

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JUNE 6, 2023 AGENDA**

Subject:	Type:	Submitted By:
PROFESSIONAL SERVICES AGREEMENT – 73 RD AVENUE CULVERT REHABILITATION	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

SYNOPSIS

A resolution has been prepared authorizing a professional services agreement with Houston Engineering, Inc., (HEI) La Vista, NE to provide professional consulting services for the design, permitting, and construction administration for the rehabilitation of a corrugated metal pipe culvert crossing the Thompson Creek at 73rd Avenue in an amount not to exceed \$28,274.

FISCAL IMPACT

The FY23/FY24 Biennial Budget includes funding for this work.

RECOMMENDATION

Approval.

BACKGROUND

The 73rd Avenue culvert crossing has been identified as an asset that requires rehabilitation. Staff reached out to HEI's La Vista office, (formerly FYRA Engineering) to evaluate, design, permit and provide construction phase services for the 7' x 12' arch corrugated metal pipe (CMP) culvert. Due to the size and shape of the pipe, the recommended solution is Centrifugally Cast Concrete Pipe (CCCP) lining of the pipe in which a cementitious mortar is centrifugally cast against wall of the existing pipe. This type of solution is anticipated to significantly increase the service life of the asset while minimizing impacts to the hydraulic characteristics of the culvert.

Construction of the CCCP lining is anticipated to begin and be completed in the Fall of 2023. Due to the specialty nature of the rehabilitation solution and the limited number of local contractors anticipated for this type of project, the contractor's window for starting the project will likely be flexible as to allow prospective contractors to schedule this project around other work in the vicinity as to potentially lower mobilization and other costs associated with using a regionally based contractor.

A copy of the scope is attached.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH HOUSTON ENGINEERING, INC., LA VISTA, NE TO PROVIDE PROFESSIONAL CONSULTING SERVICES FOR THE DESIGN, PERMITTING, AND CONSTRUCTION ADMINISTRATION FOR THE 73RD AVENUE CULVERT REHABILITATION IN AN AMOUNT NOT TO EXCEED \$28,274.00.

WHEREAS, the Mayor and City Council have determined that professional consulting services for the design, permitting and construction administration for the 73rd Avenue Culvert Rehabilitation are necessary; and

WHEREAS, the FY23/FY24 Biennial Budget includes funding for this work; and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secure council approval prior to authorizing any purchases over \$5,000.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, that a professional services agreement in a form satisfactory to the City Administrator and City Attorney, be authorized with Houston Engineering, Inc., La Vista, NE to provide professional consulting services in an amount not to exceed \$28,274.00.

PASSED AND APPROVED THIS 6TH DAY OF JUNE 2023.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Patti Anderson
Deputy City Clerk

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between City of La Vista, Nebraska (Owner) and Houston Engineering, Inc. (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as South 73rd Avenue/Thompson Creek Culvert Rehabilitation Project (Project). Engineer's services under this Agreement (Services) are generally identified as hydraulic analysis, design, construction documents, permitting, and bidding/construction phase services for the rehabilitation of a degraded arched CMP culvert under the S 73rd Avenue crossing over Thompson Creek in La Vista, Nebraska.

Owner and Engineer further agree as follows:

1.01 Services of Engineer

- A. Engineer shall provide or furnish the Services set forth in this Agreement, and any Additional Services authorized by Owner and consented to by Engineer.**

2.01 Owner's Responsibilities

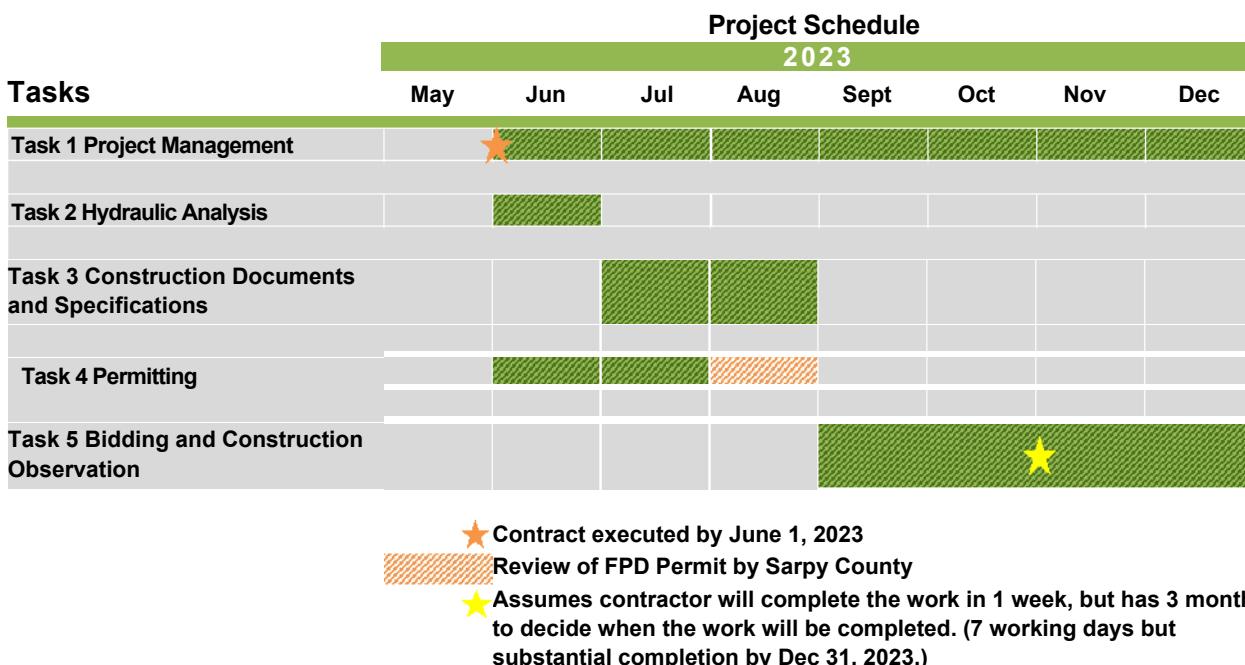
- A. Owner shall provide Engineer with existing Project-related information and data in Owner's possession and needed by Engineer for performance of Engineer's Services. Owner will advise the Engineer of Project-related information and data known to Owner but not in Owner's possession. Engineer may use and rely upon Owner-furnished information and data in performing its Services, subject to any express limitations applicable to the furnished items.**

- 1. Following Engineer's assessment of initially-available Project information and data, and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information and data as Additional Services.**

- B. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance. Owner shall give prompt notice to Engineer whenever Owner observes or otherwise becomes aware of (1) any relevant, material defect or nonconformance in Engineer's Services, or (2) any development that affects the scope or time of performance of Engineer's Services.**

3.01 Schedule for Rendering Services

- A. Engineer shall complete its Services within the following specific time period as shown in the schedule below.**



B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably as agreed by Owner and Engineer in writing.

4.01 Invoices and Payments

- A. Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Except as provided in subsection 4.01B below, invoices are due and payable within 45 days after receipt by Owner.
- B. Payment: As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in this Paragraph 4.01, Invoices and Payments. If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.
- C. Failure to Pay: If Owner fails to make any payment of any undisputed amounts due Engineer for Services, Additional Services, and expenses within 60 days after receipt of Engineer's invoice, then (1) such undisputed amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said sixtieth day; (2) in addition Engineer may, after giving 7 days' written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all such undisputed amounts due for Services, Additional Services, expenses, and other related charges; and (3) if any payment of such undisputed amounts due Engineer remains unpaid after 90 days, Engineer may terminate the Agreement for cause pursuant to Paragraph 5.01.A.2.

D. Reimbursable Expenses: Engineer is entitled to reimbursement of expenses only if so indicated in Paragraph 4.01.E or 4.01.F. If so entitled,

the amounts payable to Engineer for reimbursement of expenses will be (1) the Project-related internal expenses actually incurred or allocated by Engineer, plus (2) all invoiced external expenses for work on the Project, including Engineer's subcontractor and subconsultant charges.

E. Basis of Payment

1. **Hourly Rates.** Owner shall pay Engineer for Services as follows:
 - a. An amount equal to the cumulative hours charged to the Project by Engineer's employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services.
 - b. Engineer's Standard Hourly Rates are shown in Appendix 1 – Tasks and Fees, incorporated into this Agreement by reference.
 - c. The total compensation for Services and reimbursement of expenses is estimated to be \$28,274.
 - d. Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered but shall not exceed the total estimated compensation amount noted above unless approved in writing by the Owner.

F. Additional Services: For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services. Engineer's standard hourly rates are shown in Appendix 1 – Tasks and Fees.

5.01 Termination

A. Termination for Cause

1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of material failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
 - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 5.01.A.1 if the party, upon receipt of such notice, begins and proceeds diligently to cure such failure within no more than 30 days of receipt thereof.
2. In addition to its termination rights in Paragraph 5.01.A.1, (a) Engineer may terminate this Agreement for cause upon 7 days' written notice (i) if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional, or (ii) if payment of undisputed amounts that are due Engineer remains unpaid for 90 days, as set forth in Paragraph 4.01.C, and (b) either party may terminate this Agreement upon 7 days' written notice if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's or Owner's control.

3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.
- B. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.
- C. Payments Upon Termination: In the event of any termination under Paragraph 5.01, Engineer will be entitled to invoice Owner and to receive full payment of undisputed amounts for (i) all services satisfactorily performed or furnished in accordance with this Agreement to the date of termination, and (ii) reimbursement of expenses incurred through the effective date of termination, subject to delivery of all deliverable documents to Owner that are completed or in process of preparation on the effective date of the termination. Upon making such payment, Owner will have the limited right to the use of all deliverable documents, whether completed or under preparation, subject to the provisions of Paragraph 6.01.F, at Owner's sole risk.
 1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the deliverable documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
 2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of actual unavoidable costs of terminating contracts with Engineer's subcontractors or subconsultants.

6.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions of probable construction cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry.

However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.

- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents, other than those made by Engineer.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Engineer grants to Owner a nonexclusive license in perpetuity to use the deliverable documents on the Project, extensions of the Project, and for any other uses or purposes that Owner determines necessary or appropriate in its sole discretion, subject to receipt by Engineer of payment of all amounts due and owing under this Agreement, and subject to the following limitations:
 - 1. Owner acknowledges that (a) such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose not specified in this Agreement, and
- (b) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and subconsultants.

- G. Owner and Engineer agree to transmit, and accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. During the term of this Agreement, Engineer agrees to obtain, maintain in effect and provide certificates of such insurances coverages, including without limitation professional liability coverage, in such amounts and written by an insurer satisfactory to the City Engineer of Owner. Engineer agrees to continuously maintain such coverages in effect during the Project, and for a period of two years following substantial completion.

I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, and to terminate this Agreement for cause if such Constituents of Concern are not remedied within 90 days such that it is not practical to continue providing Services.

J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If such negotiations are unsuccessful in resolving the dispute within 30 days, then the parties may exercise their rights at law.

K. This Agreement is to be governed by the laws of the state in which the Project is located.

L. Engineer's Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

7.01 Definitions

- A. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, subcontractors, and subconsultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. Constituent of Concern—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), lead based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to laws and regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8.01 Successors, Assigns, and Beneficiaries

A. Successors and Assigns

1. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 8.01.A.2 the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

2. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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.

B. Beneficiaries: Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

9.01 Total Agreement

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Attachments: Appendix 1 - Tasks and Fees

This Agreement's Effective Date is _____ .

Owner:

_____ (name of organization)

By:

_____ (authorized individual's signature)

Date:

_____ (date signed)

Name:

_____ (typed or printed)

Title:

_____ (typed or printed)

Address for giving notices:

Designated Representative:

Name:

_____ (typed or printed)

Title:

_____ (typed or printed)

Address:

Phone:

Email:

Engineer:

Houston Engineering, Inc.

_____ (name of organization)

By:



_____ (authorized individual's signature)

Date:

10 May 2023

_____ (date signed)

Name:

Melinda C. Rogers

_____ (typed or printed)

Title:

Principal Engineer/Vice President

_____ (typed or printed)

Address for giving notices:

12702 Westport Parkway, Suite 300

LaVista, NE 68046

Designated Representative:

Name: Melinda Rogers

_____ (typed or printed)

Title: Principal Engineer/Vice President

_____ (typed or printed)

Address:

12702 Westport Parkway, Suite 300

LaVista, NE 68046

Phone: 402.934.8475

Email: LRogers@houstoneng.com

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated _____.

ENGINEER'S TASKS, FEES, AND HOURLY RATES

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraph 4.01 and are subject to annual review and adjustment.



Appendix 1 - Tasks and Fees
S 73rd Avenue/Thompson Creek Culvert Rehabilitation Project
La Vista, Nebraska
Houston Project No. 11628-0001

Tasks	Snr Eng/Prj Mngr	Project Engineer	EI	Admin	HEI Expenses	Total
Task 1 Project Management						
1.1 Contract Coordination	4				\$25	
1.2 Invoicing & Project/Schedule Updates (4)	4			4		
1.3 Meeting with City of LaVista on Final Design	2		2		\$25	
1.4 QA/QC		4				
Project Management Task Total	\$2,350	\$704	\$310	\$440	\$50	\$3,854
Task 2 Hydraulic Analysis						
2.1 Existing and Proposed Conditions Analysis ¹	4	24				
Preliminary Design Task Total	\$940	\$4,224	\$0	\$0	\$0	\$5,164
Task 3 Construction Documents and Specifications						
3.1 Construction Documents ²	4		16		\$200	
3.2 Construction Specifications and Front End Documents ³	1		8		\$400	
Construction Documents and Specifications Task Total	\$1,175	\$0	\$3,720	\$0	\$600	\$5,495
Task 4 Permitting						
4.1 Floodplain Permitting/No Rise ⁴	2	8		1		
4.2 404 Nationwide Maintenance Permit - Non Reporting	3		8	2	\$25	
Permitting Task Total	\$1,175	\$1,408	\$1,240	\$330	\$25	\$4,178
Task 5 Bidding and Construction Observation						
5.1 Contractor Coordination During Bidding	4		6	10		
5.2 Project Bidding	1.5		2	2	\$25	
5.3 Construction Contract Coordination	1		4			
5.4 Pre-Construction Meeting	1.5		1.5			
5.5 Construction Observation			20			
5.6 Project Close Out/Record Drawings	1		6			
Bidding and Construction Observation Task Total	\$2,115	\$0	\$6,123	\$1,320	\$25	\$9,583
Subtotal Hours	33	36	73.5	19		
Subtotal Costs	\$7,755	\$6,336	\$11,393	\$2,090	\$700	\$28,274

Notes

- Assumes that the effective HEC-RAS model for Thompson Creek will be provided to use for this analysis.
- Construction documents shall include cover sheet, general notes and quantities, project details, traffic control plan, and detailed rehabilitation documents and notes. Expenses are included if hard copies of the construction documents are needed.
- Front end documents will utilize standard EJCDC front end documents or City of LaVista standards. Expenses are included if hard copies of the construction specifications are required.
- Floodplain permitting fees to be paid by the client.