



City of Grand Island

Tuesday, November 6, 2018

Council Session

Item G-10

#2018-336 - Approving Amendment No. 3 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: November 6, 2018

Subject: Approving Amendment No. 3 to Engineering Consulting Agreement for 13th Street Roadway Improvements; Project No. 2018-P-1

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

Background

This project includes roadway and drainage improvements along 13th Street from North Road to Moores Creek, and intersection improvements at 13th Street and North Road.

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 13th Street Roadway Improvements; Project No. 2018-P-1. This agreement accounted for design concepts for the three lane curb and gutter roadway section with associated sidewalk and other miscellaneous improvements, including drainage.

On October 10, 2017, via Resolution No. 2017-278, City Council approved Amendment No. 1 to the original agreement to include final design services in the amount of \$141,281.25, resulting in a revised agreement amount of \$156,281.25.

On February 27, 2108, via Resolution No. 2018-59, City Council approved Amendment No. 2 to the original agreement to include construction observation services in the amount of \$255,896.97, resulting in a revised agreement amount of \$412,178.22.

Discussion

Due to unforeseen utility conflicts and construction delays, it is now requested to add additional construction observation services to the original agreement with Alfred Benesch & Company, in the amount of \$29,644.00 for a revised agreement total of \$441,822.22. Liquidated damages yet to be determined will be applied against the contractor, which will help offset the cost of this amendment.

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. 3 to the original agreement with Alfred Benesch & Company of Lincoln, Nebraska, in the amount of \$29,644.00.

Sample Motion

Move to approve the resolution.



CONSULTING SERVICES AGREEMENT

CLIENT	City of Grand Island	Project Name	City of Grand Island
Address	City Hall, 100 East First Street Grand Island, NE 68802		13 th Street Roadway Improvement Amendment No. 3 for Additional Construction Engineering
		Project Location	13 th 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. 3 for Additional Construction Engineering Consulting Services

\$29,644

Construciton Services: \$210,896.97+ \$29,644 = \$240,540.97

Total not to Exceed for Design and Construciton Services \$412,178.22 + \$29,644 = \$441,822.22

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 \$29,644.

☐ 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

ALFRED BENESCH & COMPANY

BY: _____
AUTHORIZED REPRESENTATIVE

BY: _____
AUTHORIZED REPRESENTATIVE

PRINT NAME: _____

PRINT NAME: Anthony Dirks, P.E.

TITLE: _____

TITLE: Vice President

DATE: _____, 20____

DATE: October 24, 2018

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. 3 Additional Construction Services - 13th Street Road Improvements

City Project Number 2018-P-1

TASK 1. Construction Phase Services

General Construction Project Management, Staking, Inspection, Material Testing and Closeout Services

a. Project Inspection & Observation Tasks

Benesch or their sub-consultant will observe and verify construction compliance with contract documents for critical items such as embankment, bedding, backfill, concrete box culvert construction, subgrade prep and paving with visual inspection and/or material testing before the work is "covered up". Limited observation will be provided during non-critical activities such as excavation, removals, reinforcing steel placement, forming, etc. This list is not inclusive of all tasks or inspections that will be completed by Benesch or their sub-consultant. Benesch will work closely with the City to adjust inspection hours as necessary to accommodate the Contractor's schedule and progress.

- i. Document pre-construction conditions of the project site with photos for comparison and any dispute resolution during and/or after construction.
- ii. Document all inspections in the field by photos, measurements, computations and/or observations as logged within the Inspector's Daily Reports (IDRs).
- iii. Prepare and keep detailed notes, records of quantities of pay items used in the work, test results, certifications, or basis of acceptance of these materials, and a record of the contractor's operations.
- iv. Inform Contractor at the pre-construction meeting that water shutdowns will be coordinated by the Inspector.
- v. Coordinate with the Contractor to discuss work performed when not on-site for proper documentation and inclusion in the IDRs.
- vi. Provide random/periodic review compliance of traffic control and ADA signing maintenance throughout the duration of the project, if necessary. Specifically, at the beginning, phase changes, storm events and end of the project. Benesch will report any known deficiencies but is not responsible for part/full time inspection unless approved by written request of the City Project Manager.
- vii. Verify that materials sources incorporated into the project are on the latest version of the City and/or NDOR Approved Products List.
- viii. Participate in Contractor led progress meetings every two weeks using agreed on agenda format.
- ix. Consult with the City Project Manager regarding project changes, utility conflicts, change authorizations and change orders.
- x. Observe plan profiles are constructed accurately and conduct consultation with City Project Manager regarding deviations.
- xi. Observe that poly wrap encasement is installed in accordance to DIPRA standards for ductile iron pipe, blocking, anchorage and restraints are provided where called for on the construction documents.
- xii. Observe water pipe joints placement near sanitary and storm sewer crossings.
- xiii. Observe that thrust blocking, anchorage and restraints are provided where called for on the construction documents.
- xiv. Observe that hydrants are installed to proper grades, orientation and plumb.

ATTACHMENT A

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- xv. Observe that water valve stems and waste water manholes are raised to grade per standard City details.
- xvi. Randomly observe pavement sawing and removals throughout construction.
- xvii. Observe backfilling of trenches, inlets, hydrants, manholes, pipes, culverts and appurtenances, concrete placement and ADA ramp installation.
- xviii. Observe reinforcing steel placement prior to each concrete pour.
- xix. Observe concrete placement, erosion control installation and seeding placement.
- xx. Inform and verify field modifications with the City's Project Manager prior to authorization of work.

SCHEDULE

Benesch shall provide the services stated above in accordance with a schedule set forth below:

Benesch has completed construction management and inspection services as listed in subsection one (1) above. The inspection duration for the contract is 115 Working Days (March 5-August 10), 23 Weeks and Assumes Monday thru Friday Construction Days at 9 Hours/Day including field inspection, testing, bookwork/reports and travel} per the City of Grand Island Contract with the Construction Contractor. The inspection time thru October 19th amounts 1032 hours which we had 1035 budgeted. The daily work reports started May 14th with an additional week prior for utility locates. The 23 weeks assumed project duration would therefore expire by October 19th. This amendment extends the construction management and inspection services by an additional 7 weeks (5 weeks to Thanksgiving and 2 weeks in the spring for remaining finish work).

ATTACHMENT A

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**Attachment A
Total Amendment Fee**

**13th Street Roadway Improvements - Amendment No. 3
City Project Number 2018-P-1**

Task No.	Task Description		Fee Estimate
1	AMENDMENT No. 3 Additional Construction Phase		\$27,369
	Expenses		\$2,275
		Total Amendment Cost	\$29,644

ATTACHMENT A: MAN-HOUR ESTIMATE - 13th STREET ROADWAY PROJECT AMENDMENT 3 CONSTRUCTION SERVICES

Task No.	Description of Work Items / Tasks	PM	Sr PE	LI	FE	Total Manhours	Total Labor Fee	Overhead 159.80%	Total (A+B)	Profit 12.90%	Total Fee (A+B+C)
1	Construction Phase (Assumes Mar 5-Aug 10 - 161 Calendar Days/115 Working Days/23Weeks at Monday - Friday and 8 Hr Days that includes field inspection, testing, bookwork/reports w/ all other Inspection Durations As Indidcated) (MAY 14 - OCT 19)										
	Additional 7 weeks of Construction Management (Assumes 4 hrs. per week PM, 3 hrs. per week LI and 8 hrs./working day FE)	28		21	280	329	\$9,331	\$14,911	\$24,242	\$3,127	\$27,369
	Total Manhours	28	0	21	280	329					
	Total	\$1,554	\$0	\$777	\$7,000	\$9,331	\$9,331	\$14,911	\$24,242	\$3,127	\$27,369
	Total Labor, OH & Profit	\$4,558	\$0	\$2,279	\$20,532						\$27,369

**ATTACHMENT A: TOTAL EXPENSES - 13TH STREET ROADWAY IMPROVEMENTS PROJECT NO.
2018-P-1 CONSTRUCTION SERVICES**

Expenses	Amount		\$ Ea.		Cost
Construction					
Travel, mile (truck) {Assumes 5 testing Trips at 210 miles round trip from Lincoln}		MILES	\$ 0.56		\$0.00
Travel, mile (survey vehicle) {Assumes 24 Trips at 210 miles round trip from Lincoln}		MILES	\$ 0.56		\$0.00
Travel, in Town (truck) {Work Truck in Grand Island}	35	VEHICLE DAY	\$ 65.00		\$2,275.00
Hotel Accommodations		EACH	\$ 105.00		\$0.00
Meal Per Diem		EACH	\$ 45.00		\$0.00
Concrete Cylinder Molds and Compression Test of 6" x 12" Concrete Cylinders {Assumes 1-set of 3/500 SY of paving or 1-Test/Pour/Day, 19519 SY of 9" Paving (39), Small Pours and Structures (31).}		EACH	\$ 18.50		\$0.00
Nuclear density tests - pavement subgrade		EACH	\$ 50.00		\$0.00
Nuclear density tests - Utility backfill		EACH	\$ 50.00		\$0.00
Moisture Density Proctor Curve		EACH	\$ 268.00		\$0.00
			Total		\$2,275.00

ATTACHMENT 1: PAY RATES - 13TH STREET ROADWAY IMPROVEMENTS PROJECT NO. 2018-P-1

Construction Services

Overhead Rate : 159.80%

Profit : 12.9%

Personnel		Total Hr.	Salary \$ Per Hr.	Labor Cost	Total Cost
Project Manager(TAB)	PM	28	\$55.50	\$1,554	\$4,558
Senior Engineer (JJ)	Sr Eng	0	\$52.30	\$0	\$0
Senior Environmental Scientist	Sr Env	0	\$41.00	\$0	\$0
Structural Engineer	STR Eng	0	\$48.50	\$0	\$0
Senior Project Engineer (SI)	Sr PE	0	\$49.00	\$0	\$0
Project Engineer	PE	0	\$38.00	\$0	\$0
Design Engineer (Larsen)	DE	0	\$36.00	\$0	\$0
Engineering Technician(Mike Palm)	ET	0	\$20.00	\$0	\$0
Public Involvement Specialist	PIS	0	\$0.00	\$0	\$0
Project Scientist II	PS	0	\$0.00	\$0	\$0
Technologist II / Scientist II	TS	0	\$0.00	\$0	\$0
Survey Crew Chief (RLS)	RLS	0	\$30.00	\$0	\$0
Survey Crew Member / Technician	SCMT	0	\$20.00	\$0	\$0
Field/Lab Tech III	FLT III	0	\$22.00	\$0	\$0
Field/Lab Tech II	FLT II	0	\$20.00	\$0	\$0
Field/Lab Tech I	FLT I	0	\$16.00	\$0	\$0
Construction Manager	CM	0	\$44.00	\$0	\$0
Lead Inspector	LI	21	\$37.00	\$777	\$2,279
Field Engineer	FE	280	\$25.00	\$7,000	\$20,532
	-				
	-				
	-				
Expenses					\$2,275
		329		\$9,331	\$29,644

RESOLUTION 2018-336

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 13th Street Roadway Improvements; Project No. 2018-P-1; and

WHEREAS, on October 10, 2017, via Resolution No. 2017-278, City Council approved Amendment No. 1 for such agreement to include final design services, in the amount of \$141,281.25, for a revised agreement amount of \$156,281.25; and

WHEREAS, on February 27, 2018, via Resolution No. 2018-59, City Council approved Amendment No. 2 to include construction observation services in the amount of \$255,896.97, resulting in revised agreement amount of \$412,178.22; and

WHEREAS, the original agreement is now being amended to include additional construction observation services for such project; and

WHEREAS, such amendment is in the amount of \$29,644.00, for a revised agreement amount of \$441,822.22; and

WHEREAS, Amendment No. 3 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. 3 with Alfred Benesch & Company of Lincoln, Nebraska for additional construction observation services related to 13th 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.

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Adopted by the City Council of the City of Grand Island, Nebraska, November 6, 2018.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
November 5, 2018	☐ City Attorney