

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JUNE 1, 2021 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
PROFESSIONAL SERVICES AGREEMENT – CONSTRUCTION ENGINEERING SERVICES	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

**SYNOPSIS**

A resolution has been prepared to authorize a Professional Services Agreement with Alfred Benesch and Company for construction engineering services associated with the Park View Boulevard Panel Replacement project (84<sup>th</sup> Street to 96<sup>th</sup> Street various locations) in an amount not to exceed \$48,801.00.

**FISCAL IMPACT**

The FY21/FY22 Biennial Budget provides funding for the proposed project.

**RECOMMENDATION**

Approval.

**BACKGROUND**

A proposal was obtained from Benesch to provide construction engineering services (to include project management, construction observation, materials testing, project closeout and public engagement) in conjunction with the proposed Park View Boulevard Panel Repair project. Benesch is well qualified and the City has utilized Benesch Construction engineering services for the Harrison Street panel replacement project and the 96<sup>th</sup> St & 108<sup>th</sup> St Pavement Reconstruction & Rehabilitation projects. A detailed scope of work is attached.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH ALFRED BENESH AND COMPANY FOR THE PROJECT MANAGEMENT, CONSTRUCTION OBSERVATION, MATERIALS TESTING, PROJECT CLOSEOUT AND PUBLIC INVOLVEMENT FOR THE PARK VIEW BOULEVARD PANEL REPLACEMENT, 84<sup>th</sup> STREET TO 96<sup>th</sup> STREET VARIOUS LOCATIONS PROJECT IN AN AMOUNT NOT TO EXCEED \$48,801.00.

WHEREAS, the City Council of the City of La Vista has determined that various panel replacements along Park View Boulevard between 84th Street and 96th Street are necessary; and

WHEREAS, The FY21/FY22 Biennial Budget provides funding for the proposed project; and

WHEREAS Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secures Council approval prior to authorizing any purchase over \$5,000.00;

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska authorize a Professional Services Agreement with Alfred Benesch and Company for the project management, construction observation, materials testing, project closeout and public involvement for the Park View Boulevard Panel Replacement, 84<sup>th</sup> Street to 96<sup>th</sup> Street Various Locations project in an amount not to exceed \$48,801.00.

PASSED AND APPROVED THIS 1ST DAY OF JUNE 2021.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk



## **CONSULTING SERVICES AGREEMENT**

CLIENT	City of La Vista Public Works Department	Project Name	M376(378) - Park View Blvd - 84 <sup>th</sup> to 96 <sup>th</sup>
Address	8116 Park View Blvd	St. - Panel Replacement	
	La Vista, Nebraska 68128		
		Project Location	Park View Blvd - 84th to 96th
Telephone	402-331-8927		
Client Contact	Pat Dowse, City Engineer	Consultant PM	Tim O'Bryan
Client Job No.		Consultant Job No.	120715.00

This Agreement is made by and between City of La Vista Public Works Department, hereinafter called "Client," and Alfred Benesch & Company, hereinafter called "Consultant", for professional consulting services as specified herein. Consultant agrees to provide Client with requested consulting services more specifically described as follows (or shown in Attachment A):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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: \$\_\_\_\_\_.

☒ By Other Payment Method (See Attachment A): \$48,801.00.

☐ 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: Jeffery A. Sockel  
AUTHORIZED REPRESENTATIVE

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

PRINT NAME: Jeffery A. Sockel, PE

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

TITLE: Sr Vice President

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

DATE: May 12, 2021

BENESCH OFFICE: Omaha

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

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

## **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 if the Services described in the Scope of Services have not commenced, Consultant reserves the right to revise the Scope or Fee Estimate. Any such revision shall be subject to approval of both parties and if such approval is not forthcoming, either party may elect to terminate this Agreement for Cause pursuant to subsection 3.3.1 below.

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 Consultant observed 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 0.5% per month, or the maximum allowed by law, will be charged on all undisputed past due amounts starting thirty (30) days after receipt 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 receipt 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 of undisputed amounts owed pursuant to this

Section 2 within forty-five (45) days of the receipt of the 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 the undisputed amount for all services satisfactorily performed prior to the effective date of the 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. 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 to the Client information and documents developed under the terms of this Agreement with respect to which Client has made payment to Consultant. Upon receipt of all other information and documents, Client shall pay Consultant the undisputed amount for services satisfactorily 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 to the Client information and documents developed under the terms of this Agreement with respect to which Client has made payment to Consultant.

### **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 2.

## **SECTION 4 - General Considerations**

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

**4.1.1** Consultant shall be solely responsible for its performance under this Agreement and for those who Consultant designates to carry out such performance.

**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 be subject to the exclusive direction and control of Consultant and 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 execution of this Agreement showing amounts and types of insurance carried by Consultant, subject to the reasonable satisfaction of the Client's City Engineer as to the insurer, amounts and types of insurance, which certificate shall include Client as an additional insured with respect to Consultant's Commercial General Liability, Automobile Liability, and Umbrella Liability policies and 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. In the event of cancellation or non-renewal of any of Consultant's policies, Consultant shall obtain replacement coverage reasonably satisfactory to the Client's City Engineer so that there is no break in insurance coverage. Consultant shall require any subconsultants under this Agreement to comply with this subsection 4.2.1.

**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. Provided, however, Client by this Agreement is granted and shall have the right in perpetuity to use any and all such 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 with respect to the Project. Not in limitation of the foregoing sentence, 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. 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 all undisputed amounts 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 reasonably 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 applicable professional standard of skill and care ordinarily provided by firms practicing in the same or similar locality in the Omaha metropolitan area 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 there is a deficiency that fails to meet the standard of care and it is attributable to Consultant, the deficiency shall be corrected at no additional cost to Client.

#### **5.2 Not Used**

#### **5.3 Not Used**

#### **5.4 Not Used**

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

Client and Consultant expressly agree that this 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**

Direct negotiation will be the initial process utilized by all parties. Either the Client or Consultant may make a request for Direct Negotiation as an initial attempt to resolve any claim, dispute, or other matter arising out of this Agreement. Any request for Direct Negotiation will be subject to approval of the other party. Direct Negotiation will take place at the project worksite or at a location as agreed to by Client's and Consultant's designated representatives. If Direct 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 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. With respect to any underground utilities and structures marked by Client pursuant to this paragraph, Client, subject to liability limitations and other provisions of the Nebraska Political Subdivisions Tort Claims Act, shall indemnify and hold Consultant harmless from any damages proximately caused by, 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. Except in the event of Consultant's negligence, 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.

**CONSTRUCTION ENGINEERING SERVICES**

**M376(378)**

**PARK VIEW BLVD from 84<sup>TH</sup> STREET to 96<sup>TH</sup> STREET**

**PANEL REPLACEMENT**

**SCOPE OF SERVICES**

**OVERVIEW**

Alfred Benesch & Company (Benesch) proposes to provide professional services related to project management, construction observation, materials testing and public involvement for the above-mentioned project. Construction engineering activities shall include but are not limited to, project management, public outreach, pre-construction preparation, construction inspection, project closeout and materials testing.

It is Benesch's understanding that the panel replacement for Park View Blvd from 84<sup>th</sup> St. to 96<sup>th</sup> St. will include, but is not limited to, pavement repair, construction of ADA curb ramps and replacement of curb inlet tops.

Benesch anticipates the staffing requirements for this contract will consist of one (1) project manager, one (1) full-time - construction observer, one (1) material testing technician and necessary coordination or administrative support personnel. Exhibit "C" indicates an estimated number of hours, personnel, and testing services and the associated fees Benesch anticipates the City will request for the proposed work under this agreement. Variation of this estimate is expected due to factors beyond Benesch's control such as contractor operations, field changes, requested support services, or other situations that may occur. Should the requested services exceed this fee estimate, Benesch will notify the City if the total fee may exceed the estimated amount and compensations shall be provided using the same established billing rates.

Compensation for professional services related to project management, construction inspection, materials testing, and public involvement shall be on an hourly rate basis determined by the classification of the personnel provided or specified and the material testing fee schedule. Administration (copying, fax, printing, long distance telephone, postage, etc.), observation equipment (cellular phone, measuring wheel, levels, tools, paint, etc.), and other overhead- related expenses shall be compensated at actual costs incurred without markup. An estimate of these costs is indicated in the fee estimate.

The following shall describe the scope of work related to each of these categories. Services may be added or deleted upon request. Changes to the total contract amount will be addressed as indicated above.

The professional services provided by Benesch shall be described under the following major categories:

1. Project Management, Meetings, and Pre-Construction Preparation
2. Construction Observation
3. Materials Testing
4. Project Closeout
5. Public Involvement

**PROJECT MANAGEMENT & MEETINGS**

Benesch shall provide project management services to the City of La Vista in the following areas:

- Coordinate activities between the City of La Vista and Contractor
- Monitor the construction schedule
- Conduct periodic progress meetings
- Address stakeholder concerns
- Review and submit Partial Pay Estimates
- Scheduling personnel and testing activities

**PRE-CONSTRUCTION PREPARATION**

The following pre-construction tasks will include:

- Coordinate and schedule public involvement notifications
- Pre-construction photos
- Mark removal limits

**CONSTRUCTION OBSERVATION**

The following construction observation tasks will include:

- Record and maintain; project field diaries, quantities, files and records.
- Create weekly progress reports.
- Submit weekly progress reports to general contractor and City representative.
- Monitor the contractors’ activities for compliance with the plans and specifications.
- Review work zone traffic control devices each day.
- Coordinate with general contractor.
- Coordinate material testing services.
- Observe and record change order and force account work.
- Document and address stakeholder concerns.

**MATERIALS TESTING SERVICES**

The following materials and testing will include:

- Perform materials testing.
- Acquire, record, and provide all necessary material certifications.
- Provide all test reports and certifications to the City project manager.

**CONSTRUCTION CLOSEOUT**

The following construction phase tasks will include:

- Schedule and conduct a final project walkthrough/inspection.
- Prepare and submit punch list to the general contractor and City representative
- Verify all project work has been completed, inspected, and approved.
- Prepare and submit as-built plans.
- Develop final payment.

## Exhibit "A"

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## Reimbursables

Subtotal

**\$ 36,383.00**

**\$ 12,418**

**\$ 48,801.00**