



# City of Grand Island

Tuesday, October 10, 2017

Council Session

## Item G-14

**#2017-278 - Approving Amendment No. 1 to Engineering Consulting Agreement for 13th Street Roadway Improvements; Project No. 2018-P-1**

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

# **Council Agenda Memo**

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

**Meeting:** October 10, 2017

**Subject:** Approving Amendment No. 1 to Engineering Consulting Agreement for 13<sup>th</sup> Street Roadway Improvements; Project No. 2018-P-1

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

## **Background**

Roadway improvements along 13<sup>th</sup> Street from Moores Creek to North Road, as well as intersection improvements at 13<sup>th</sup> Street and North Road are planned. Public Works Engineering staff is proposing a three lane curb and gutter roadway section with associated sidewalk and other miscellaneous improvements. This project also will get much needed drainage improvements to the 13<sup>th</sup> and North Road intersection which do not exist today.

On August 22, 2017, via Resolution No. 2017-236, City Council approved an agreement with Alfred Benesch & Company of Lincoln, Nebraska in the amount of \$15,000.00 for 13<sup>th</sup> Street Roadway Improvements; Project No. 2018-P-1. This agreement accounts for design concepts for the proposed three lane curb and gutter roadway section with associated sidewalk and other miscellaneous improvements, such as drainage.

## **Discussion**

The original agreement did not include geotechnical sampling and reporting, Right-of-Way and easement acquisition assistance, and final design services all of which are included in Amendment No. 1 for the 13<sup>th</sup> Street Roadway Improvements; Project No. 2018-P-1. It is now requested to supplement the original agreement with Alfred Benesch & Company to allow for such additional services, in the amount of \$141,281.25 for a revised agreement total of \$156,281.25.

## **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 with Alfred Benesch & Company of Lincoln, Nebraska, in the amount of \$141,281.25.

### **Sample Motion**

Move to approve the resolution.



## CONSULTING SERVICES AGREEMENT

CLIENT	City of Grand Island	Project Name	City of Grand Island 2018 CIP Project I
Address	City Hall, 100 East First Street		13 <sup>th</sup> Street Roadway Improvement
	Grand Island, NE 68802		Amendment No. 1 for Final Design
		Project Location	13 <sup>th</sup> Street - North to Moore's Creek
Telephone	308-385-5444		
Client Contact	Keith Kurz	Consultant PM	Terry Brown
Client Job No.	2018-P1	Consultant Job No.	00111672.00

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 d(or shown in Attachment A):

Amendment No. 1 for Final Design Consulting Services

Total not to Exceed for Design \$141,281.25 + initial \$15,000 = \$156,281.25

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

☒ 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:

☐ BY LUMP SUM: \$\_\_\_\_\_.

☒ BY TIME AND MATERIALS: \$Not to exceed \$141,281.25.

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

☐ AS SHOWN ON SERIALLY NUMBERED WORK AUTHORIZATIONS USING EXHIBIT A

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

CLIENT

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

BY: Anthony Dirks  
AUTHORIZED REPRESENTATIVE

PRINT NAME: \_\_\_\_\_ PRINT NAME: Anthony Dirks, P.E.

TITLE: \_\_\_\_\_ TITLE: Vice President

DATE: \_\_\_\_\_, 20\_\_\_\_ DATE: September 27, 2017

BENESCH OFFICE: Lincoln

ADDRESS: 825 M Street, Suite 100

Lincoln, NE 68508

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



## STANDARD TERMS AND CONDITIONS

### SECTION 1 – 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 by using 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. The Scope of Services and Fee Estimate (Attachment A) is valid for sixty (60) days, after which Consultant reserves the right to revise the Scope or Fee Estimate.

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 2 – Payments to Consultant

#### 2.1 Method of Payment

Payment for Consultant's personnel services and direct expenses shall be 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, Client must provide written notice to Consultant within ten (10) days of the date of any invoice, otherwise the invoice will be considered to be correct. In the event Client timely submits in writing a dispute on a particular 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 3 - 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 by written notice stating the basis for the termination and providing 7 days to cure. The termination will be effective seven (7) days after delivery of written notice thereof if the basis for the termination has not been cured. 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 4 - 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.

**4.2.2** Any construction contracts relative to Consultant's Services shall require that the Client and Consultant be included as additional insureds on the contractor's and contractor's subcontractors' commercial general liability and commercial automobile liability insurance policies and that the coverage afforded Client and Consultant is primary to any insurance maintained by Client or Consultant and that Client and Consultant's insurance is non-contributory with any coverage afforded by contractor and subcontractors. Client will also require contractor and all subcontractors to purchase and maintain workers' compensation and employer's liability insurance. Consultant will name the Client as additional insured on

Consultant's commercial general liability insurance.

#### **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 subconsultants 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 exercise the professional standard of care to comply with, and cause its subconsultants to comply with, applicable Federal, state, and local laws, orders, rules, and regulations in effect at the time services are rendered, and relating to the performance of the services Consultant is to perform under this Agreement. If the Scope of Services requires Consultant to prepare an application for a permit, Consultant does not represent or warrant that said permit or approval will be issued by any governmental body.

**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 acting on behalf of Client 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 Consultant's Personnel at Project Site**

**4.6.1** 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.

**4.6.2** To the extent Consultant's Scope of Work includes construction observation, the Consultant shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. 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.

#### **4.7 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.

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

**4.8.1** 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.

**4.8.2** 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.

**4.8.3** 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 5 - Professional Responsibility**

#### **5.1 Performance of Services**

Consultant shall perform its services consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances (hereinafter the "Standard of Care"). Consultant expressly disclaims all express or implied warranties and guarantees with respect to the performance of professional services, and it is agreed that the quality of

such services shall be judged solely as to whether the services were performed consistent with the Standard of Care. Consultant owes Client only that level of performance defined in this Section 5.1, and nothing herein shall be construed as creating a fiduciary relationship.

If at any time prior to construction Client believes Consultant's services are deficient due to not meeting the Standard of Care, Client must immediately inform Consultant in writing and shall afford Consultant the opportunity to correct such deficiency. If, upon review by Consultant it is determined the deficiency is attributable to Consultant, the deficiency shall be corrected at no additional cost to Client.

#### **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 amount paid under the contract or \$50,000 whichever is greater, , 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 and Consultant mutually agree to indemnify and hold each other harmless from and against any and all claims, damages, losses and expenses, defense costs including reasonable attorneys' fees, and court or arbitration costs and other liabilities arising from their own negligent acts, errors or omissions in performance of their services under this Agreement, but only to the extent caused that each party is responsible for such damages, liabilities and costs on a comparative basis of fault.

#### **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 6 - 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 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.

### **6.5 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.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. Any dispute not resolved through mediation shall be subject to litigation in a court of competent jurisdiction in the state in which the project is located.

### **6.6 Equal Opportunity**

Consultant will, in the performance of this Agreement, comply with federal, state, and local laws, and all

regulations and orders issued under any applicable law related to equal employment opportunity, non-discrimination, or employment generally.

Consultant certifies that it will not knowingly employ or contract with a non-legal resident of the United States to perform work under this Agreement, and verifies or attempts to verify employee eligibility of its employees through participation in the U.S. Department of Homeland Security and Social Security Administration's E-Verify system.

### **6.7 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.

### **6.8 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.

## **SUPPLEMENTAL CONDITIONS FOR SURVEY, ENVIRONMENTAL OR GEOTECHNICAL SERVICES**

☐ ***Supplemental Condition is incorporated herein when the applicable box is checked.***

☐ **S.1 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.

☐ **S.2 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.

☐ **S.3 Disposition of Samples and Equipment**

**S.3.1 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.

**S.3.2 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.

**S.3.3 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 S.3.2 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.

## **ATTACHMENT A**

### **Scope of Services**

Amendment No. 1 Final Design for Project 1 – 13<sup>th</sup> Street Road Improvements

**City Project Number 2018-P-1**

#### **TASK 1. Project Management**

##### *a. Project Management*

Benesch Project Manager will serve as point of contact, maintain project schedule and budget, and be responsible for coordinating work of subconsultants. Provide regular progress reports with invoices.

#### **TASK 2. General Project Meetings**

##### *a. Public Information Meeting*

Benesch will schedule an public information meeting open to the general public and project directly affected stakeholders. The City's Project Manager will assist in a list of invitees and Benesch shall be responsible for notification to attendees.

##### *b. Review Meetings*

Benesch will schedule and attend one (1) review meeting to receive the City's review comments from the draft PS&E submittal.

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

Benesch will schedule and attend a plan-in-hand meeting after the 50% plan submittal following the review period for this submittal.

#### **TASK 3. Survey**

##### *a. Field Survey*

Benesch will perform additional necessary topographic ground survey to confirm horizontal and vertical control, confirmation of section and property corners, survey of additional utilities and potholing of water main.

##### *i. Horizontal Control*

Benesch shall provide a list of horizontal control points with coordinates, descriptions, station and offset. Horizontal control will be referenced to the Modified State Plane using known land survey monuments provided by the City of Grand Island.

##### *ii. Vertical Control*

Vertical control will be completed by differential level circuit referenced to NAVD 88. Ties to control used for City of Grand Island projects in the area can be done for "design-fit" confirmation.

*iii. Locate Section Corners*

Benesch will survey section corners in order to assemble the geometry to create the right-of-way drawings and confirm any locations already established by the City of Grand Island.

*iv. Utility Locates*

Utilities will be drawn from surveying above ground features, including markings by utility companies resulting from the locate request. Information supplied by utility companies will be used to complete the placement of existing utilities on the plans. Locations from utility plans will be transferred into the topographic survey. Where available, above-ground features will be used to improve accuracy. Benesch will add a disclaimer to the drawings with respect to the undetermined location of underground utilities.

*b. Base File Completion*

Benesch will add additional information to the established base map from the City of Grand Island using any new topographic survey data.

*c. Field Staking Utility Conflicts for Potholing*

Benesch will stake field locations of assumed water utility conflicts to be potholed by the City of Grand Island. Our survey crew will be on-site while the City completes the work to establish a top of pipe elevation at each pothole location. It is assumed there will be approximately five (5) pothole locations and a survey crew may potentially need to come out twice to the project site to complete the work.

## **TASK 4. Utility Coordination**

*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. Benesch 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, Benesch will then request the Utility Company to verify the conflict and provide a preliminary estimate of reimbursable costs associated with the utility relocation.

Prior to the 50% submittal, the plans will be distributed by Benesch to public and private utilities for comment.

Any utility review meeting should be scheduled to coincide with a regular project progress meeting or City review meeting. Benesch has not included any additional trips within our scope of work to coordinate with utilities.

## **TASK 5. Drainage Analysis**

### *a. Hydraulic/Hydrologic Analysis*

Benesch shall determine proposed outfall locations, delineate drainage areas to each outfall, and calculate 2, 5 and 10-year peak flow rates using the rational method for existing and proposed conditions. City will provide Benesch with any pertinent information regarding irrigation practices by the land owner that could impact the function of the storm sewer system. Proposed inlet locations shall be determined based on the proposed roadway profile and storm sewer hydraulic calculations shall be completed using the worksheets provided by the City or of similar format. Benesch shall also size a culvert crossing for the drainage way that crosses the west end of the project site and will investigate feasibility of cleaning out channel bottom between the upstream and downstream bounding culvert crossings along this drainage way.

## **TASK 6. 50% Submittal**

### *a. Preliminary Designs*

Benesch shall prepare project base files and plan sheets following the standard layout appearance of City of Grand Island documents. Plan sheets to be included in the 50% submittal include the following:

- Cover Sheet
- Typical Section Sheets
- General Notes Sheet
- Horizontal/Vertical Control Sheets
- Roadway Plan and Profile Sheets
- 13<sup>th</sup> & North Road Intersection Improvements Sheets
- Removal Sheets
- Water Main Plan and Profile Sheets
- Wastewater Plan and Profile Sheets
- Roadway Cross-Section Sheets

### *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.

## **TASK 7. Geotechnical Evaluation**

### *a. Data Research*

Based upon current site topography, the site grading is expected to consist of minimal excavation with fill depths ranging from approximately 0 to 5 feet.

It is expected up to nine (9) soil test borings will be taken with the project at locations staked by the City of Grand Island within the proposed roadway pavement area. The fee associated with these borings assumes the project site is easily accessible for truck-mounted drilling equipment

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and rights of access can be obtained from adjacent owners. If traffic control is required, it would be provided by the City. These test borings will be in accordance with schedules located in the most recent NDOR Geotechnical Policy and Procedures Manual.

The borings will be spaced approximately 500 to 750 feet apart along the proposed roadway alignment. Each boring will be drilled to a maximum depth of 10 feet below the existing ground surface. Shelby tube samples will be taken beneath the existing topsoil and Standard Penetration tests will be performed at 5-foot increments to the base of each boring. Laboratory testing will be performed to assist with classification and consistency of subgrade materials.

*b. Design Recommendations/Report*

Benesch shall prepare geotechnical recommendations for the primary purpose of developing geotechnical design criteria for use in designing the concrete pavement for the project. Benesch shall prepare and submit three (3) copies of a geotechnical report to the City Project Manager for review.

## **TASK 8. Environmental Review**

Per discussion with the City of Grand Island, Benesch's engineering services does not include effort to complete a Corp of Engineers 404 permit for this project.

## **TASK 9. Existing Water Main and/or Wastewater Relocation**

Benesch shall identify existing water mains or sanitary sewers that are in conflict with project improvements. Project improvements are to be designed around water mains and sanitary sewer lines; however, in some situations relocating the water main or sanitary line will produce an improved engineering design. Engineering judgment shall be used to determine when to relocate a public utility. This task involves minor relocations involving a public utility due to an improvement project not initiated by the specific utility section, including coordination with the City of Grand Island Utilities Department regarding the relocation/new construction of fire hydrants.

## **TASK 10. Replacement Water Main Design**

- a. Horizontal Alignment*
- b. Vertical Alignment*
- c. Utility Conflict Verification and Resolution (Assumes five (5) loops/drops at approximately 40 foot segments to avoid conflicts with storm inlets or water main crossings.)*

## **TASK 11. Replacement Wastewater Design**

Benesch has identified existing sanitary sewers that do not appear to be in conflict with project improvements and therefore has no design requirements.

## **TASK 12. Right-of-Way**

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Benesch shall provide all necessary plan sheets and legal descriptions and will complete right of way acquisitions and negotiations for the project. Benesch will determine the temporary and/or permanent easements and/or ROW to construct the project. Temporary construction easements will be acquired to construct driveways or make improvements to personal property beyond the existing or proposed right of way. The City of Grand Island base file and title researches performed by Benesch will be used by Benesch to determine the existing right-of-way and to design the easements or necessary ROW to construct the project.

*a. Easement or ROW Descriptions & Track Drawings*

Benesch shall prepare legal descriptions and tract drawings for the permanent and temporary easements or ROW required from each of the impacted tracts. It is estimated there will be seven (7) tracts associated with this project. Seven (7) tracts are estimated to need revisions due to property owner negotiations.

*b. Title Search and Appraisals*

Benesch shall perform a title search and have an appraisal completed for each of the impacted tracts for use in the acquisition of the temporary and/or permanent easement. Benesch will utilize the services of Principle Right of Way Services for the appraisal and property acquisition services.

*c. Easement or ROW Acquisitions*

Benesch will assist the Client in the negotiations for the acquisition of the temporary and/or permanent easements or ROW. Benesch will prepare the easement or ROW documents, present, explain offers, answer related questions, and secure signatures from interested parties. Benesch will attempt to meet with each property owner at least three times if necessary.

Benesch will perform the services in accordance with the Client of Grand Island's procedures. The goal will be to acquire the necessary right of way through amicable negotiations. If condemnation is required, Benesch will deliver the parcel files to the City of Grand Island and be available for consultation or condemnation testimony.

Benesch will submit signed purchase agreements, deeds and temporary easements, along with a payment transmittal letter to the Client. The Client will approve all signed purchase agreements and easement or ROW documents and will make payments to each property owner and tenant, if necessary. The Client will record the deeds at the County Courthouse, and provide copies of the recorded documents and payment vouchers or checks to Benesch in order to complete the acquisition file.

### **TASK 13. 95% Submittal**

*a. 95% Submittal Design*

Benesch shall prepare project base files and plan sheets following the standard layout appearance of City of Grand Island documents. All sheets that will be included in the PS&E plan set will be included in the 95% submittal. This includes, but not limited to, the following sheets:

- Cover Sheet
- Summary of Quantities Sheet
- Typical Section Sheets
- General Notes Sheet
- Detail Sheets

- Horizontal/Vertical Control Sheets
- Traffic Control/Detour Sheets
- Geometric, Joints and Grades Sheets
- Roadway Plan and Profile Sheets
- Removal Sheets
- Sediment and Erosion Control Sheets
- Water Main Plan and Profile Sheets
- Wastewater Plan and Profile Sheets
- Lighting Plan Sheets (By City of Grand Island)
- Roadway Cross-Section Sheets

*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 95% submittal.

#### **TASK 14. Permit Applications**

Benesch will not prepare or submit on behalf of the City of Grand Island the following permits, agreements, certifications, and forms.

- ☐ Corps of Engineers 404 Permit (Per discussion with the City of Grand Island, Benesch's engineering services does not include effort to complete a Corp of Engineers 404 permit for this project.)
- ☐ SWPPP - NPDES Permit (To be completed by the contractor per City of Grand Island standard practice on projects.)

#### **TASK 15. Final Submittal**

*a. Final PS&E Submittal*

Upon incorporating review comments into the plan set and special provisions, Benesch shall prepare and submit all drawings, special provisions, 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, Benesch shall submit the bid package to the City's Project Manager. The bid package includes sealed white half-size bond drawings, sealed special provisions and sealed pdf documents too.

#### **TASK 16. Bidding Phase**

- a. Answer Design Questions*
- b. Prepare up to one (1) Addenda*
- c. Complete Recommendation of Award Letter*



## **GENERAL INFORMATION**

### **1. PLAN FORMAT**

A PDF Half size (11" x 17") copy of the plans will be submitted at the 50% submittal, 95% submittal, and PS&E submittal. One half size (11" x 17") white paper bond and PDF copy of the plans will be submitted for PS&E review. Any material, which does not produce an acceptable reproduction will be returned to Benesch for rectification.

Final plans will be submitted electronically PDF and on 11" x 17" white paper bond and will be accompanied by an electronic copy of the design in AutoCAD format.

Care will be exercised in drawing all construction details. All notes will be properly spaced and all lettering will be of an engineering style. Clarity must be maintained to allow the plans to be archived on microfilm; the background topography, grid lines etc. on plan and profile sheets will be removed behind the text.

The CADD files will conform to the following standards and conventions. All plans, specifications, and documents will be in English units using the following working units:

- a) Master Units = Ft
- b) Sub Units = 1000<sup>th</sup>
- c) Position Units = 1

Global origin of the graphics design plane will be located at x= 0.0000, y= 0.0000.

### **Reports, Studies and Technical Information:**

Benesch shall prepare and submit the following items:

- 1. Meeting minutes from all meetings
- 2. Drainage computations, culverts and storm drainage design
- 3. Opinion of probable cost
- 4. Permit applications
- 5. Special Provisions for items not covered by the City of Grand Island Specifications

### **Cross-sections**

Benesch will:

- 1. Plot cross-sections with the labeling of the sections on the right side of the sheet, label existing and design centerline elevations at their respective centerline, and offset distances 20 feet from the design centerline along the bottom of each sheet.
- 2. Plot cross-section on standard size sheets (same size as the plan and profile sheets).
- 3. Roadway cross-sections are to be plotted using a vertical and horizontal scale of 1" = 20'.
- 4. Plot the cross-sections with the stations progressing upward from the bottom to the top of the sheet.
- 5. Plot the original ground with a dashed line
- 6. Plot the design template with a solid line.
- 7. Label the cut and fill quantities for each section.

8. Plot the right-of-way and easements on each cross section.

## **2. RIGHT-OF-WAY SUBMITTALS**

Plan submittals and right-of-way documents for the project will include, but not be limited to the following:

1. Summary Sheet
2. Right-of-way Plan Sheets
3. Legal Descriptions

The 50% submittal (Ownership Plans) will show the existing ownership, existing right-of-way, as well as the preliminary design features of the roadway and preliminary limits of construction.

The 95% submittal (Appraisal/Negotiation Plans) will show the proposed easement design. The plans will show new temporary and permanent easements needed for construction and maintenance of the new roadway.

A summary sheet will be prepared showing the area of new easements needed from each tract along the project in square feet, along with a strip map showing the location of the tracts. Legal descriptions will be prepared for tracts needing additional easements.

Benesch will make right-of-way design alterations as required by the City's Project Manager during negotiations. The revisions to the plans must be made within ten working days after the City's Project Manager requests the revision.

The easements will be staked for use by the City during negotiations. This activity should be coordinated between Benesch and the City's Project Manager.

The final right-of-way plans will be submitted on 11" x 17" white bond paper with the bid package and will be accompanied by an electronic copy of the design in AutoCAD format.

**Attachment A**  
**Total Final Design Amendment No. 1 Fee**

**13th Street Roadway Improvements**  
**City Project Number 2018-P-1**

<b>Task No.</b>	<b>Task Description</b>		<b>Fee Estimate</b>
1	Project Management		\$15,838.97
2	General Project Meetings		\$4,487.12
3	Survey		\$4,440.48
4	Utility Coordination		\$1,701.22
5	Drainage Analysis		\$4,376.25
6	50% Submittal		\$20,677.48
7	Geotechnical Evaluation		\$5,644.83
8	Environmental Review		\$0.00
9	Existing Water Main and/or Wastewater Relocation		\$0.00
10	Replacement Water Main Design		\$3,449.37
11	Replacement Wastewater Design		\$0.00
12	Right-of-Way		\$9,493.41
13	95% Submittal		\$26,435.24
14	Permit Applications		\$102.66
15	PS&E Submittals		\$2,066.69
16	Bidding Phase		\$3,144.33
17	Construction Phase (To be Negotiated at a Later date)		\$0.00
	Expenses		\$39,423.20
		<b>Total Project Cost</b>	<b>\$141,281.25</b>

<b>ATTACHMENT A: TOTAL EXPENSES - FINAL DESIGN AMENDMENT NO. 1 for 13TH STREET ROADWAY IMPROVEMENTS PROJECT NO. 2018-P-1</b>					
<b>Design</b>	<b>Expenses</b>	<b>Amount</b>	<b>\$ Ea.</b>	<b>Cost</b>	
Travel, mile (car) {Assumes 4 Trips at 210 miles round trip from Lincoln}		840	MILES 0.56	\$470.40	
Travel, mile (survey vehicle) {Assumes 2 Trips at 210 miles round trip from Lincoln}		630	MILES 0.56	\$352.80	
Geotechnical Mobilization, Testing, & Expenses		1	L.S. 3600	\$3,600.00	
ROW Service (Principle ROW)(assuming 7 parcels)		7	L.S. 5000	\$35,000.00	
<b>Construction</b>					
Travel, mile (car) {Assumes __ Trips at 210 miles round trip from Lincoln}			MILES 0.56	\$0.00	
Travel, mile (survey vehicle) {Assumes _ Trips at 210 miles round trip from Lincoln}			MILES 0.56	\$0.00	
Travel, in Town (car) {Work Truck in Grand Island}			VEHICLE DAY 65	\$0.00	
Hotel Accommodations			EACH 105	\$0.00	
Meal Per Diem			EACH 45	\$0.00	
Concrete Cylinder Molds and Compression Test of 6" x 12" Concrete Cylinders {Assumes 1-Test/100 C.Y. or 1-Test/Pour/Day, 8" Paving, 4" Sidewalk and Inlets for Approximately ____ C.Y. }			EACH 18.5	\$0.00	
			Total	\$39,423.20	

RESOLUTION 2017-278

WHEREAS, on August 22, 2017, via Resolution No. 2017-236 the Grand Island City Council approved entering into an agreement with Alfred Benesch & Company of Lincoln, Nebraska in the amount of \$15,000.00 for conceptual design services for 13<sup>th</sup> Street Roadway Improvements; Project No. 2018-P-1; and

WHEREAS, the original agreement is now being amended to include final design services for such project; and

WHEREAS, such amendment is in the amount of \$141,281.25, for a revised agreement amount of \$156,281.25; and

WHEREAS, Amendment No. 1 to the original agreement with Alfred Benesch & Company of Lincoln, Nebraska is required to proceed with this project

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Amendment No. 1 with Alfred Benesch & Company of Lincoln, Nebraska for final design services related to 13<sup>th</sup> Street Roadway Improvements; Project No. 2018-P-1 is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such amendment on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, October 10, 2017.

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

Attest:

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

Approved as to Form	☐ _____
December 14, 2017	☐ City Attorney