks

TITLE: \_\_\_\_\_

TITLE: Sr. Vice President

DATE: \_\_\_\_\_, 20\_\_\_\_

DATE: July 27, 2017

BENESCH OFFICE: Grand Island

ADDRESS: \_\_\_\_\_

**PLEASE SIGN AND RETURN ONE COPY TO ALFRED BENESCH & COMPANY (ADDRESS ABOVE).**

## GENERAL CONDITIONS

### SECTION I - SERVICES BY CONSULTANT

#### 1.1 General

CONSULTANT shall provide services under this AGREEMENT only upon request of the CLIENT, and only to the extent defined and required by the CLIENT. These services may include the use of outside services, outside testing laboratories, and special equipment. Attachments to this AGREEMENT are as identified on the signature page to this AGREEMENT or using serially numbered Work Authorizations, and with these GENERAL CONDITIONS, are all as attached hereto, and made a part of this AGREEMENT.

#### 1.2 Scope of Services and Fees

The services to be performed by CONSULTANT and the associated fee are attached hereto and made a part of this AGREEMENT or using by serially numbered Work Authorizations, all as identified on the signature page to this AGREEMENT, and shall be performed by the CONSULTANT in accordance with the CLIENT's requirements. It is mutually understood that CONSULTANT'S fee is not a firm contractual amount except the total fee by the CONSULTANT shall not be exceeded unless authorized in writing by the CLIENT. The intent of the Scope of Services is to identify the services to be provided by CONSULTANT. However, it is specifically understood that by written notice to CONSULTANT, CLIENT can decrease or, with concurrence of CONSULTANT, increase the Scope of Services.

### SECTION II - PAYMENTS TO CONSULTANT

#### 2.1 Method of Payment

Payment for CONSULTANT'S personnel services and direct expenses shall be expressed in U. S. dollars, and based on the Method of Payment which is identified on the signature page to this AGREEMENT or serially numbered Work Authorizations, attached hereto, and made a part of this AGREEMENT.

#### 2.2 Payment for Personnel Services

##### 2.2.1 Payment

Payment for the services rendered by CONSULTANT's personnel shall be based on the hours of chargeable time and in accordance with CONSULTANT's Schedule of Unit Rates, which is identified on the signature page to this AGREEMENT and attached hereto, and made a part of this AGREEMENT.

##### 2.2.2 Chargeable Time

Chargeable time for CONSULTANT's personnel is that portion of their time devoted to providing services requested by CLIENT. Chargeable time for field personnel located away from CONSULTANT's office for more than one week is a minimum of eight hours per day and five days per calendar week, except for federally declared legal holidays or during an employee's sick leave or vacation time. Travel time from CONSULTANT's office to an assigned work site, and return to CONSULTANT's office, is chargeable time; or if more economical for CLIENT, CONSULTANT shall lodge its personnel overnight near the work site in lieu of traveling back to CONSULTANT's office at the end of each work day.

##### 2.2.3 Overtime Rates

The basis for payment to CONSULTANT for each hour worked in excess of forty (40) hours in any calendar week shall be the applicable hourly rate as specified in the Schedule of Unit Rates.

#### 2.3 Payment for Direct Expenses

##### 2.3.1 Payment

For Direct Expenses incurred by CONSULTANT, payment to CONSULTANT by the CLIENT shall be in accordance with CONSULTANT's Schedule of Unit Rates.

##### 2.3.2 Direct Expenses

For the purposes of this AGREEMENT, Direct Expenses to be contracted and managed by CONSULTANT and payable by CLIENT to CONSULTANT shall include: Outside Services including the services and reimbursable expenses for firms other than CONSULTANT which are necessary for the work the CONSULTANT is directed to perform; Laboratory Tests and related reports necessary for the work the CONSULTANT is directed to perform, either by the CONSULTANT or by an outside service for the CONSULTANT; Special Equipment expenses including the costs of the CONSULTANT locating, acquiring, leasing, or renting any equipment or facilities not currently owned, leased, or rented by CONSULTANT at the time of the request for services which are necessary to enable CONSULTANT to provide the services requested; vehicles furnished by CONSULTANT for CONSULTANT's authorized travels and for CONSULTANT's field personnel; Per Diem expense or actual costs of maintaining CONSULTANT's field personnel on or near the Project site, for each day of field assignment away from CONSULTANT's office; and Other Direct Expenses associated with all services provided hereunder and identified in the Schedule of Unit Rates.

#### 2.4 Payment Conditions

2.4.1 CONSULTANT shall submit monthly invoices for all personnel services and direct expenses under this AGREEMENT and a final invoice upon completion of services.

2.4.2 Invoices are due and payable upon receipt by CLIENT. Interest at a rate of 1.5% per month, or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after date of invoice. Payments will first be credited to interest and then to principal.

2.4.3 In the event of a disputed or contested invoice, only that portion so contested will be withheld from payment and the CLIENT will pay the undisputed portion. No interest will accrue on any reasonably contested portion of the invoice until mutually resolved.

2.4.4 If CLIENT fails to make payment in full to CONSULTANT within sixty (60) days after the date of the undisputed invoice, CONSULTANT may, after giving seven (7) days' written notice to CLIENT, suspend services under this AGREEMENT until paid in full, including interest. CONSULTANT shall have no liability to CLIENT for delays or damages caused by such suspension of services. CLIENT agrees to pay all costs of collection, including reasonable attorney's fees, incurred by CONSULTANT as a result of CLIENT's failure to make payments in accordance with this AGREEMENT. No final plans, documents or reports will be released for any purpose until CONSULTANT has been paid in full.

**2.4.5** The billing rates specified in the Schedule of Unit Rates for subsequent years shall be adjusted annually in accordance with CONSULTANT's costs of doing business, subject to CLIENT's review and concurrence.

### **SECTION III - Term of Agreement**

#### **3.1 Term**

CONSULTANT's obligations to perform under this AGREEMENT shall extend from the date of execution until terminated by either party.

#### **3.2 Abandonment of Work**

CLIENT shall have the absolute right to abandon any work requested hereunder or to change the general scope of the work at any time, and such action on its part shall in no event be deemed a breach of contract.

#### **3.3 Termination of AGREEMENT**

##### **3.3.1 Termination with Cause**

The obligation to provide further services under this AGREEMENT may be terminated with cause by either party. In the event of such termination, either party will promptly notify and confirm the termination in writing to the other party. The termination will be effective seven (7) days after delivery of written notice thereof. In the event of termination by CONSULTANT caused by failure of the CLIENT to perform in accordance with the terms of this AGREEMENT, CLIENT shall pay for all services performed prior to the effective date of the termination, including all project termination expenses, collection fees and legal expenses. CONSULTANT shall prepare a progress report, including information as to all the services performed by CONSULTANT and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this AGREEMENT to the CLIENT upon receipt of final payment. In the event of termination by the CLIENT caused by failure by CONSULTANT to perform in accordance with the terms of this AGREEMENT, CONSULTANT shall prepare a progress report, including information as to all the services performed by CONSULTANT and the status of the services as of the date of the termination and provide information and documents developed under the terms of this AGREEMENT to the CLIENT. Upon receipt of all other information and documents, CLIENT shall pay CONSULTANT for services performed prior to the effective date of the termination.

##### **3.3.2 Termination without Cause**

Either party may, at its sole discretion, terminate this AGREEMENT without cause at any time. In the event of such termination, the terminating party will promptly notify and confirm the termination in writing to the other party. The termination will be effective seven (7) days after delivery of written notice thereof. Upon termination, CONSULTANT shall prepare a progress report, including information as to all the services performed by CONSULTANT and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this AGREEMENT to the CLIENT upon receipt of final payment.

#### **3.4 Payment for Work Upon Abandonment or AGREEMENT Termination**

If CLIENT abandons requested work or terminates this

AGREEMENT, CONSULTANT shall be paid on the basis of work completed to the date of abandonment or effective date of termination. CONSULTANT shall perform no activities other than reasonable wrap-up activities after receipt of notice of abandonment or termination. Payment for the work shall be as established under Section II.

### **SECTION IV - General Considerations**

#### **4.1 Assignment and Responsibility for Personnel**

**4.1.1** The assignment of personnel and all phases of the undertaking of the services which CONSULTANT shall provide hereunder shall be subject to the oversight and general guidance of CLIENT.

**4.1.2** While upon the premises of CLIENT or property under its control, all employees, agents, and subconsultants of CONSULTANT shall be subject to CLIENT's rules and regulations respecting its property and the conduct of its employees thereon.

**4.1.3** However, it is understood and agreed that in the performance of the work and obligations hereunder, CONSULTANT shall be and remain an independent Consultant and that the employees, agents or subconsultants of CONSULTANT shall not be considered employees of or subject to the direction and control of CLIENT. CONSULTANT shall be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

#### **4.2 Insurance**

**4.2.1** CONSULTANT shall furnish CLIENT a certificate of insurance upon request showing amounts and types of insurance carried by CONSULTANT, which certificate shall contain a commitment by the Insurance Company that during the time any work is being performed by CONSULTANT under this AGREEMENT it will give CLIENT notice of cancellation or non-renewal of the insurance coverage shown on such certificates in accordance with policy provisions.

#### **4.3 Successors and Assigns**

**4.3.1** CLIENT and CONSULTANT each binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to the other party to this AGREEMENT and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this AGREEMENT.

**4.3.2** Neither CONSULTANT nor CLIENT shall assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other party, except as stated in paragraph 4.3.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent consultants, associates, and subconsultant's as it may deem appropriate to assist in the performance of services hereunder.

**4.3.3** Nothing herein shall be construed to give any rights or benefits hereunder to any one other than CLIENT and CONSULTANT except as otherwise provided herein.

#### **4.4 Compliance with Law**

**4.4.1** CONSULTANT shall comply with, and cause its subconsultants to comply with, applicable Federal, state, and local laws, orders, rules, and regulations

relating to the performance of the services CONSULTANT is to perform under this AGREEMENT.

**4.4.2** Neither the CONSULTANT nor the CONSULTANT's agents or employees shall discriminate against any employee or applicant for employment to be employed in the performance of this AGREEMENT with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, or national origin.

#### **4.5 Ownership and Reuse of Documents**

**4.5.1** All drawings, specifications, test reports, and other materials and work products which have been prepared or furnished by CLIENT prior to this AGREEMENT shall remain CLIENT's property. CONSULTANT shall be permitted to rely on CLIENT furnished documents and CLIENT shall make available to CONSULTANT copies of these materials as necessary for the CONSULTANT to perform the services requested hereunder.

**4.5.2** All drawings, specifications, test reports, and other materials and work products, including computer aided drawings, designs, and other data filed on electronic media which will be prepared or furnished by CONSULTANT (and CONSULTANT's independent professional associates and subconsultants) under this AGREEMENT, are instruments of service in respect to the Project and CONSULTANT shall retain an ownership and property interest therein whether or not the Project is completed. CLIENT may make and retain copies for information and reference in connection with the use and the occupancy of the Project by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Further, CONSULTANT makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by CONSULTANT in performing services herein, and to the condition or availability of the computer data after an acceptance period of thirty (30) days from delivery to CLIENT. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's independent professional associates or subconsultants, and CLIENT shall indemnify and hold harmless CONSULTANT and CONSULTANT's independent professional associates and subconsultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by CLIENT and CONSULTANT.

#### **4.6 Severability**

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

#### **4.7 Location of Underground Utilities**

It shall be the CLIENT's responsibility to locate and physically mark all underground utilities and structures which lie within the work area prior to the start of subsurface investigations. If the CLIENT elects not to assume this responsibility, CLIENT shall notify CONSULTANT and shall compensate CONSULTANT for all costs associated with locating and physically marking said underground utilities and structures over and above the estimated project fee. CLIENT shall indemnify and hold CONSULTANT harmless

from any damages and delays resulting from unmarked or improperly marked underground utilities and structures. For reasons of safety, CONSULTANT will not begin work until this has been accomplished.

#### **4.8 Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the CONSULTANT.

#### **4.9 CONSULTANT's Personnel at Project Site**

**4.9.1** The presence or duties of the CONSULTANT personnel at a Project site, whether as onsite representatives or otherwise, do not make the CONSULTANT or its personnel in any way responsible for those duties that belong to the CLIENT and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the project documents and any health or safety precautions required by such construction work. The CONSULTANT and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor or other entity or any other persons at the site except CONSULTANT's own personnel.

**4.9.2** The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed work will conform generally to the project documents and that the integrity of the design concept as reflected in the project documents has been implemented and preserved by the contractor(s). CONSULTANT neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s)' failure to perform their work in accordance with the project documents.

#### **4.10 Opinions of Cost, Financial Considerations, and Schedules**

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, the CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions. CONSULTANT's opinions of probable Total Project Costs and Construction Costs provided for herein as appropriate are made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's judgments as an experienced and qualified professional consultant familiar with the construction industry. CONSULTANT makes no warranty that the CLIENT's actual Total Project or Construction Costs, financial aspects, economic feasibility, or schedules will not vary from the CONSULTANT's opinions, analyses, projections, or estimates. If CLIENT wishes greater assurance as to any element of the Total Project or Construction cost, feasibility, or schedule, CLIENT will employ an independent cost estimator, contractor, or other appropriate advisor.

#### **4.11 Disposition of Samples and Equipment**

##### **4.11.1 Disposition of Samples**

No samples and/or materials will be kept by CONSULTANT longer than thirty (30) days after submission of the final report unless agreed otherwise.

##### **4.11.2 Hazardous or Potentially Hazardous Samples and Materials**

In the event that samples and/or materials contain or are suspected to contain substances or constituents hazardous or detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, CONSULTANT will, after completion of testing, return such samples and materials to CLIENT, or have the samples and materials disposed of in accordance with CLIENT's directions and all applicable laws. CLIENT agrees to pay all costs associated with the storage, transportation, and disposal of samples and materials. CLIENT recognizes and agrees that CONSULTANT at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

##### **4.11.3 Contaminated Equipment**

All laboratory and field equipment contaminated in CONSULTANT's performance of services will be cleaned at CLIENT's expense. Contaminated consumables will be disposed of and replaced at CLIENT's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of CLIENT. At CLIENT's expense, such equipment shall be delivered to CLIENT, or disposed of in the same manner specified in 4.11.2 above. CLIENT agrees to pay CONSULTANT the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to CLIENT pursuant to this AGREEMENT.

#### **4.12 Discovery of Unanticipated Pollutant and Hazardous Substance Risks**

**4.12.1** If CONSULTANT, while performing the services, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule, and the estimated cost of CONSULTANT's services will be reconsidered and that this AGREEMENT shall immediately become subject to renegotiation or termination.

**4.12.2** In the event that the AGREEMENT is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that CONSULTANT shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this AGREEMENT, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

**4.12.3** CLIENT also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for CONSULTANT to take immediate measures to protect health and safety. CONSULTANT agrees to notify CLIENT as soon as practically possible should unanticipated pollutants and/or hazardous substances be suspected or encountered. CLIENT authorizes CONSULTANT to take measures that in CONSULTANT's sole judgment are justified to preserve and protect the health and safety of CONSULTANT's personnel and the public. CLIENT agrees to compensate CONSULTANT for the additional cost of taking such additional precautionary measures to protect employees' and the public's health and safety. This section is not intended to impose upon CONSULTANT any duties or obligations other than those imposed by law.

## **SECTION V - Professional Responsibility**

### **5.1 Performance of Services**

CLIENT acknowledges that the performance of professional services is not an exact science, and errors and omissions may occur that are within the industry standard of practice which states that CONSULTANT will strive to perform services under this AGREEMENT in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document, or otherwise.

### **5.2 Limitation of Liability**

CLIENT and CONSULTANT agree to allocate certain of the risks so that, to the fullest extent permitted by law, CONSULTANT's total liability to CLIENT is limited to the available limit of CONSULTANT's insurance coverage or the total fee for Services rendered on this Project, whichever is less, this being the CLIENT's sole and exclusive remedy for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this AGREEMENT from any cause or causes. Such causes include, but are not limited to, CONSULTANT's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

### **5.3 No Special or Consequential Damages**

CLIENT and CONSULTANT agree that to the fullest extent permitted by law neither party shall be liable to the other for any special, indirect, or consequential damages whatsoever, whether caused by either party's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes.

### **5.4 Indemnification**

To the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold CONSULTANT, its officers, directors, employees, and, subconsultants harmless from and against any and all claims, damages, losses and expenses, defense costs including attorneys' fees, and court or arbitration costs and other liabilities arising out of or resulting from, wholly or in part, the performance of CONSULTANT's services hereunder; provided that CLIENT shall not indemnify CONSULTANT against liability for damages or expenses to the extent caused by the negligence of CONSULTANT, its officers, directors, employees, or subcontractors.

### **5.5 No Third Party Beneficiaries**

CLIENT and CONSULTANT expressly agree that AGREEMENT does not confer upon any third party any rights as beneficiary to this AGREEMENT. CONSULTANT accepts no responsibility for damages, if any, suffered by any third party as the result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it.

CLIENT agrees that CONSULTANT's services and work products are for the exclusive present use of CLIENT. CLIENT agrees that CONSULTANT's compliance with any request by CLIENT to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive, or otherwise alter provisions of this AGREEMENT nor does it create or confer any third party beneficiary rights on any third party.

## **SECTION VI - Miscellaneous Provisions**



### **6.1 Notices**

Any notice to either party herein shall be in writing and shall be served either personally or by registered or certified mail addressed to the signing party shown on the signature page.

### **6.2 Joint Preparation**

For purposes of contract interpretation and for the purpose of resolving any ambiguity in this AGREEMENT, the parties agree that this Agreement was prepared jointly by them and/or their respective attorneys.

### **6.3 Headings**

Headings used in this AGREEMENT are for the convenience of reference only and shall not affect the construction of this AGREEMENT

### **6.4 Dispute Resolution**

If negotiation in good faith fails to resolve a dispute within thirty (30) days of written notice of the dispute by either party, then the parties agree that each dispute, claim or controversy arising from or related to this AGREEMENT or the relationships which result from this AGREEMENT shall be subject to mediation as a condition precedent to initiating legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No legal or equitable action may be instituted for a period of ninety (90) days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties and shall be held in a location mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

Furthermore, in no circumstances shall a party to this AGREEMENT be joined by the other party to any other lawsuit, dispute or legal proceeding involving a party and any of the party's, consultants, subconsultants, lower tier subconsultants, other design professionals, construction managers, or other individuals or entities unless the parties agree to be joined in writing.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

### **6.5 Governing Law**

This AGREEMENT is to be governed by the laws of the jurisdiction in which the project is located. For locations outside of the United States, this AGREEMENT shall be governed by the laws of the State of Illinois.

### **6.6 Entire Agreement**

This AGREEMENT, along with those documents specified, attached, or hereby cited together, and serially numbered Work Authorizations if used, constitute the entire AGREEMENT between the parties hereto and no changes,

modifications, extensions, terminations, or waivers of this agreement, or other documents, or any of the provisions herein, or therein contained, shall be valid unless made in writing and signed by duly authorized representatives of both parties.

Std S Client Agree  
October 2015

**SCOPE OF SERVICES**  
**SYCAMORE UNDERPASS DESIGN PHASE**  
**GRAND ISLAND, NE**  
**ATTACHMENT A**

**PROJECT DESCRIPTION**

The scope of the project consists of the reconstruction of the South Front Street bridge, with the associated eastern abutment, over Sycamore Street in City of Grand Island; pump replacement for the stormwater drainage system; and remediation of the associated western abutment, remaining North Front Street bridge, and retaining walls along Sycamore Street between 3<sup>rd</sup> and 4<sup>th</sup> Street. The existing bridge is a single span reinforced concrete bridge deck that along with its eastern abutment are in need of replacement. Replacement of the existing bridge will include raising the top of road level of the bridge by approximately one foot over the current elevation, and reducing the bridge width from the existing approximate 54 feet to approximately 32 feet. Stormwater pumps servicing the area also require replacement.

The work required for this project includes: data collection, groundwater analysis, stormwater drain system investigation and analysis, final structural design of a replacement bridge and abutment as detailed in this scope of services, remediation of the existing remaining traffic bridge, abutments and retaining walls, pump replacement and relocation, and final roadway design and utility coordination.

Design and plan preparation will follow Nebraska Department of Transportation guidelines including the following:

- NDOT Roadway Design Manual
- NDOT Bridge Office Policies and Procedures Manual
- NDOT LPA Guidelines Manual
- NDOT Drainage Design and Erosion Control Manual
- NDOT Standard Specifications for Highway Construction, and Standard Plans

Any deviations from the above must be approved by the City of Grand Island prior to preparation of plans. Other design manuals include the following:

- AASHTO Policy on Geometric Design of Highways and Streets
- AASHTO Roadside Design Guide
- Manual on Uniform Traffic Control Devices
- AASHTO LRFD Bridge Design Specifications, Fifth Edition.

### **CITY OF GRAND ISLAND/NDOT TO PROVIDE OR COMPLETE**

The Consultant anticipates the City of Grand Island, UPRR or NDOT will provide or arrange for the following items to be used by the Consultant in the development of project deliverables:

1. As-built plans of existing bridge and roadway (if available)
2. Existing cadastral maps, plat maps, electronic right-of-way files of the project area (if available)
3. Names of known utilities, addresses and permits listing use and occupancy permit data along the project
4. All Deed and Title Research including deeds for previous R.O.W. projects
5. Control points, ties, and benchmark information
6. Right-of-entry to private property for surveyors
8. Contractor bid tabs from bid opening

### **UNDERSTANDINGS AND ASSUMPTIONS**

1. City of Grand Island standard plans, provisions, and plan format shall be followed
2. If necessary, the City of Grand Island will appraise and negotiate for any right-of-way needs
3. The City of Grand Island will advertise and award the project

### **ANTICIPATED SCHEDULE**

- |  |                   |
|--|-------------------|
| • <b>Notice to Proceed</b>                       | <b>08-09-2017</b> |
| • <b>Complete Analysis of Existing Structure</b> | <b>09-12-2017</b> |
| • <b>Plan-in-Hand</b>                            | <b>11-14-2017</b> |
| • <b>PS&amp;E</b>                                | <b>12-12-2017</b> |

## **TASK 1            PROJECT MANAGEMENT / GENERAL PROJECT MEETINGS**

The Consultant Project Manager will serve as point of contact, maintain project schedule and budget. Provide regular progress reports with invoices.

The Consultant will coordinate their design with agencies and/or Consultants that are involved with this project or adjacent projects. Coordination includes one-on-one meetings with the agencies or Consultants. Included with this task is coordination regarding construction access, and right-of-way agreements.

Benesch will coordinate, facilitate and attend various meetings associated with the project. The following outlines the anticipated project meetings, the focus of the meetings, and assumed quantity of each meeting type. The meetings identified in this scope of services are based on completing the work for both bridge sites as a single combined project. Any additional meetings not identified in this task shall be performed by supplemental agreement.

### *a. Progress Meetings (4)*

The Consultant will schedule and attend all progress meetings. The Consultant will create and distribute a meeting agenda at least 48 hours prior to all progress meetings. Utility review / coordination will occur with the progress meetings.

### *b. Review Meetings (3)*

The Consultant will schedule and attend review meetings to receive the City's review comments from the submittals at the plan-in-hand and pre-PS&E stages.

### *c. Plan-in-Hand*

The Consultant will schedule and attend a plan-in-hand field inspection. This field inspection will follow the review of the plan in hand plans by the City.

### *d. UPRR Coordination*

The Consultant will schedule and coordinate with the UPRR as necessary as required for UPRR design needs and review.

## **TASK 2            TOPOGRAPHIC SURVEY**

Benesch will complete a topographic survey with sufficient data for project design using a combination of electronic total station and GPS survey equipment. We will gather full topographic survey for the distance between the south and north ends of the Sycamore Street retaining walls excluding the rail bridge. Additionally, we will provide survey information for South Front Street for 50 feet east and west of the South Front Street bridge and any relevant data pertaining to groundwater sampling and negative drainage concerns. Benesch will also document the stormwater pump system and piping in the existing pump house, and any future locations of new pump housing.

Benesch will also obtain and coordinate 3-D scanning of the bridge structures and retaining walls. Scans will be provided in a format that may be utilized for additional informational reference.

The Survey will be based on the US State Plane 1983 Coordinate System, Zone: Nebraska 2600. Horizontal Datum is 1983 (NQADA83) and vertical Datum will be North American Vertical Datum of 1988 (NAVD88).

### **TASK 3            GROUNDWATER EVALUATION**

#### **a.    *Drilling and Sampling Methods***

Benesch proposes to drill at least (5) exploratory wells at the project site. The estimated depth of each well is 20 to 25 feet. A minimum of two (2) wells will be in the immediate vicinity of the YMCA swimming pool and a minimum of three (3) wells will be along the 8" water main along the middle of South Front Street.

Sampling of ground water and laboratory testing will be performed to try to determine if either item is a source of water for the ground water.

#### **b.    *Evaluation and Recommendations***

Benesch will evaluate the results of the laboratory testing and make recommendations specific to the results. Any design related to the determination that either source is a contributor to the ground water is not part of the scope of this contract.

#### **c.    *Exclusions***

Design recommendations pertaining to groundwater, such as dewatering requirements and design, are excluded from this contract. Any additional design pertaining to dewatering during construction would be in addition to this contract

### **TASK 4            STORMWATER PIPING EVALUATION AND REMEDIATION**

#### **a.    *Data Gathering***

Benesch will use a remote access camera to examine and record conditions of existing stormwater piping in the project area. Evaluation of the footage of the examination will be performed to make recommendations for any remediation of the existing piping.

#### **b.    *Remediation/Replacement Recommendations***

Plans and specifications for the project will include any recommended remedial or replacement design of the existing stormwater system piping in the project area.

#### **c.    *Exclusions***

Design recommendations for remediation of the stormwater piping system are based upon the assumption that remediation will require minimal invasive procedures, such as relining the existing system. Invasive and extensive remediation such as complete removal and replacement of the existing piping would be in addition to this contract.

## **TASK 5      ROADWAY DESIGN**

Benesch anticipates that approaches to the bridge will require modification in elevation and dimensions to accommodate the new bridge deck. In addition, road surfaces along the retaining walls to the south of the bridge need to be reset so that positive drainage is accomplished. Benesch intends to coordinate with the City to explore the possibility of changing the traffic patterns and usage of the roads to the south of the bridge.

### **Design Meetings**

Benesch will meet with the City prior to the start of design to map out potential usage changes in the streets immediately adjacent to the retaining walls on the south side of the South Front Street Bridge, and to plan the streets in the design envelope to integrate the new bridge elevation and dimensions. Also, we anticipate the need to be aware of and accommodate pedestrian traffic with the change in the walkway to the south side of the bridge.

### **Utility Coordination**

Benesch will perform utility coordination services for the project. The following outlines the specific scope of the utility coordination services to be performed. Any additional utility coordination services not identified in this task shall be performed by supplemental agreement.

#### ***a. Utility Location/ Verification***

Benesch will review the utility locations shown on the plans, and verify these locations during field inspections. After survey is complete, plans will be printed and distributed to the Utility Companies for verification of ownership, type, size, location, and cased or uncased.

Benesch will request that the Utility Companies return to Benesch marked up plans with utility verification. The Consultant will incorporate the information into the topography. All utilities identified in the topographic survey and verified by the individual utility will be incorporated into the plans.

Identification and verification by the Utility Companies of major utility conflicts such as fiber optic lines, gas pipelines, crude oil pipelines, high-pressure waterlines, transmission lines, etc., will be accomplished at the earliest possible time. Benesch and the City's Project Manager will discuss major conflicts and attempt to avoid them. If avoidance is not possible, the Consultant will then request the Utility Company to verify the conflict and provide a preliminary estimate of reimbursable costs associated with the utility relocation.

#### ***b. Utility Meetings***

Benesch will coordinate and facilitate two (2) meetings with the City Project Manager and will discuss major conflicts and available options to avoid them. If avoidance is not possible or not desirable, the Consultant will meet with the conflicting utility owner or designated representative to discuss options for relocating the utility and request confirmation the conflict exists. It is anticipated not more than two (2) meetings with utility owners or their designated representative(s) collectively will be required.

### Plan-in-Hand Submittal

#### *a. Preliminary Designs*

Benesch shall prepare project base files and plan sheets in accordance with the City of Grand Island CADD standards. Plan sheets to be included in the first submittal include the following:

- Cover Sheet
- General Notes Sheet
- Removal Sheet
- Roadway Plan and Profile Sheets
- Right-of-Way Sheets
  - Existing right-of-way and ownerships identified

#### *b. Cost Estimates*

Benesch shall prepare an updated total project cost estimate. This shall include Preliminary Engineering, ROW acquisition, Private Utility Relocations, Public Utility Relocations, Construction, and Construction Engineering on the appropriate forms.

### Right-of-Way

#### *a. Right-of-Way Determination*

Benesch will determine any temporary easements required to construct the project. Temporary construction easements will be acquired to provide adequate room for constructing the project.

#### *b. Legal Descriptions*

Benesch will prepare legal descriptions for the utility and temporary access easement.

#### *c. Stake Right-of-Way*

Benesch will stake corners of utility and temporary easements required to construct the project. It is estimated all of the tracts will be staked once and there will be no need to re-stake any due to property owner negotiations.

### Draft PS&E Submittal

#### *a. Draft PS&E Submittal Design*

Benesch shall prepare project base files and plan sheets in accordance with the City of Grand Island CADD standards. All sheets that will be included in the Final PS&E plan set will be included in the draft PS&E submittal. This includes, but not limited to, the following sheets:

- Cover Sheet
- General Notes and Summary of Quantities Sheet
- Typical Section Sheet
- Detail Sheets
- Horizontal/Vertical Control Sheet
- Traffic Control/Detour Route Sheet

- Removal Sheet
- Erosion Control Sheet
- Geometrics/Joints/Grades Sheet
- Roadway Plan and Profile Sheet
- Right-of-Way Sheets
  - Proposed easements identified

*b. Cost Estimates*

Benesch shall prepare an updated total project cost estimate. This shall include, but not be limited to Preliminary Engineering, ROW acquisition, Private Utility Relocations, Public Utility Relocations, Construction, and Construction Engineering on the appropriate forms.

*c. Special Provisions*

Benesch will submit Special Provisions with the final submittal.

Permit Applications

Benesch shall prepare and submit on behalf of the City of Grand Island the SW PPP - NPDES Permit or UPRR permit as determined to be necessary for the project. Benesch shall copy the City's project manager on all applications being submitted.

Final Submittal

Upon incorporating review comments into the plan set, special provisions, permits and bidding documents, Benesch shall prepare and submit all drawings, special provisions, bidding documents and an updated total project cost estimate, to the City's Project Manager for the final PS&E review. Upon City acceptance of the PS&E plans, the Consultant shall submit the bid package to the City's Project Manager. The bid package includes sealed electronic and bond paper 11" x 17" drawings and sealed special provisions. The bid package will also be accompanied by an electronic copy of the design in AutoCAD format.

**TASK 6 PUMP STATION**

Pump System Removal and Replacement

Benesch will designate removal of the existing two (2) pumps and associated motors, electrical systems, and piping as needed. Benesch will then provide the design for two (2) designated vertical mixed-flow pump as approved by the City along with all associated mechanical and electrical equipment and piping required to move the predominance of the equipment to existing grade in accordance with the Alternate 2 concept developed in the Engineering Assessment. Benesch will also locate and design integration of the new pump system into the existing stormwater removal system, including locating the point of attachment and designing connections to the existing system.

Concrete Boring

Benesch will locate and designate the boring in the existing concrete so that new piping can be placed to accommodate the new pump system.



## Pump Housing

Benesch will design the foundation and structure for the new pump housing to be placed at existing grade to contain the new pump equipment.

## **TASK 7 BRIDGE DESIGN**

The design for the South Front Street bridge replacement will be completed based on the Alternative 2 concept developed in the Engineering Assessment prepared by Benesch. This alternative consists of a single approximately 32' span reinforced concrete bridge deck and new reinforced concrete abutment replacing the existing eastern abutment. The new top of bridge deck elevation will be approximately 12" higher than the existing bridge deck. The new bridge deck and eastern abutment will be incorporated into the existing bridge foundation and western abutment. The new bridge deck will consist of two (2) 12' foot traffic lanes with (2) 2' foot aprons, a 4' pedestrian walkway with a 2' apron, and associated barriers and railing in approximate aesthetic conformance with the existing bridge structure. Conceptual design of the new bridge deck is to be approved by the City prior to commencement of final design.

All drafting will be completed in an electronic drafting format using NDOT Bridge Division drafting standards in accordance with NDOT requirements. Benesch will prepare any special provisions necessary to complete the construction work.

Exclusion - Design of the east abutment and bridge deck are based upon the assumption that the existing design of the structure is compliant with current relevant codified requirements for structures of this nature. If the existing design, as determined by as-built drawings provided to Benesch, is found to be structurally inadequate and would require additional design of the proposed new structures as well as structural enhancement or removal and replacement of the west abutment and foundation, any additional design would be in addition to this contract. Alternatively, in the event that the remaining structure is found to be inadequate, an addendum may be added at the discretion of the City to modify the scope of work at the bridge which would include any associated change in cost.

An Estimate of Probable Construction Costs will be prepared for the City based on the most recent, readily available unit prices for similar construction and other current letting information readily available or provided by the City. Adjustments to unit prices and inflationary increases will be considered as deemed appropriate by the Engineer and agreed upon by the City. The Estimate of Probable Construction Costs will be itemized to reflect individual construction items of work anticipated for the project.

Benesch will develop the final design and prepare final bridge plans for the bridge in accordance with the requirements outlined in the AASHTO LRFD Bridge Design Specifications, Fifth Edition. The design and plans will also be completed in accordance with the NDOT Bridge Office Policies and Procedures Manual and associated drafting standards with any exceptions as noted by the City. Final bridge design will include a complete set of quantity calculations in compliance with the standard bid items in the Nebraska Standard Specifications.

Benesch will prepare an independent design check of all bridge calculations and plan items in accordance with NDOT requirements. Benesch will also perform a QC/QA review of the plans to verify conformance with design requirements.

Bridge plans will be submitted for review by the City at the 30% stage when the general bridge layout and cross-section are complete for the plan-in-hand review. Final completed bridge plans and special provisions (if necessary) will be submitted to the City for final review. Copies for coordination purposes will also be submitted to NDOT and UPRR. Once the final review process is complete, the PS&E package will be submitted to the City for bid advertisement and letting.

**TASK 8            ABUTMENT AND RETAINING WALL REMEDIATION**

We will assess the condition of the surface and interfaces of western abutment of the South Front Street bridge and retaining walls to the north and south of the rail bridge. Benesch will take a survey of all surfaces, identify areas that require repair, and provide construction drawings designating the repairs in these areas.

**TASK 9            BIDDING PHASE**

Bidding phase services will consist of answering bidder questions, preparing up to two addenda, and assisting in the analysis of the bids.

**TASK 10          CONSTRUCTION PHASE**

Construction Phase services are not included with this scope of service, but can be provided by amendment if requested by the City.

Our fee for the basic scope of services (Task 1 through Task 9) will be a not to exceed cost of **\$214,210**.

**2017 EMPLOYMENT CLASSIFICATION AND RATE SCHEDULE**

<b><u>CLASSIFICATION</u></b>	<b><u>BILLABLE RATE</u></b>
Project Manager I	\$140.00
Project Manager II	\$155.00
Senior Project Manager	\$180.00
Project Principal	\$238.00
Project Engineer I	\$102.00
Project Engineer II	\$115.00
Senior Project Engineer	\$150.00
Landscape Architect	\$111.00
Construction Representative I	\$78.00
Construction Representative II	\$84.00
Construction Representative III	\$95.00
Inspector I	\$70.00
Inspector II	\$78.00
Designer I	\$79.00
Designer II	\$91.00
Technologist I	\$56.00
Technologist II	\$72.00
Senior Technologist	\$117.00
Technical Specialist I	\$81.00
Technical Specialist II	\$90.00
Senior Technical Specialist	\$130.00
Intern	\$52.00
Field/Lab Technician I	\$47.00
Field/Lab Technician II	\$57.00
Field/Lab Technician III	\$67.00
Senior Field/Lab Technician	\$87.00
Instrument Operator	\$53.00
Party Chief	\$71.00
Surveyor (RLS)	\$87.00
Senior Surveyor (RLS)	\$116.00
Scientist I	\$60.00
Scientist II	\$68.00

Project Scientist I (Geotechnical)	\$66.00
Project Scientist I (Environmental)	\$80.00
Project Scientist II (Geotechnical)	\$77.00
Project Scientist II (Environmental)	\$102.00
Project Scientist III (Environmental)	\$113.00
Senior Project Scientist	\$136.00
Business Development Assistant	\$54.00
Business Development Coordinator	\$73.00
Business Development Manager	\$105.00
Office Assistant	\$47.00
Project Assistant I	\$54.00
Project Assistant II	\$60.00
Division Administrative Assistant I	\$54.00
Division Administrative Assistant II	\$67.00

RESOLUTION 2017-210

WHEREAS, on February 14, 2017, via Resolution No. 2017-31, City Council approved an agreement for Engineering Consulting Services Related to Sycamore Street Underpass Rehabilitation with Alfred Benesch & Company of Lincoln, Nebraska in the amount of \$70,912.00; and

WHEREAS, it is necessary to amend the original agreement to allow for the final design phase of such project; and

WHEREAS, Amendment No. 1 to the original agreement is for an amount not to exceed \$214,210.00, resulting in a revised agreement total of \$285,122.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Amendment No. 1 to the original agreement for engineering consulting services related to Sycamore Street Underpass Rehabilitation with Alfred Benesch & Company of Lincoln, Nebraska in the amount of \$214,210.00 is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such Amendment No. 1 on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, August 8, 2017.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
August 4, 2017	☐ City Attorney