



**CITY OF SEWARD**  
**City Council**  
**Regular Meeting**  
**Agenda**

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**Tuesday, June 6, 2023**

**7:00 PM**

**Municipal Building Council Chambers**

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**NOTICE IS HEREBY GIVEN** that a meeting of the City Council of the City of Seward, Nebraska will be held at 7:00 PM on Tuesday, June 6, 2023, in the Council Chambers, 142 N 7th Street, Seward, Nebraska in which the meeting will be open to the public. The Mayor and City Council reserve the right to adjourn into Closed Session as per Section 84-1410 of the Nebraska Revised Statutes. An Agenda for such meeting, kept continually current, is available at the Office of the City Clerk, 537 Main Street, Seward, Nebraska, during normal business hours. Individuals requiring physical or sensory accommodations, who desire to attend or participate, please contact the City Clerk's Office at 402.643.2928 no later than 3:30 PM on the Friday preceding the Council Meeting.

City financial claims and related invoices will be available for Council member review, audit and voluntary signatures at the meeting location beginning 30 minutes prior to the scheduled meeting time.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**DISCLOSURE OF OPEN MEETINGS ACT & OTHER NOTIFICATIONS**

This is an Open Meeting of the Seward Nebraska Governing Body. The City of Seward abides by the Nebraska Open Meetings Act in conducting business. A copy of the Nebraska Open Meetings Act is displayed on the north wall of this meeting room facility as required. Disclosure of meeting recording processes is posted in the Meeting Room. A participant sign-in sheet is available for use by any Citizen addressing the Council. Presenters shall approach the podium, state their name & address for the Clerk's record and are asked to limit remarks to five minutes. All remarks shall be directed to the Mayor who shall determine by whom any appropriate response shall be made. The City of Seward reserves the right to adjust the order of items on this Agenda if necessary and may elect to take action on any of the items listed.

**ROLL CALL**

**CONSENT AGENDA**

1. Claims & Payables Reports

CLAIMS LIST

6-6-23

COUNCIL MEETING

Abbreviations: BE, Benefits; BU, Building Upkeep; CI, Capital Improvements; DO, Donations; EQ, Equipment; EX, Expense; FA, Fixed Asset; GS, Gas; GU, Ground Upkeep; IT, Technology; IV, Inventory; MA, Maintenance; MC, Miscellaneous; MH, Merchandise; MI, Mileage; ML, Meals; MS, Memberships; OI, Oil; OP, Operations; PO, Postage; PU, Publications; RE, Repairs; RI, Reimbursement; SA, Salaries, SE, Services; SL, Sales; ST, Sales Tax; SU, Supplies; TG, Training; TO, Tools; TR, Transfer; UN, Uniforms; UT, Utilities.

ADE	BU	100.00
AKRS Equipment Inc	SU	130.40
All Road Barricades Inc	SU	1,431.76
Amazon Business	SU	1,397.04
Anderson Auto Group	RE	1,386.31
Aqua-Chem Inc	MA	6,055.30
ARPS	CI	10,146.13
Bargmann Derek	MI	51.54
Benedict Caden	SE	75.00
Benedict Jeremy	SE	75.00
Berner Todd	SE	75.00
Birkels Rock And Gravel	MA	1,439.61
Bizco Technologies	IT	5,995.50
Blue Cross Blue Shield Ne	BE	62,283.98
Border States Industries	IV	2,731.55
Brainard Softball	MS	225.00
Brecka Joanie	SE	400.00
Campbell Cleaning	SE	1,405.00
Capital Business-Dallas	MA	837.88
Cash-Wa Distributing Co	SU	580.78
Chase Card Service		14,417.20
Amazon	SU	2,787.79
The American Legion	MS	575.00
American Water Works	MS	222.00
Brown Blue Training	TG	398.00
Constant Contact	SE	20.00
Dragon Palace	ML	175.93
Durham Ellis	SU	241.42
Emergency Solutions	MS	167.00
Fast Mart	SE	12.00
Flagstore	SU	531.21
Foreup.com	SE	499.80
The Fort	UN	1,862.69
Grow Nebraska	TG	-100.00
KK Insurance	MS	463.00
The Lifeguard Store	UN	752.79
Lineman's Supply	SU	125.32
Menard's	SU	29.85
Microsoft	MS	239.46

MOCIC	MS	75.00	
NE Society of CPA's	PU	155.00	
Office Max	SU	137.58	
Poolweb	SU	2,836.57	
Runza	ML	281.62	
Safe Life Defense	MC	-14.26	
Sam's Club	SU	350.15	
Smartsign	SU	88.04	
Sparetime	ML	151.37	
Southeast CC	TG	99.00	
Swim Outlet	SU	140.60	
Tracfone	MS	28.70	
USPS	PO	81.43	
Valentino's	ML	101.16	
Walmart	SU	657.04	
Weather Tech	SU	142.95	
Zoom	MS	101.99	
City Of Hickman	MS		250.00
City Seward Buildings/Gr	OP		3,000.00
City Seward Dowding Pool	MC		360.00
City Seward Electric Fund	UT		45,587.57
City Seward Library Petty	PO		318.49
City Seward Payroll Accou	SA		203,457.83
Concordia University	SE		1,250.00
Consolidated Water Soluti	SU		10,611.76
Control Services Inc	MA		843.00
Core & Main LP	RE		1,316.57
Croan Sheldon	SE		45.00
Decker Sports	SU		464.10
Ditch Witch Grand Island	RE		665.45
ERA	SE		856.54
Fastenal Company	BU		570.24
Garland Youth Sports	MS		225.00
Gehring Construction	CI		160,551.35
Geis Steel	RE		25.00
Grady Brecken	SE		130.00
Great Plains Communicatio	SE		490.00
H&S Plumb Heat & Air Inc	BU		1,461.43
Hammond Michael	MC		70.00
Hobson Automotive & Tire	RE		346.00
Hoffschneider Law PC LLO	SE		5,050.00
Home Depot Pro	SU		182.87
Husker Electric Supply Co	SU		533.08
Hydraulic Equipment	RE		112.19
J C I Industries Inc	SU		11.36
Janousek Lathan	SE		95.00
JEO Consulting Group	CI		940.00
Jones Bank	MC		596.76
K & Z Distributing	SU		735.30
Last Mile Network Consult	IT		75.30

Lee'S Refrigeration	BU	614.00
Lincoln Tree Service Inc	SE	2,710.00
Lincoln Windustrial Co	RE	194.06
Lincoln Winwater Works	TO	195.00
Loos Josh / Amanda	SE	45.00
M C 2 Inc	MA	1,511.72
Mcmaster-Carr	RE	53.07
Memorial Health-Drug	SE	135.00
Menards North	GU	99.34
Metering & Technology Sol	OP	591.96
Meyer Automotive	RE	471.30
Mid-American Benefits Inc	BE	1,520.37
Midwest Auto Parts	SU	132.91
Midwest Petroleum Equip	SE	312.50
Midwest Service & Sales	SU	187.50
Midwest Turf & Irrigation	RE	210.89
Miers Robert M	RI	31.00
Morse Laurie	RI	40.00
Municipal Supply Omaha	RE	239.38
Nebraska D A S Acct Ocio	MA	245.00
Nebraska Door & Window	SE	416.47
Nebraska Fire Marshal	MS	72.00
Nebraska Golf & Turf	RE	230.45
Nebraska Health Lab	MA	184.00
Nextlink	SE	200.00
Norris Public Power Distr	UT	1,202.74
Olsson	CI	9,776.18
One Billing Solutions Llc	SE	5,156.20
O'Reilly Automotive Inc	SU	57.92
Orscheln Farm & Home	GU	1,341.14
Pavers Inc	CI	579.20
Pitney Bowes Inc	SU	132.79
Plunkett's Pest Control	BU	66.33
Principal Financial Group	BE	2,352.15
Quality Brands Of Lincoln	SU	2,690.86
Quill Corp	SU	285.76
Reimers Kaufman Concrete	SU	519.50
Rolf Gary	MC	800.00
Sapp Brothers Petroleum I	GS	12,348.00
Sargent Drilling Inc	SE	400.00
Schemmer Architects Engin	CI	28,946.10
Short Elliott Hendrickson	CI	153,145.69
Siteone Landscape Supply	GU	694.70
Spickelmier & Son Inc	SE	26,655.00
Sports Express	SU	1,047.20
SS Graphics	SU	560.00
State Distributing Co	SU	998.98
Stephanie'S Pest Control	BU	90.00
Suhr & Lichty Insurance A	MS	159.00
Taylor Robert	MC	1,200.00

Time Warner/Spectrum	SU	830.30
U S A Bluebook - Cust 812	SU	282.03
U S Cellular	SE	207.63
Vancura Brad	SE	95.00
Verizon Wireless	SE	431.69
Verizon Wireless - Vsat N	SE	50.00
Wesco Distribution Inc	IV	2,892.83
White Cap	SU	1,193.60
Zimco Supply Co	FA	3,844.50
	CLAIMS TOTAL	\$824,143.11

## 2. Seward County Chamber & Development Partnership Report

**PRESIDENT & CEO**

# QUARTERLY REPORT SUMMARY



**Prepared for SCCDP Members • May 2023**

- The SCCDP was selected for \$756,000 grant funding through the Rural Workforce Housing Fund as administered by Nebraska Department of Economic Development. Along with local matching funds of \$378,000, SCCDP will have a total of \$1,134,000 to support future local housing projects.
- The SCCDP was selected for distributing \$73,700 grant funds from the State of Nebraska Preschool Development Grant-CRRSA to sustainably increase capacity of quality for local childcare providers.
- Participated in Seward County Gives from May 1-5 for Illuminate Seward project to replace silhouette lights in downtown Seward, which raised \$2,558.02 with matching funds to follow. Also, supported Seward 4th of July Celebration Committee to raise money for new speaker system in downtown Seward, which raised \$757.02 with matching funds to follow.
- Submitted proposals for Project Need (international ag equipment manufacturing company) for Seward Rail Campus, Seward I-80 Site, Northwest Milford Site, Knox Site, and Pitsch Property and Project MRXT (call center) for downtown Seward building.
- Hosted site visits on April 10 and 19 with Project Move at Seward Rail Campus and hotel developer on April 14.
- Attended Nebraska Investment Finance Authority (NIFA on April 18-19) conference to interact with housing funders, developers, and professional colleagues and Nebraska Chambers Association Mini Institute conference in Aurora (March 30-31) to participate in professional development and network with professional colleagues.
- Since the beginning of the gift card program in July 2022, SCCDP has sold \$60,389 in gift cards (1,829 individual cards). There are 49 participating businesses across Seward County.
- The SCCDP hosted events including Business After Hours event at Hackbart Chiropractic (February 23), STEP grant with Colby Angst from Nebraska Department of Economic Development (March 24), and ALLO Communications (April 13); Kiwanis Club and SCCDP's Seward County Ag Recognition Banquet (March 20); Ambassadors ribbon cutting with new SCCDP member business Pizza Kitchen (March 22); Career Fairs at Milford and Seward High Schools (April 4) and Centennial High School (April 19); Seward County Clean Up Day (April 15); and SCCDP Business Anniversaries Luncheon (April 27).
- Connected resources for LB 840, TIF, grants, and/or available building & land to various business owners and brokers including companies that want to start or expand ice cream shop in Milford, ag commodity research and development facility in Seward County, steakhouse in Seward, Chinese restaurant in Milford, mixed-use commercial building in Milford, trucking company in Seward County, office space for technology company in Seward, housing developer in Seward, oil change/car service and repair business in Seward, retail business in Seward, self-storage facility in Seward, ag seed company in Seward, and manufacturing company in Utica.
- See below for example of Entrepreneurial Operating System (EOS – Vision/Traction Organizer) and 2023 Implementation Plan goals that our staff is implementing on a weekly basis to ensure SCCDP next multiple-year strategic plan is being executed.

**QUESTIONS OR FOLLOW UP?**

**CONTACT:**

**JONATHAN JANK**

**402-570-8020**

**THANK YOU TO OUR QUARTERLY REPORT  
SUMMARY SPONSORS!**



# MEET THE TEAM



## DIRECTOR OF MEMBERSHIP, HARRISON HELMER

The Director of Membership is responsible for working with their teammates, members, and community volunteers to accomplish the short and long-term goals of the Seward County Chamber & Development Partnership (SCCDP) related to maintaining current relationships with members while seeking new membership and sponsorship opportunities for the SCCDP. This position helps the President & CEO work to fulfill the Vision Statement 2035

## DIRECTOR OF MARKETING & STORYTELLING, JOANIE BRECKA

The Director of Marketing & Storytelling is responsible for working with their teammates, members, and community volunteers to accomplish the short and long-term goals of the Seward County Chamber & Development Partnership (SCCDP) related to marketing/communications. This position helps the President & CEO work to fulfill the Vision Statement 2035.



## DIRECTOR OF COMMUNITY AFFAIRS, JACOB JENNINGS

The Community Affairs Director is responsible for working with the Seward County Chamber & Development Partnership (SCCDP) President & CEO, members, and community volunteers to create strategies to strengthen Seward County's workforce and housing development activities and find solutions to relevant community issues. This position also leads SCCDP's legislative efforts including building relationships with elected officials and advocating for policies, regulations, and programs which benefit the Seward County business community. This position helps the President & CEO work to fulfill the Seward County Vision Statement 2035.

## EXECUTIVE ASSISTANT & EVENTS PLANNER, DONNA HENDRICKSON

The Events Planner & Executive Assistant is responsible for working with their teammates, members, and community volunteers to accomplish the short and long-term goals of the Seward County Chamber & Development Partnership (SCCDP) related to maintaining SCCDP's office systems and equipment, including ensuring bookkeeping and payroll are completed by an accounting contractor on a weekly basis, responding to general communications, planning/coordinating all SCCDP events, helping members and visitors feel welcome, and providing administrative support as needed. This position helps the President & CEO work to fulfill the Vision Statement 2035.



## PRESIDENT & CEO, JONATHAN JANK

The President & CEO is the chief executive officer of the Seward County Chamber & Development Partnership (SCCDP) and directs all activities necessary to meet the objectives and implement policy, as established by the Board of Directors. This executive position is accountable for the effective and efficient operation of all organizational activities of the SCCDP to move Seward County forward to fulfill the Vision Statement 2035. Reports to the SCCDP Board of Directors; responsible for leadership and development of professional staff members.



3. Draft Minutes of May 16, 2023, City Council Meeting

**May 16, 2023**

The Seward City Council met at 7:00 p.m. on Tuesday, May 16, 2023, with Mayor Joshua Eickmeier presiding and City Clerk Derek Bargmann recording the proceedings. Upon roll call, the following Councilmembers were present: Megan Kahler, John Singleton, Matt Stryson, Tatum Tonniges, Rich Wergin, Jonathon Wilken. Councilmembers Absent: Jessica Kolterman, Karl Miller. Other officials present: City Administrator Greg Butcher, Connor Madsen (representing City Attorney Hoffschneider's office), City Engineer Mike Oneby, Water/Wastewater Director Brandon Koll, and Chief of Police Brian Peters.

Notice of the meeting was given in advance thereof, and Mayor Eickmeier announced that a copy of the Open Meetings Act and tonight's agenda is posted in the meeting room and is accessible to members of the public. Mayor Eickmeier led those in attendance in the Pledge of Allegiance.

**CONSENT AGENDA CONSIDERATION ITEMS**

The following Consent Agenda items were approved in one single motion made by Councilmember Wergin, seconded by Councilmember Singleton.

1. City Codes Director Report
2. City Treasurer Report
3. Claims & Payables Report (totaling \$3,786,177.45)
4. Police Department Report
5. Refuse Hauler's Annual License Application – Broken Arrow Rolloffs
6. Draft Minutes of May 2, 2023, Council Meeting

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller. Motion carried.

**ADMINISTRATIVE ITEMS**

**1. APPROVAL OF SEWARD 4<sup>TH</sup> OF JULY COMMITTEE REQUESTS FOR ANNUAL FESTIVITIES**

City Clerk Bargmann noted the annual 4<sup>th</sup> of July parade would navigate the same route as previous years, along Seward Street. Due to crossing a state highway, the State will have to approve the parade route.

**A. CONSIDERATION OF STREET CLOSURE PERMIT**

Councilmember Singleton moved, seconded by Councilmember Stryson, to approve the street closure permit for the 2023 4<sup>th</sup> of July parade as presented.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller. Motion carried.

**B. CONSIDERATION OF A RESOLUTION FOR 2023 PARADE**

Councilmember Stryson introduced **Resolution 2023-5**, to approve the closure of highways 15 and 34 to allow for the annual 4<sup>th</sup> of July activities. Councilmember Wergin moved, seconded by Councilmember Singleton to approve Resolution 2023-5.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller. Motion carried.

**2. REQUESTED ITEMS FROM BOTTLE ROCKET BREWING, LLC.**

**A. CONSIDERATION TO ALLOW FOR AN ADDITION TO THE EXISTING LIQUOR LICENSE TO INCLUDE EXPANDED BEER GARDEN AREA**

City Administrator Butcher described the plans for the location to expand their outdoor beer garden area to allow for more seating, with approval forwarded along to the Nebraska Liquor Control Commission.

Councilmember Singleton moved, seconded by Councilmember Tonniges, to approve Bottle Rocket Brewery, LLC's request for expansion of outdoor beer garden area.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller. Motion carried.

**B. CONSIDERATION OF A SPECIAL DESIGNATED LIQUOR LICENSE FOR AN EVENT TO BE HELD IN COORDINATION WITH BIKE RIDE ACROSS NEBRASKA (BRAN) ON JUNE 9<sup>TH</sup>**

Mr. Butcher identified the request as approval for Bottle Rocket Brewing to sell alcoholic beverages on City property (on 5<sup>th</sup> Street, between Seward-Main Street) during the street dance event that evening.

May 16, 2023

Councilmember Kahler moved, seconded by Councilmember Wergin, to approve the sale of alcoholic beverages on City property during the BRAN street dance on June 9<sup>th</sup>.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller. Motion carried.

3. CONSIDERATION OF A RESOLUTION TO ADJUST THE BUILDING PERMIT FEES, SPECIFICALLY FEE TO INSTALL A TEMPORARY WATER METER

Water/Wastewater Director Koll identified an issue the City has encountered with contractors using non-metered City water at no cost. By creation of a fee, it will provide a means for the City to charge temporary users to establish a meter connection and associated water rates, like other comparable cities are doing.

Councilmember Stryson introduced **Resolution 2023-6**, to establish tap fees for temporary water meters.

Councilmember Wergin moved, seconded by Councilmember Wilken to approve Resolution 2023-6.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller. Motion carried.

4. CONSIDERATION OF CHANGE ORDERS FOR THE EAST SEWARD STREET IMPROVEMENTS PROJECT

City Engineer Oneby described change order #1 as related to the storm sewer collar and change order #2 as a change to the alignment of the sewer to the middle of E Seward Street. By identifying and correcting both items now rather than in the future, it is expected to generate cost savings (approx. \$100-\$150k), improve water flow to the area, and address before the neighborhood is built out. No additional project budget is requested.

A. CHANGE ORDER #1 IN THE AMOUNT OF \$25,148.00

Councilmember Wergin moved, seconded by Councilmember Stryson, to approve change order #1 in the amount of \$25,148.00 as presented.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller. Motion carried.

B. CHANGE ORDER #2 IN THE AMOUNT OF \$167,401.80

Councilmember Singleton moved, seconded by Councilmember Stryson, to approve change order #2 in the amount of \$167,401.80 as presented.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller. Motion carried.

5. CONSIDERATION OF AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH SEH, INC. FOR THE WASTEWATER TREATMENT FACILITY IMPROVEMENTS PROJECT IN THE AMOUNT OF \$278,786.00

Colin Marcusen, Project Manager from SEH, was present and discussed the design progress to date. The project is approaching 90% design completion, which is the benchmark for submittal to the State for consideration. Due to the City's continued pursuit of funding opportunities, the project engineer is proposing a pause to work at 90% design completion. The remaining work is proposed to resume once the City has secured project funding and will move to the bidding phase. Further, he noted the project had incurred a few minor changes to the scope of services previously approved for the supplemental services agreement. The total requested amendment would increase the supplemental services scope by \$7,786 to a total of \$278,786.00 to account for log of work completed.

Councilmember Stryson moved, seconded by Councilmember Tonniges, to approve the amendment to the supplemental services agreement with SEH Engineering for the Wastewater Treatment Facility Improvements Project as presented.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller. Motion carried.

6. CONSIDERATION OF A PROFESSIONAL SERVICES AGREEMENT WITH HDR ENGINEERING, INC. FOR THE FINAL DESIGN OF THE INTERIOR DRAINAGE AND PUMP STATION IMPROVEMENTS PROJECT IN THE AMOUNT NOT-TO-EXCEED \$419,780.00

City Engineer Oneby noted the Council approved the recommendation to award HDR Engineering, Inc. for design services related to the Pump Station Improvements project at the January 17<sup>th</sup> meeting. The first phase will include a design to automate functions of the pump house on south 10<sup>th</sup> street. To receive phase II project funding from the Nebraska Emergency Management Agency (NEMA), the cost-benefit analysis information must be favorable. City Administrator Butcher identified that the engineer had been made aware of the criticality of the cost-benefit

**May 16, 2023**

analysis being favorable to move the project forward.

Councilmember Singleton moved, seconded by Councilmember Tonniges, to approve the professional services agreement with HDR Engineering, Inc. for the Interior Drainage and Pump Station Improvements Project in the amount not-to-exceed \$419,780.00 as presented.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller.

Motion carried.

**7. UPDATE ON THE WELLNESS CENTER**

City Administrator Butcher communicated the final design of the pool area is now completed, with the whole building design nearing completion. Information has been sent to equipment providers for estimates. Finally, the fundraising team has reconvened to target additional donations, and grants.

**CITY ADMINISTRATOR'S REPORT**

Councilmember Singleton moved, seconded by Councilmember Wergin, that City Administrator Butcher's report of May 16, 2023, be accepted.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller.

Motion carried.

**UPCOMING EVENTS**

May 31<sup>st</sup> – 4<sup>th</sup> of July kickoff event

June 9<sup>th</sup> – Bike Ride Across Nebraska (BRAN) in Seward

**STRATEGY SESSION**

**1. STRATEGY SESSION WITH CITY ATTORNEY TO PROVIDE NEGOTIATION GUIDANCE CONCERNING REAL ESTATE INTERESTS AT THE SEWARD RAIL CAMPUS**

Councilmember Singleton moved, seconded by Councilmember Wilken, that the Council enter a closed session with the Mayor, City Administrator, City Attorney representative (Connor Madsen), City Clerk, and Jonathan Jank, President and CEO of Seward County Chamber & Development Partnership (SCCDP) for the protection of the public interest and to discuss current real estate interests and to provide the City Attorney with negotiating guidance for a period not to exceed 30 minutes.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller.

Motion carried.

Mayor Eickmeier stated the Council has voted to go into closed session at 8:04 p.m. for the protection of the public interest and to discuss real estate interests and to provide the City Attorney with negotiating guidance.

At 8:35 p.m., the closed session ended, and the following Councilmembers reconvened to regular session: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken. Mayor Eickmeier announced that no formal action was taken during the executive session.

**MOTION TO ADJOURN**

Councilmember Wergin moved, seconded by Councilmember Singleton, that the May 16, 2023, City Council Meeting be adjourned.

Aye: Kahler, Singleton, Stryson, Tonniges, Wergin, Wilken.

Nay: None. Absent: Kolterman, Miller.

Motion carried.

Adjourned approximately 8:35 p.m.

THE CITY OF SEWARD, NEBRASKA

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Derek Bargmann  
City Clerk

**ADMINISTRATIVE ITEMS**

1. Consideration of a Request from Pivo's Tavern, LLC, for the Approval of Special Designated Liquor License Application for an event at Harvest Hall on June 24, 2023  
- City Clerk Bargmann

**CITY OF SEWARD**  
**COUNCIL POLICY STATEMENT**  
**2020-001**

Dated: 10-20-2020

**Expedited Process for Reviewing Special Designated Liquor License Applications**

The purpose of this policy statement is to establish a uniform expedited process for the recommendation to the Nebraska Liquor Commission to approve or deny an application for a Special Designated Liquor License by the holder of a catering license within the City of Seward.

An application for a special designated license will be recommended for approval under the following expedited process when the following criteria are met:

1. The application holds a valid catering license under the Nebraska Liquor Control Act, Neb. Rev. Stat. § 53-123 et seq.;
2. The application complies with the requirements of Seward Municipal Code § 205-2.28;
3. The holder of the catering license has previously been approved for a Special Designated Liquor License in the City of Seward; and
4. The application is submitted for review at least **twelve (12) days** prior to the event, as authorized by Neb. Rev. Stat. § 53-124.13.

The applicant retains all appeal rights otherwise available under the Seward Municipal Code and Nebraska Revised Statutes. Nothing herein shall preclude the City Clerk from deviating from the above-stated guidelines when exceptional circumstances exist warranting such a deviation.

**Special Designated License  
Local Recommendation (Form 200)**

Applications must be entered on the portal after local approval – no exceptions  
Late applications are non-refundable and will be rejected

Pivo's Tavern LLC  
Retail Liquor License Name or \*Non-Profit Organization (\*Must include Form #201 as Page 2)

182 n 2nd st. DWight NE 68635  
Retail Liquor License Address or Non-Profit Business Address

122896  
Retail License Number or Non-Profit Federal ID #

Consecutive Dates only  
Event Date(s): June 24 2023

Event Start Time(s): 2:00

Event End Time(s): 12:00

Alternate Date: none

Alternate Location Building & Address:

Event Building Name: Harvest Hall

Event Street Address/City: 1625 Fairgrounds circle Seeward Ne  
68434

Indoor area to be licensed in length & width: 75 x 100

Outdoor area to be licensed in length & width:     X     (Diagram Form #109 must be attached)

Type of Event: Wedding Reception Estimate # of attendees: 400

Type of alcohol to be served: Beer  Wine  Distilled Spirits   
(If not marked, you will not be able to serve this type of alcohol)

Event Contact Name: Duane Tejra Event Contact Phone Number: 402-643-0313

Event Contact Email: duane@hughesbros.com

\*Signature Authorized Representative: [Signature] Printed Name Duane M. Tejra

*I declare that I am the authorized representative of the above named license applicant and that the statements made on this application are true to the best of my knowledge and belief. I also consent to an investigation of my background including all records of every kind including police records. I agree to waive any rights or causes of action against the Nebraska Liquor Control Commission, the Nebraska State Patrol or any other individual releasing said information to the Liquor Control Commission or the Nebraska State Patrol. I further declare that the license applied for will not be used by any other person, group, organization or corporation for profit or not for profit and that the event will be supervised by persons directly responsible to the holder of this Special Designated License.*

\*Retail licensee – Must be signed by a member listed on permanent license  
\*Non-Profit Organization – Must be signed by a Corporate Officer

**Local Governing Body completes below:**

The local governing body for the City/Village of \_\_\_\_\_ OR County of \_\_\_\_\_ approves the issuance of a Special Designated License as requested above. (Only one should be written above)

\_\_\_\_\_  
Local Governing Body Authorized Signature Date

2. Items Related to the Park Avenue - Bradford Street Storm Sewer Improvements Project - City Engineer Oneby
  - A. Consideration of a Construction Contract with General Excavating for the Bradford Street - 6th to 10th Street Storm Sewer Improvements Project and Authorization for Mayor to Sign All Documents

**SUGGESTED FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between \_\_\_\_\_ City of Seward, Nebraska \_\_\_\_\_ (“Owner”) and  
\_\_\_\_\_ General Excavating \_\_\_\_\_ (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Furnish all labor, materials, and equipment for BRADFORD STREET STORM SEWER IMPROVEMENTS. Work, per the plans and specifications, shall include clearing and grubbing, excavation, storm sewer construction, box culvert construction, replacing existing pavement, sidewalk construction, signing, seeding, and all incidental work necessary to complete the Project as required by the plans and specifications.

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**CITY OF SEWARD  
BRADFORD STREET STORM SEWER IMPROVEMENTS  
SCHEMMER PROJECT NO. 08586.001-B**

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by the Schemmer Associates (Engineer), which is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work will be completed per the CONTRACT TIME section of the special provisions after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions for Project Bradford Street Storm Sewer Improvements.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$250.00 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

**ARTICLE 5 – CONTRACT PRICE**

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A below:

A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

<u>UNIT PRICE WORK</u>						
<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Bid Unit Price</u>	<u>Bid Price</u>	
	“UNIT PRICE” AND “BID PRICE” AS DEVELOPED ON BID TAB					
Total of all Bid Prices (Unit Price Work)						\$ 944,553.99

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 99 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

## ARTICLE 7 – INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 8 percent per annum.

## ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data,"
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 *Contents*

A. The Contract Documents consist of the following:

1. Cover Page
2. Table of Contents
3. Notice to Contractors (page NC-1)
4. Instructions to Bidders (pages 200-1: 200-9)
5. Bid Form (pages 410-1: 410-8)
6. Bid Bond (pages 430-1: 430-2)
7. This Agreement (pages 520-1 to 520-8, inclusive).
8. Performance bond (pages 610-1 to 610-3, inclusive).
9. Payment bond (pages 615-1 to 615-3, inclusive).
10. Other bonds (pages – to --, inclusive).
  - a. \_\_\_\_ (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - b. \_\_\_\_ (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - c. \_\_\_\_ (pages \_\_\_\_ to \_\_\_\_, inclusive).
11. General Conditions (pages 700-1 to 700-62, inclusive).
12. Supplementary Conditions (pages 800-1 to 800-9, inclusive).
13. Special Provisions (pages 1 to 99).
14. Drawings consisting of the Drawings listed on attached sheet index.
15. Addenda (numbers \_\_\_\_ to \_\_\_\_, inclusive).
16. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid (pages \_\_\_\_ to \_\_\_\_, inclusive).

- b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
17. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
- a. Notice of Award (pages 1 to 1, inclusive).
  - b. Notice to Proceed (pages 1 to 1, inclusive).
  - c. Work Change Directives.
  - d. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### *10.01 Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### *10.02 Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

### *10.03 Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 *Other Provisions*

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on June 7, 2023 (which is the Effective Date of the Agreement).

OWNER:

City of Seward, Nebraska

By: Joshua Eickmeier

Title: Mayor

Attest: \_\_\_\_\_

Title: City Clerk

Address for giving notices:

City of Seward

537 Main St

Seward, NE 68434

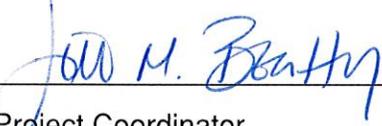
(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CONTRACTOR

By: 

Title: President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: 

Title: Project Coordinator

Address for giving notices:

General Excavating LLC

6701 Cornhusker Hwy

Lincoln, NE 68507

License No.: \_\_\_\_\_

(Where applicable)

*NOTE TO USER: Use in those states or other jurisdictions where applicable or required.*

Agent for service of process:

\_\_\_\_\_

Letter of Authority

Ted C. Butler, President of General Excavating, is authorized and has been so authorized since May 27, 2022 to sign contracts, change orders, agreements and any other related items for General Excavating and that General Excavating is one and the same entity as General Excavating, LLC.

  
\_\_\_\_\_  
Joseph T. Hausmann, Managing Member

05/08/2023  
\_\_\_\_\_  
Date

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
5/17/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER <b>INSPRO, a Marsh &amp; McLennan Agency LLC, Company</b> 4000 Pine Lake Road Lincoln, NE 68506	CONTACT NAME: <b>Katie Brooks</b>
	PHONE (A/C, No, Ext): <b>402-483-4500</b> FAX (A/C, No): <b>402-483-7977</b> E-MAIL ADDRESS: <b>Katie.Brooks@MarshMMA.com</b>
INSURED  <b>General Excavating, LLC</b> 6701 Cornhusker Hwy Lincoln, NE 68507	INSURER(S) AFFORDING COVERAGE INSURER A : <b>Zurich American Insurance Company</b> NAIC # <b>16535</b>
	INSURER B : <b>Atlantic Specialty Insurance Company</b> <b>27154</b>
	INSURER C : <b>Evanston Insurance Company</b> <b>35378</b>
	INSURER D :
	INSURER E :
	INSURER F :

**COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:			GLO670496201	10/28/2022	10/28/2023	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BAP670496401	10/28/2022	10/28/2023	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$0			AUC694499001	10/28/2022	10/28/2023	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y / <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WC670496301	10/28/2022	10/28/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
B	Rented/Leased Eq			790036110-0000	10/28/2022	10/28/2023	1,000,000
B	Install Floater			790036110-0000	10/28/2022	10/28/2023	2,500,000
C	CL Pollution			MMAENV002777	05/10/2021	05/10/2023	2,000,000

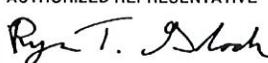
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

See Page 2

(See Attached Descriptions)

**CERTIFICATE HOLDER**

**CANCELLATION**

City of Seward 537 Main St Seward, NE 68434	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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## DESCRIPTIONS (Continued from Page 1)

**General Liability:**

**Blanket Additional Insured, when required by written contract.**

- Includes Completed Operations

- Includes Primary and Non-contributory

**Blanket Waiver of Subrogation, when required by written contract.**

**Workers Compensation:**

**Blanket Waiver of Subrogation, when required by written contract.**

**Automobile Liability:**

**Blanket Additional Insured, when required by written contract.**

- Includes Primary and Non-contributory

**Blanket Waiver of Subrogation, when required by written contract.**

**Umbrella:**

**Blanket Additional Insured, when required by written contract.**

- Includes Completed Operations

- Includes Primary and Non-contributory

**Blanket Waiver of Subrogation, when required by written contract.**

**Notice of Cancellation Included.**

**Project: City of Seward Bradford Street Storm Sewer Improvements Schemmer Project No. 08586.001-B**

# PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

General Excavating, LLC  
6701 Cornhusker Hwy  
Lincoln, NE 68507

**SURETY (Name, and Address of Principal Place of Business):**

Amerisure Mutual Insurance Company  
P.O. Box 9098  
Farmington Hills, MI 48333-9098

**OWNER (Name and Address):**

City of Seward  
537 Main St  
Seward, NE 68434

**CONTRACT**

Effective Date of Agreement: June 7, 2023

Amount: \$944,553.99

Description (Name and Location): Bradford Street Storm Sewer Improvements, Schemmer Project No. 08586.001-B

**BOND**

Bond Number: 8051876

Date (Not earlier than Effective Date of Agreement): June 7, 2023

Amount: \$944,553.99

Modifications to this Bond Form: None

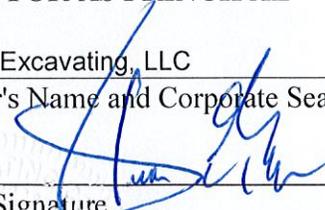
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

General Excavating, LLC (Seal)  
Contractor's Name and Corporate Seal

Amerisure Mutual Insurance Company (Seal)  
Surety's Name and Corporate Seal

By:   
Signature

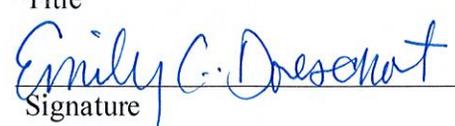
By:   
Signature (Attach Power of Attorney)

Tea C Both  
Print Name

Maura P. Kelly  
Print Name

President  
Title

Attorney-in-Fact  
Title

Attest:   
Signature

Attest:   
Signature

HR Admin.  
Title

Attester  
Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.
2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
  - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
  - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
  - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
    1. Surety in accordance with the terms of the Contract; or
    2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.
3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:
  - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
  - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
  - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
  - 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
    1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
    2. Deny liability in whole or in part and notify Owner citing reasons therefor.
4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
- 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
- 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

7. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.

8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

10. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### 11. Definitions.

- 11.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
- 11.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 11.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 11.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – *(Name, Address and Telephone)*

Surety Agency or Broker: FNIC, 14010 FNB Parkway, Suite 300, Omaha, NE 68154 (402) 861-7000

Owner's Representative *(Engineer or other party)*:

# PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

General Excavating, LLC  
6701 Cornhusker Hwy  
Lincoln, NE 68507

**SURETY (Name, and Address of Principal Place of**

**Business):** Amerisure Mutual Insurance Company  
P.O. Box 9098  
Farmington Hills, MI 48333-9098

**OWNER (Name and Address):**

City of Seward  
537 Main St  
Seward, NE 68434

**CONTRACT**

Effective Date of Agreement: June 7, 2023

Amount: \$944,553.99

Description (Name and Location): Bradford Street Storm Sewer Improvements, Schemmer Project No. 08586.001-B

**BOND**

Bond Number: 8051876

Date (Not earlier than Effective Date of Agreement): June 7, 2023

Amount: \$944,553.99

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

General Excavating, LLC (Seal)

Contractor's Name and Corporate Seal

Amerisure Mutual Insurance Company (Seal)

Surety's Name and Corporate Seal

By:

Signature

Print Name

Title

Attest:

Signature

Title

By:

Signature (Attach Power of Attorney)

Maura P. Kelly

Print Name

Attorney-in-Fact

Title

Attest:

Signature

Attester

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with Contractor:
    1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
    2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
    3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions

15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract, or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – *(Name, Address, and Telephone)*

Surety Agency or Broker: FNIC, 14010 FNB Parkway, Suite 300, Omaha, NE 68154 (402) 861-7000

Owner's Representative *(Engineer or other)*:

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company are corporations duly organized under the laws of the State of Michigan (herein collectively the "Companies"), and that the Companies do hereby make, constitute and appoint:

DAVID A. DOMINIANI, DUSTIN COOPER, KEVIN J. STENGER,

JACQUELINE L. DREY, JOAN LEU and MAURA P. KELLY

its true and lawful Attorney(s)-in Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge, for and on its behalf and as its act and deed, bonds or others writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts or suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

TWO HUNDRED MILLION (\$200,000,000.00) DOLLARS

This Power of Attorney is granted and signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company at meetings duly called and held on February 17, 2022.

"RESOLVED, that any two of the President & Chief Executive Officer, the Chief Financial Officer & Treasurer, the Senior Vice President Surety, the Vice President Surety, or the General Counsel & Corporate Secretary be, and each or any of them hereby is authorized to execute, a Power of Attorney qualifying the attorney-in-fact named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that President & Chief Executive Officer, Chief Financial Officer & Treasurer or General Counsel & Corporate Secretary each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company;

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto electronically/digitally or by facsimile, and any such Power of Attorney or certificate bearing such electronic/digital or facsimile signatures or electronic/digital or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached;

FURTHER RESOLVED, that any work carried out by the attorney-in-fact pursuant to this resolution shall be valid and binding upon the Company."



By: *Michael A. Ito*  
Michael A. Ito, Senior Vice President

By: *Aaron Green*  
Aaron Green, Vice President

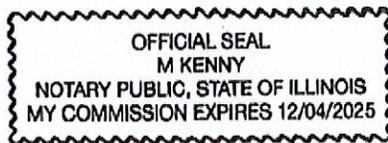


IN WITNESS WHEREOF, Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 12th day of April, 2022.

Amerisure Mutual Insurance Company  
Amerisure Insurance Company  
Amerisure Partners Insurance Company

State of Illinois  
County of Kane

On this 12th day of April, 2022, before me, a Notary Public personally appeared Michael A. Ito, of Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company and Aaron Green of Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



*M. Kenny*  
M. Kenny, Notary Public

I, Shannon K. Anderson, the duly elected Vice President, General Counsel & Corporate Secretary of Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said Companies, which remains in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 7th day of June 2023

*Shannon K. Anderson*

Shannon K. Anderson, Vice President, General Counsel & Corporate Secretary

B. Consideration of a Construction Contract with General Excavating for the Park Avenue Storm Sewer Improvements Project and Authorization for Mayor to Sign All Documents

**SUGGESTED FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between \_\_\_\_\_ City of Seward, Nebraska \_\_\_\_\_ (“Owner”) and  
\_\_\_\_\_ General Excavating \_\_\_\_\_ (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Furnish all labor, materials and equipment for PARK AVENUE STORM SEWER IMPROVEMENTS. Work, per the plans and specifications, shall include clearing and grubbing, excavation, storm sewer construction, box culvert construction, replacing existing pavement, sidewalk construction, signing, seeding, and all incidental work necessary to complete the Project as required by the plans and specifications.

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**CITY OF SEWARD  
PARK AVENUE STORM SEWER IMPROVEMENTS  
SCHEMMER PROJECT NO. 08586.001-A**

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by the Schemmer Associates (Engineer), which is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

A. The Work will be completed per the CONTRACT TIME section of the special provisions after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions for Project Park Avenue Storm Sewer Improvements.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$250.00 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

**ARTICLE 5 – CONTRACT PRICE**

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A below:

A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

<u>UNIT PRICE WORK</u>						
<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Bid Unit Price</u>	<u>Bid Price</u>	
	"UNIT PRICE" AND "BID PRICE" AS DEVELOPED ON BID TAB					
Total of all Bid Prices (Unit Price Work)						\$ 1,589,679.03

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions.

## ARTICLE 6 – PAYMENT PROCEDURES

### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

- a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
- b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 99 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

## ARTICLE 7 – INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 8 percent per annum.

## ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data,"
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 *Contents*

#### A. The Contract Documents consist of the following:

1. Cover Page
2. Table of Contents
3. Notice to Contractors (page NC-1)
4. Instructions to Bidders (pages 200-1: 200-9)
5. Bid Form (pages 410-1: 410-9)
6. Bid Bond (pages 430-1: 430-2)
7. This Agreement (pages 520-1 to 520-8, inclusive).
8. Performance bond (pages 610-1 to 610-3, inclusive).
9. Payment bond (pages 615-1 to 615-3, inclusive).
10. Other bonds (pages – to --, inclusive).
  - a. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - b. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  - c. \_\_\_\_\_ (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
11. General Conditions (pages 700-1 to 700-62, inclusive).
12. Supplementary Conditions (pages 800-1 to 800-9, inclusive).
13. Special Provisions (pages 1 to 105).
14. Drawings consisting of the Drawings listed on attached sheet index.
15. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive).
16. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).

- b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
17. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
- a. Notice of Award (pages 1 to 1, inclusive).
  - b. Notice to Proceed (pages 1 to 1, inclusive).
  - c. Work Change Directives.
  - d. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## ARTICLE 10 – MISCELLANEOUS

### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### 10.06 *Other Provisions*

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on June 7, 2023 (which is the Effective Date of the Agreement).

OWNER:

City of Seward, Nebraska

By: Joshua Eickmeier

Title: Mayor

Attest: \_\_\_\_\_

Title: City Clerk

Address for giving notices:

City of Seward

537 Main St

Seward, NE 68434

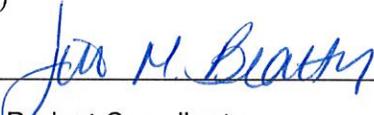
(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CONTRACTOR

By: 

Title: President

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: 

Title: Project Coordinator

Address for giving notices:

General Excavating LLC  
6701 Cornhusker Hwy  
Lincoln, NE 68507

License No.: \_\_\_\_\_

(Where applicable)

*NOTE TO USER: Use in those states or other jurisdictions where applicable or required.*

Agent for service of process:

\_\_\_\_\_

Letter of Authority

Ted C. Butler, President of General Excavating, is authorized and has been so authorized since May 27, 2022 to sign contracts, change orders, agreements and any other related items for General Excavating and that General Excavating is one and the same entity as General Excavating, LLC.

  
\_\_\_\_\_  
Joseph T. Hausmann, Managing Member

05/08/2023  
\_\_\_\_\_  
Date



## DESCRIPTIONS (Continued from Page 1)

**General Liability:**

Blanket Additional Insured, when required by written contract.

- Includes Completed Operations

- Includes Primary and Non-contributory

Blanket Waiver of Subrogation, when required by written contract.

**Workers Compensation:**

Blanket Waiver of Subrogation, when required by written contract.

**Automobile Liability:**

Blanket Additional Insured, when required by written contract.

- Includes Primary and Non-contributory

Blanket Waiver of Subrogation, when required by written contract.

**Umbrella:**

Blanket Additional Insured, when required by written contract.

- Includes Completed Operations

- Includes Primary and Non-contributory

Blanket Waiver of Subrogation, when required by written contract.

Notice of Cancellation Included.

Project: City of Seward Park Avenue Storm Sewer Improvements Schemmer Project No. 08586.001-A

# PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

**CONTRACTOR** (*Name and Address*):

General Excavating, LLC  
6701 Cornhusker Hwy  
Lincoln, NE 68507

**SURETY** (*Name, and Address of Principal Place of Business*):

Amerisure Mutual Insurance Company  
P.O. Box 9098  
Farmington Hills, MI 48333-9098

**OWNER** (*Name and Address*):

City of Seward  
537 Main St  
Seward, NE 68434

**CONTRACT**

Effective Date of Agreement: June 7, 2023

Amount: \$1,589,679.03

Description (*Name and Location*): Park Avenue Storm Sewer Improvements, Schemmer Project No. 08586.001-A

**BOND**

Bond Number: 8051875

Date (*Not earlier than Effective Date of Agreement*): June 7, 2023

Amount: \$1,589,679.03

Modifications to this Bond Form: None

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

General Excavating, LLC (Seal)

Contractor's Name and Corporate Seal

By: \_\_\_\_\_

Signature

Print Name

Title

Attest: \_\_\_\_\_

Signature

Title

**SURETY**

Amerisure Mutual Insurance Company (Seal)

Surety's Name and Corporate Seal

By: \_\_\_\_\_

Signature (Attach Power of Attorney)

Print Name

Print Name

Attorney-in-Fact

Title

Attest: \_\_\_\_\_

Signature

Attester

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.
2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
  - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
  - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
  - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
    1. Surety in accordance with the terms of the Contract; or
    2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.
3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:
  - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
  - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
  - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
  - 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
    1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
    2. Deny liability in whole or in part and notify Owner citing reasons therefor.
4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
  - 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
  - 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.
6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.
7. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.
8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.
10. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
11. Definitions.
- 11.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
  - 11.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
  - 11.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
  - 11.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – *(Name, Address and Telephone)*

Surety Agency or Broker: FNIC, 14010 FNB Parkway, Suite 300, Omaha, NE 68154 (402) 861-7000

Owner's Representative *(Engineer or other party)*:

**PAYMENT BOND**

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

General Excavating, LLC  
6701 Cornhusker Hwy  
Lincoln, NE 68507

**SURETY (Name, and Address of Principal Place of Business):**

Amerisure Mutual Insurance Company  
P.O. Box 9098  
Farmington Hills, MI 48333-9098

**OWNER (Name and Address):**

City of Seward  
537 Main St  
Seward, NE 68434

**CONTRACT**

Effective Date of Agreement: June 7, 2023

Amount: \$1,589,679.03

Description (Name and Location): Park Avenue Storm Sewer Improvements, Schemmer Project No. 08586.001-A

**BOND**

Bond Number: 8051875

Date (Not earlier than Effective Date of Agreement): June 7, 2023

Amount: \$1,589,679.03

Modifications to this Bond Form: None

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

General Excavating, LLC (Seal)

Amerisure Mutual Insurance Company (Seal)

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: \_\_\_\_\_

By: \_\_\_\_\_

Signature

Signature (Attach Power of Attorney)

Print Name

Maura P. Kelly

Print Name

Title

Attorney-in-Fact

Title

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Signature

Signature

Title

Attester

Title

Note: Provide execution by additional parties, such as joint venturers, if necessary.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with Contractor:
    1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
    2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
    3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### 15. Definitions

15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract, or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – (*Name, Address, and Telephone*)

Surety Agency or Broker: FNIC, 14010 FNB Parkway, Suite 300, Omaha, NE 68154 (402) 861-7000

Owner's Representative (*Engineer or other*):

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company are corporations duly organized under the laws of the State of Michigan (herein collectively the "Companies"), and that the Companies do hereby make, constitute and appoint:

DAVID A. DOMINIANI, DUSTIN COOPER, KEVIN J. STENGER,  
JACQUELINE L. DREY, JOAN LEU and MAURA P. KELLY

its true and lawful Attorney(s)-in Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge, for and on its behalf and as its act and deed, bonds or others writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts or suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

TWO HUNDRED MILLION (\$200,000,000.00) DOLLARS

This Power of Attorney is granted and signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company at meetings duly called and held on February 17, 2022.

"RESOLVED, that any two of the President & Chief Executive Officer, the Chief Financial Officer & Treasurer, the Senior Vice President Surety, the Vice President Surety, or the General Counsel & Corporate Secretary be, and each or any of them hereby is authorized to execute, a Power of Attorney qualifying the attorney-in-fact named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that President & Chief Executive Officer, Chief Financial Officer & Treasurer or General Counsel & Corporate Secretary each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company;

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto electronically/digitally or by facsimile, and any such Power of Attorney or certificate bearing such electronic/digital or facsimile signatures or electronic/digital or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached;

FURTHER RESOLVED, that any work carried out by the attorney-in-fact pursuant to this resolution shall be valid and binding upon the Company."



By: Michael A. Ito  
Michael A. Ito, Senior Vice President

By: Aaron Green  
Aaron Green, Vice President



IN WITNESS WHEREOF, Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 12th day of April, 2022.

Amerisure Mutual Insurance Company  
Amerisure Insurance Company  
Amerisure Partners Insurance Company

State of Illinois  
County of Kane

On this 12th day of April, 2022, before me, a Notary Public personally appeared Michael A. Ito, of Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company and Aaron Green of Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



M. Kenny  
M. Kenny, Notary Public

I, Shannon K. Anderson, the duly elected Vice President, General Counsel & Corporate Secretary of Amerisure Mutual Insurance Company, Amerisure Insurance Company and Amerisure Partners Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney executed by said Companies, which remains in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 7th day of June 2023

Shannon K. Anderson

Shannon K. Anderson, Vice President, General Counsel & Corporate Secretary

- C. Consideration of a Professional Services Agreement in the Amount of \$110,307.00 with The Schemmer Associates for Construction Engineering Services for the Bradford Street-6th to 10th Street Storm Sewer Improvements Project and Authorization for Mayor to Sign All Documents

AGREEMENT BETWEEN  
THE CITY OF SEWARD  
AND  
THE SCHEMMER ASSOCIATES  
FOR PROFESSIONAL SERVICES

**Bradford Street Storm Sewer Improvements  
CONSTRUCTION ENGINEERING**

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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ , \_\_\_\_\_ (“Effective Date”) between

The City of Seward (“Owner”) and

The Schemmer Associates Inc. (“Engineer”).

Owner intends to Contract with Engineer to receive construction engineering services for observation, material sampling, material testing, and management of the storm sewer improvements and associated plan work detailed in the plans entitled “Bradford Street Storm Sewer Improvements” (“Project”).

---

Owner and Engineer agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit A.
- B. Owner shall pay Engineer as set forth in Exhibit B.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

## ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

### 3.01 *Commencement*

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- 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.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

## ARTICLE 4 – INVOICES AND PAYMENTS

### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

### 4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. 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 thirtieth day; and
  - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services,

expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## **ARTICLE 5 – OPINIONS OF COST**

### *5.01 Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since 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.

### *5.02 Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## **ARTICLE 6 – GENERAL CONSIDERATIONS**

### *6.01 Standards of Performance*

- 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 Engineer's services.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

- C. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants 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.
- E. Engineer and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition or newer) unless both parties mutually agree to use other General Conditions by specific reference.
- H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

## 6.02 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that 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 or on any other project without written verification or adaptation by Engineer; (2) 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 Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

### 6.03 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit D, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit D, "Insurance." Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the "Standard General Conditions of the Construction Contract," (No. C-700, 2002 Edition or newer) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit D. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit D. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit D will be supplemented to incorporate these requirements.

### 6.04 *Suspension and Termination*

- A. Suspension.

By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

- B. Termination. The obligation to provide further services under this Agreement may be terminated:
  - 1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. By Engineer:
  - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
  - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. Payments Upon Termination.

- 1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
- 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for

services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.05 *Controlling Law*

- A. This Agreement is to be governed by the law of the state in which the Project is located.

#### 6.06 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or 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.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
  - 2. 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.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

#### 6.07 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit E or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit E. If Exhibit E is not included, or if no dispute resolution method is specified in Exhibit E, then the parties may exercise their rights under law.

## 6.08 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents 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 Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

## 6.09 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by Owner and Engineer in Exhibit F, "Allocation of Risks," if any.

- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- C. *Environmental Indemnification.* In addition to the indemnity provided under Paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### 6.10 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall

continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract," prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition):
  - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.
  - 2. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A of this Agreement.
  - 3. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land or rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
  - 4. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

5. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates, consultants, subcontractors, or vendors.
6. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
7. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
8. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
9. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
10. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer’s agent or employee and under Engineer’s supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any.
11. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
12. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### 8.01 *Exhibits Included*

- A. Exhibit A, “Engineer’s Services,” consisting of 4 pages.
- B. Exhibit B, “Consultant Estimate of Hours and Expenses,” consisting of 2 pages.
- C. Exhibit C, “Payments to Engineer for Services and Reimbursable Expenses,” consisting of 2 pages.

- D. Exhibit D, "Insurance," consisting of 2 pages.
- E. Exhibit E, "Dispute Resolution," consisting of 1 pages.
- F. Exhibit F, "Allocation of Risks," consisting of 1 pages.

8.02 *Total Agreement*

- A. This Agreement (consisting of pages 1 to 14 inclusive, together with the exhibits identified above) 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

Engineer:

City of Seward

The Schemmer Associates

By: \_\_\_\_\_

By: Darin G. Brown

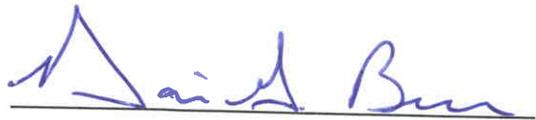
Title: \_\_\_\_\_

Title: CA Group Manager

Date: \_\_\_\_\_

Date: 5-3-23

Signed: \_\_\_\_\_

Signed: 

Address for giving notices:

Address for giving notices:

333 S. 21<sup>st</sup> Street

Suite 102

Lincoln, NE 68510

## **PART 2 – ADDITIONAL SERVICES**

### *A2.01 Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.
  4. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
  5. Furnishing services of Engineer's Consultants for other than Basic Services.
  6. Providing construction surveys and staking to enable Contractor to perform its work.
  7. Providing Construction Phase services beyond the original date for final completion of the Work.
  8. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

This is **EXHIBIT A**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services dated March 15, 2022**

## **Engineer's Services**

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Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Additional Services as set forth below.

### **BRADFORD STREET STORM SEWER IMPROVEMENTS**

#### **1. INTRODUCTION**

The following Scope of Services for Construction Engineering Services shall include Project Management, Construction Observation, Administration, Staking and Materials Testing. The work shall include but are not limited to; the preconstruction phase, construction phase, construction closeout, coordination with the general contractor, construction observation, SWPPP inspections, as-built plans, final documents, staking, and materials testing.

#### **2. ASSUMPTIONS**

- Construction duration is set at 150 calendar day duration.
- Construction inspection is anticipated to average 6 hours per working day with 92 working days anticipated for the Bradford Street project.
- Half of our effort for these projects will occur in 2023 and half will occur in 2024.

#### **3. PROJECT DESCRIPTION**

- Bradford Street Storm Sewer Improvements: Storm sewer and paving improvements are planned for Bradford Street from 10<sup>th</sup> to 6<sup>th</sup> Streets. Contract duration is set at 150 calendar days with construction completion around July 1, 2024.

#### **4. PRE-CONSTRUCTION PHASE**

The following pre-construction phase tasks will include but are not limited to:

- A. Conduct the pre-construction meeting with the contractor and all stake holders. Two (2) preconstruction meetings are included in this scope.
- B. Preconstruction photos
- C. Draft and hand out flyers to residents

## **5. CONSTRUCTION PHASE**

The following construction phase tasks will include, but are not limited to:

- A. Establish a procedure for managing, tracking, and storing all relevant documents between the contractor, City, and CE firm.
- B. Mobilize a construction inspection team on site for the duration of the construction activities.
- C. Maintain project field diaries, accurate quantities, files and records.
- D. Construction progress photos
- E. Complete daily report for each day.
- F. Monitor the contractors' activities for compliance with the plans and specifications.
- G. Review work zone traffic control devices each day.
- H. Review contractor submittals.
- I. Conduct weekly meetings (Construction Progress Meetings) with the contractor. Twenty-one (21) meetings are included in this scope.
- J. Draft change orders as needed. Two (2) change orders are included in this scope.
- K. Review and recommend contractor's pay applications on a monthly basis. Five (5) pay application reviews are included in this scope.
- L. Perform erosion control inspections on a weekly basis. If discrepancies are found, issue non-conformance report to contractor and monitor progress for correction.
- M. Perform materials testing in accordance with NDOT Materials Sampling Guide
- N. Perform construction staking as follows:
  - 1. Re-establish control
  - 2. Stake removals
  - 3. Stake storm sewer
  - 4. Storm sewer as built flow line and rim shots

## **6. CONSTRUCTION CLOSEOUT**

The following construction phase tasks will include but are not limited to:

- A. Conduct a final project walkthrough/inspection.
- B. Prepare and provide to the contractor a punch list of repair items that need to be addressed before project acceptance.
- C. Verify all project work has been completed, inspected and approved.

- D. Prepare as-built plans. As-built plans will be created and submitted in electronic format.

**7. PROJECT MANAGEMENT**

The following project management tasks will include, but are not limited to:

- A. Review work, communication with contractor / client, and invoicing



**Construction Engineering Services  
Bradford Street, 10th to 6th Streets Storm Sewer Improvements**

City of Seward  
Project Nos. 08586.001-B

BREAKDOWN OF COSTS

<b>PROJECT TASK &amp; PERSONNEL CLASSIFICATION</b>	<b>ESTIMATED HOURS</b>	<b>2023 STANDARD RATE</b>	<b>2024 PROJECTED STANDARD RATE</b>	<b>50% EFFORT IN 2023, 50% EFFORT IN 2024 ESTIMATED TOTAL</b>
<b>I. Preconstruction Phase</b>				
SENIOR ENGINEER	8	\$180.00	\$185.00	\$1,460
PROJECT REPRESENTATIVE	22	\$110.00	\$115.00	\$2,475
FIELD TECHNICIAN II	0	\$100.00	\$105.00	\$0
RLS	0	\$140.00	\$145.00	\$0
CADD TECHNICIAN	0	\$75.00	\$80.00	\$0
2 MAN SURVEY CREW	0	\$180.00	\$185.00	\$0
ADMINISTRATIVE SUPPORT	0	\$75.00	\$80.00	\$0
			<b>TASK TOTAL</b>	<b>\$3,935</b>
<b>II. Construction Phase</b>				
SENIOR ENGINEER	104	\$180.00	\$185.00	\$18,980
PROJECT REPRESENTATIVE	509	\$110.00	\$115.00	\$57,263
FIELD TECHNICIAN II	12	\$100.00	\$105.00	\$1,230
RLS	12	\$140.00	\$145.00	\$1,710
CADD TECHNICIAN	20	\$75.00	\$80.00	\$1,550
2 MAN SURVEY CREW	69	\$180.00	\$185.00	\$12,593
ADMINISTRATIVE SUPPORT	0	\$75.00	\$80.00	\$0
			<b>TASK TOTAL</b>	<b>\$93,325</b>
<b>III. Construction Closeout</b>				
SENIOR ENGINEER	9	\$180.00	\$185.00	\$1,643
PROJECT REPRESENTATIVE	13	\$110.00	\$115.00	\$1,463
FIELD TECHNICIAN II	0	\$100.00	\$105.00	\$0
RLS	0	\$140.00	\$145.00	\$0
CADD TECHNICIAN	0	\$75.00	\$80.00	\$0
2 MAN SURVEY CREW	0	\$180.00	\$185.00	\$0
ADMINISTRATIVE SUPPORT	0	\$75.00	\$80.00	\$0
			<b>TASK TOTAL</b>	<b>\$3,105</b>

Continued Next Page

**IV. Project Management**

SENIOR ENGINEER	15	\$180.00	\$185.00	\$2,738
PROJECT REPRESENTATIVE	0	\$110.00	\$115.00	\$0
FIELD TECHNICIAN II	0	\$100.00	\$105.00	\$0
RLS	0	\$140.00	\$145.00	\$0
CADD TECHNICIAN	0	\$75.00	\$80.00	\$0
2 MAN SURVEY CREW	0	\$180.00	\$185.00	\$0
ADMINISTRATIVE SUPPORT	0	\$75.00	\$80.00	\$0
TASK TOTAL				\$2,738

**Sub-Total**

\$103,103

**REIMBURSABLES**

	No.	Rate (\$)		
Plan Sets	4	\$20.00	\$	80.00
Mileage	11000	\$ 0.655	\$	7,205.00
Other			\$	-
Other			\$	-
<b>Sub-Total</b>			<b>\$</b>	<b><u>7,205.00</u></b>

**TOTAL ESTIMATED FEE**

\$ 110,307.50

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Payments to Engineer for Services and Reimbursable Expenses**

---

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

### **ARTICLE 2 – OWNER’S RESPONSIBILITIES**

#### *C2.01 Compensation For Basic Services (other than Resident Project Representative and Post-Construction) – Standard Hourly Rates Method of Payment*

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative and Post-Construction Phase services, if any, as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultant’s charges, if any.
  2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates included in Exhibit B.
  3. The total compensation for services under Paragraph C2.01 is estimated to be \$39,650.00
  4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.
  5. The total estimated compensation for Engineer’s services included Paragraph C2.01.B.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Consultant’s charges.
  6. The amounts billed for Engineer’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer’s Consultant’s charges.
  7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

#### *C2.02 Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Exhibit B.

- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.0.

### C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.0.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. Estimated Compensation Amounts
  - 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall be paid for all services rendered hereunder.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **EXHIBIT D**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Insurance**

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Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

Engineers Certificate of Liability insurance is attached to this Exhibit D.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/22/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> FNIC P.O. Box 45279 Omaha NE 68145-0279	<b>CONTACT NAME:</b> Deanne Beltz-Sund <b>PHONE (A/C. No. Ext):</b> 402-861-7000 <b>E-MAIL ADDRESS:</b> deanne.beltz@fnicgroup.com	<b>FAX (A/C. No):</b>
	<b>INSURER(S) AFFORDING COVERAGE</b>	
License#: SCH41058 SCH41058	<b>INSURER A:</b> Continental Casualty Co.	<b>NAIC #</b> 20443
<b>INSURED</b> The Schemmer Associates Inc. 1044 North 115th Street Omaha NE 68154	<b>INSURER B:</b> Continental Insurance Company	35289
	<b>INSURER C:</b> Valley Forge Insurance Co.	20508
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 663563116

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:			6023928716	12/31/2022	12/31/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
C	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			6023928747	12/31/2022	12/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			6023928702	12/31/2022	12/31/2023	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	6023928733	12/31/2022	12/31/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability Claims Made Basis Pollution Legal Liab			AEH288365469	12/31/2022	12/31/2023	\$5,000,000 \$5,000,000 Ea.Claim Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

City of Seward Nebraska  
 142 N. 7th St.  
 Seward NE 68434

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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This is **EXHIBIT E**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Dispute Resolution**

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Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

### *H6.09 Dispute Resolution*

- A. **Mediation.** Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation in accordance with Construction Industry Mediation Rules of the American Arbitration Association currently in effect. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT F**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Allocation of Risks**

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Paragraph 6.10 of the Agreement is amended and supplemented to include the following agreement of the parties:

### **I6.10.B** *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation.* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total compensation received by Engineer under this Agreement.



D. Consideration of a Professional Services Agreement in the Amount of \$182,420.00 with The Schemmer Associates for Construction Engineering Services for the Park Avenue Storm Sewer Improvements Project and Authorization for Mayor to Sign All Documents

AGREEMENT BETWEEN  
THE CITY OF SEWARD  
AND  
THE SCHEMMER ASSOCIATES  
FOR PROFESSIONAL SERVICES

**Park Avenue Storm Sewer Improvements  
CONSTRUCTION ENGINEERING**

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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ , \_\_\_\_\_ (“Effective Date”) between

The City of Seward (“Owner”) and

The Schemmer Associates Inc. (“Engineer”).

Owner intends to Contract with Engineer to receive construction engineering services for observation, material sampling, material testing, and management of the storm sewer improvements and associated plan work detailed in the plans entitled “Park Avenue Storm Sewer Improvements” (“Project”).

---

Owner and Engineer agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit A.
- B. Owner shall pay Engineer as set forth in Exhibit B.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

## ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

### 3.01 *Commencement*

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- 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.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

## ARTICLE 4 – INVOICES AND PAYMENTS

### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

### 4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. 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 thirtieth day; and
  - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services,

expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## **ARTICLE 5 – OPINIONS OF COST**

### *5.01 Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since 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.

### *5.02 Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## **ARTICLE 6 – GENERAL CONSIDERATIONS**

### *6.01 Standards of Performance*

- 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 Engineer's services.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

- C. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants 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.
- E. Engineer and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition or newer) unless both parties mutually agree to use other General Conditions by specific reference.
- H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

## 6.02 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that 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 or on any other project without written verification or adaptation by Engineer; (2) 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 Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

### 6.03 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit D, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit D, "Insurance." Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the "Standard General Conditions of the Construction Contract," (No. C-700, 2002 Edition or newer) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit D. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit D. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit D will be supplemented to incorporate these requirements.

### 6.04 *Suspension and Termination*

- A. Suspension.

By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

- B. Termination. The obligation to provide further services under this Agreement may be terminated:
  - 1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. By Engineer:
  - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
  - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. Payments Upon Termination.

- 1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
- 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for

services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.05 *Controlling Law*

- A. This Agreement is to be governed by the law of the state in which the Project is located.

#### 6.06 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or 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.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
  - 2. 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.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

#### 6.07 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit E or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit E. If Exhibit E is not included, or if no dispute resolution method is specified in Exhibit E, then the parties may exercise their rights under law.

## 6.08 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents 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 Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

## 6.09 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by Owner and Engineer in Exhibit F, "Allocation of Risks," if any.

- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- C. *Environmental Indemnification.* In addition to the indemnity provided under Paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### 6.10 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall

continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract," prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition):
  - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.
  - 2. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A of this Agreement.
  - 3. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land or rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
  - 4. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

5. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates, consultants, subcontractors, or vendors.
6. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
7. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
8. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
9. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
10. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer’s agent or employee and under Engineer’s supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any.
11. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
12. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### **8.01 *Exhibits Included***

- A. Exhibit A, “Engineer’s Services,” consisting of 4 pages.
- B. Exhibit B, “Consultant Estimate of Hours and Expenses,” consisting of 2 pages.
- C. Exhibit C, “Payments to Engineer for Services and Reimbursable Expenses,” consisting of 2 pages.

- D. Exhibit D, "Insurance," consisting of 2 pages.
- E. Exhibit E, "Dispute Resolution," consisting of 1 pages.
- F. Exhibit F, "Allocation of Risks," consisting of 1 pages.

8.02 *Total Agreement*

- A. This Agreement (consisting of pages 1 to 14 inclusive, together with the exhibits identified above) 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

Engineer:

City of Seward

The Schemmer Associates

By: \_\_\_\_\_

By: Darin G. Brown

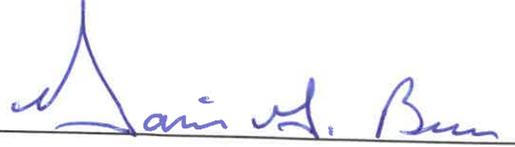
Title: \_\_\_\_\_

Title: CA Group Manager

Date: \_\_\_\_\_

Date: 5-3-23

Signed: \_\_\_\_\_

Signed: 

Address for giving notices:

Address for giving notices:

333 S. 21<sup>st</sup> Street

Suite 102

Lincoln, NE 68510

## **PART 2 – ADDITIONAL SERVICES**

### *A2.01 Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.
  4. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
  5. Furnishing services of Engineer's Consultants for other than Basic Services.
  6. Providing construction surveys and staking to enable Contractor to perform its work.
  7. Providing Construction Phase services beyond the original date for final completion of the Work.
  8. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

This is **EXHIBIT A**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services dated March 15, 2022**

## **Engineer's Services**

---

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Additional Services as set forth below.

### **PART 1 – SCOPE OF SERVICES**

## **PARK AVENUE STORM SEWER IMPROVEMENTS**

### **1. INTRODUCTION**

The following Scope of Services for Construction Engineering Services shall include Project Management, Construction Observation, Administration, Staking and Materials Testing. The work shall include but are not limited to; the preconstruction phase, construction phase, construction closeout, coordination with the general contractor, construction observation, SWPPP inspections, as-built plans, final documents, staking, and materials testing.

### **2. ASSUMPTIONS**

- Construction duration is set at 150 calendar day duration.
- Construction inspection is anticipated to average 8 hours per working day with 92 working days anticipated for the Park Avenue project.
- Half of our effort for these projects will occur in 2023 and half will occur in 2024.

### **3. PROJECT DESCRIPTION**

- Park Avenue Storm Sewer Improvements: Storm sewer and paving improvements are planned for Park Avenue from 6<sup>th</sup> to 8<sup>th</sup> Streets. Contract duration is set at 150 calendar days with construction completion around July 1, 2024.

### **4. PRE-CONSTRUCTION PHASE**

The following pre-construction phase tasks will include but are not limited to:

- A. Conduct the pre-construction meeting with the contractor and all stake holders. Two (2) preconstruction meetings are included in this scope.
- B. Preconstruction photos
- C. Draft and hand out flyers to residents

## **5. CONSTRUCTION PHASE**

The following construction phase tasks will include, but are not limited to:

- A. Establish a procedure for managing, tracking, and storing all relevant documents between the contractor, City, and CE firm.
- B. Mobilize a construction inspection team on site for the duration of the construction activities.
- C. Maintain project field diaries, accurate quantities, files and records.
- D. Construction progress photos
- E. Complete daily report for each day.
- F. Monitor the contractors' activities for compliance with the plans and specifications.
- G. Review work zone traffic control devices each day.
- H. Review contractor submittals.
- I. Conduct weekly meetings (Construction Progress Meetings) with the contractor. Twenty-one (21) meetings are included in this scope.
- J. Draft change orders as needed. Two (2) change orders are included in this scope.
- K. Review and recommend contractor's pay applications on a monthly basis. Five (5) pay application reviews are included in this scope.
- L. Perform erosion control inspections on a weekly basis. If discrepancies are found, issue non-conformance report to contractor and monitor progress for correction.
- M. Perform materials testing in accordance with NDOT Materials Sampling Guide
- N. Perform construction staking as follows:
  - 1. Re-establish control
  - 2. Stake removals
  - 3. Stake limits of construction
  - 4. Stake temporary easement
  - 5. Stake storm sewer
  - 6. Stake box culvert
  - 7. Stake sidewalks (one side)
  - 8. Stake driveways
  - 9. Storm sewer as built flow line and rim shots

## **6. CONSTRUCTION CLOSEOUT**

The following construction phase tasks will include but are not limited to:

- A. Conduct a final project walkthrough/inspection.

- B. Prepare and provide to the contractor a punch list of repair items that need to be addressed before project acceptance.
- C. Verify all project work has been completed, inspected and approved.
- D. Prepare as-built plans. As-built plans will be created and submitted in electronic format.

**7. PROJECT MANAGEMENT**

The following project management tasks will include, but are not limited to:

- A. Review work, communication with contractor / client, and invoicing



**Construction Engineering Services  
Park Avenue Storm Sewer Improvements**

City of Seward  
Project Nos. 08586.001-A

BREAKDOWN OF COSTS

<b>PROJECT TASK &amp; PERSONNEL CLASSIFICATION</b>	<b>ESTIMATED HOURS</b>	<b>2023 STANDARD RATE</b>	<b>2024 PROJECTED STANDARD RATE</b>	<b>50% EFFORT IN 2023, 50% EFFORT IN 2024 ESTIMATED TOTAL</b>
<b>I. Preconstruction Phase</b>				
SENIOR ENGINEER	10	\$180.00	\$185.00	\$1,825
PROJECT REPRESENTATIVE	11	\$110.00	\$115.00	\$1,238
FIELD TECHNICIAN II	0	\$100.00	\$105.00	\$0
RLS	0	\$140.00	\$145.00	\$0
CADD TECHNICIAN	0	\$75.00	\$80.00	\$0
2 MAN SURVEY CREW	0	\$180.00	\$185.00	\$0
ADMINISTRATIVE SUPPORT	0	\$75.00	\$80.00	\$0
			<b>TASK TOTAL</b>	<b>\$3,063</b>
<b>II. Construction Phase</b>				
SENIOR ENGINEER	146	\$180.00	\$185.00	\$26,645
PROJECT REPRESENTATIVE	757	\$110.00	\$115.00	\$85,163
FIELD TECHNICIAN II	28	\$100.00	\$105.00	\$2,870
RLS	26	\$140.00	\$145.00	\$3,705
CADD TECHNICIAN	71	\$75.00	\$80.00	\$5,503
2 MAN SURVEY CREW	227	\$180.00	\$185.00	\$41,428
ADMINISTRATIVE SUPPORT	0	\$75.00	\$80.00	\$0
			<b>TASK TOTAL</b>	<b>\$165,313</b>
<b>III. Construction Closeout</b>				
SENIOR ENGINEER	12	\$180.00	\$185.00	\$2,190
PROJECT REPRESENTATIVE	17	\$110.00	\$115.00	\$1,913
FIELD TECHNICIAN II	0	\$100.00	\$105.00	\$0
RLS	0	\$140.00	\$145.00	\$0
CADD TECHNICIAN	0	\$75.00	\$80.00	\$0
2 MAN SURVEY CREW	0	\$180.00	\$185.00	\$0
ADMINISTRATIVE SUPPORT	0	\$75.00	\$80.00	\$0
			<b>TASK TOTAL</b>	<b>\$4,103</b>

Continued Next Page

**IV. Project Management**

SENIOR ENGINEER	15	\$180.00	\$185.00	\$2,738
PROJECT REPRESENTATIVE	0	\$110.00	\$115.00	\$0
FIELD TECHNICIAN II	0	\$100.00	\$105.00	\$0
RLS	0	\$140.00	\$145.00	\$0
CADD TECHNICIAN	0	\$75.00	\$80.00	\$0
2 MAN SURVEY CREW	0	\$180.00	\$185.00	\$0
ADMINISTRATIVE SUPPORT	0	\$75.00	\$80.00	\$0
TASK TOTAL				\$2,738

**Sub-Total**

\$175,215

**REIMBURSABLES**

	No.	Rate (\$)		
Plan Sets	4	\$20.00	\$	80.00
Mileage	11000	\$ 0.655	\$	7,205.00
Other			\$	-
Other			\$	-
<b>Sub-Total</b>			<b>\$</b>	<b><u>7,205.00</u></b>

**TOTAL ESTIMATED FEE**

\$ 182,420.00

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Payments to Engineer for Services and Reimbursable Expenses**

---

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

### **ARTICLE 2 – OWNER’S RESPONSIBILITIES**

#### *C2.01 Compensation For Basic Services (other than Resident Project Representative and Post-Construction) – Standard Hourly Rates Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative and Post-Construction Phase services, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultant’s charges, if any.
2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates included in Exhibit B.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$39,650.00
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.
5. The total estimated compensation for Engineer’s services included Paragraph C2.01.B.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Consultant’s charges.
6. The amounts billed for Engineer’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer’s Consultant’s charges.
7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

#### *C2.02 Compensation For Reimbursable Expenses*

A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Exhibit B.

- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.0.

### C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.0.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. Estimated Compensation Amounts
  - 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall be paid for all services rendered hereunder.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **EXHIBIT D**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Insurance**

---

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

Engineers Certificate of Liability insurance is attached to this Exhibit D.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/22/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> FNIC P.O. Box 45279 Omaha NE 68145-0279	<b>CONTACT NAME:</b> Deanne Beltz-Sund <b>PHONE (A/C. No. Ext):</b> 402-861-7000 <b>E-MAIL ADDRESS:</b> deanne.beltz@fnicgroup.com	<b>FAX (A/C. No):</b>
	<b>INSURER(S) AFFORDING COVERAGE</b>	
License#: SCH41058 SCH41058	<b>INSURER A:</b> Continental Casualty Co.	<b>NAIC #</b> 20443
<b>INSURED</b> The Schemmer Associates Inc. 1044 North 115th Street Omaha NE 68154	<b>INSURER B:</b> Continental Insurance Company	35289
	<b>INSURER C:</b> Valley Forge Insurance Co.	20508
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 663563116

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:			6023928716	12/31/2022	12/31/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
C	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			6023928747	12/31/2022	12/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			6023928702	12/31/2022	12/31/2023	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000 \$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	6023928733	12/31/2022	12/31/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability Claims Made Basis Pollution Legal Liab			AEH288365469	12/31/2022	12/31/2023	\$5,000,000 \$5,000,000 Ea.Claim Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

City of Seward Nebraska  
 142 N. 7th St.  
 Seward NE 68434

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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This is **EXHIBIT E**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Dispute Resolution**

---

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

### *H6.09 Dispute Resolution*

- A. **Mediation.** Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation in accordance with Construction Industry Mediation Rules of the American Arbitration Association currently in effect. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT F**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Allocation of Risks**

---

Paragraph 6.10 of the Agreement is amended and supplemented to include the following agreement of the parties:

### **I6.10.B** *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation.* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total compensation received by Engineer under this Agreement.



3. Consideration of a Professional Services Agreement in the Amount of \$98,278.19 with The Schemmer Associates for Design Services for Lindell Ave Reconstruction Project - City Engineer Oneby

AGREEMENT BETWEEN  
THE CITY OF SEWARD  
AND  
THE SCHEMMER ASSOCIATES  
FOR PROFESSIONAL SERVICES

LINDELL AVENUE RECONSTRUCTION  
FROM JACKSON AVENUE TO  
EAST SEWARD STREET

**PRELIMINARY AND FINAL DESIGN**

**Professional Services Provided: Storm Sewer Design and Roadway Design**

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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ , \_\_\_\_\_ (“Effective Date”) between

The City of Seward (“Owner”) and

The Schemmer Associates Inc. (“Engineer”).

Owner intends to Contract with Engineer to receive preliminary and final design services for roadway design and storm sewer design for:

---

work associated with storm sewer design related to the completion of final engineering plans to reconstruct and widen Lindell Avenue a portion of Jackson Avenue including replacement of the storm sewer system. (“Project”).

Owner and Engineer agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit A.
- B. Owner shall pay Engineer as set forth in Exhibit B.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

## ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

### 3.01 *Commencement*

- A. Engineer shall begin rendering services as of the Effective Date of the Agreement.

### 3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- 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.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

## ARTICLE 4 – INVOICES AND PAYMENTS

### 4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

### 4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. 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 thirtieth day; and
  - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services,

expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## **ARTICLE 5 – OPINIONS OF COST**

### *5.01 Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since 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.

### *5.02 Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## **ARTICLE 6 – GENERAL CONSIDERATIONS**

### *6.01 Standards of Performance*

- 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 Engineer's services.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.

- C. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants 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.
- E. Engineer and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition or newer) unless both parties mutually agree to use other General Conditions by specific reference.
- H. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- I. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner without consultation and advice of Engineer.

## 6.02 *Design Without Construction Phase Services*

- A. Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services beyond shop drawing review, answering design questions and attending the pre-construction meeting, therefore (1) Engineer's services under this Agreement shall be deemed complete

no later than the end of the shop drawing review Phase; (2) Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (3) Owner waives any claims against the Engineer that may be connected in any way thereto.

### 6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a license to use the Documents on the Project, extensions of the Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that 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 or on any other project without written verification or adaptation by Engineer; (2) 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 Engineer's Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from

any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Owner shall not create any rights in third parties.

- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Project or for any other project, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit D, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit D, "Insurance." Owner shall cause Engineer and Engineer's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain general liability and other insurance in accordance with the requirements of Paragraph 5.04 of the "Standard General Conditions of the Construction Contract," (No. C-700, 2002 Edition or newer) as prepared by the Engineers Joint Contract Documents Committee and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit D. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.
- F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit D. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit D will be supplemented to incorporate these requirements.

#### 6.05 *Suspension and Termination*

- A. Suspension.

By Owner: Owner may suspend the Project upon seven days written notice to Engineer.

By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement.

- B. Termination. The obligation to provide further services under this Agreement may be terminated:
1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
      - 3) Engineer shall have no liability to Owner on account of such termination.
    - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. For convenience,
    - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination.* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. Payments Upon Termination.

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state in which the Project is located.

#### 6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or 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.
- C. Unless expressly provided otherwise in this Agreement:
  1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
  2. 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.
  3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

## 6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit E or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit E. If Exhibit E is not included, or if no dispute resolution method is specified in Exhibit E, then the parties may exercise their rights under law.

## 6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents 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 Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

## 6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by Owner and Engineer in Exhibit F, "Allocation of Risks," if any.
- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.
- C. *Environmental Indemnification.* In addition to the indemnity provided under Paragraph 6.10.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and

consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### 6.11 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

### ARTICLE 7 – DEFINITIONS

#### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above or in the exhibits; in the following provisions; or in the "Standard General Conditions of the Construction Contract," prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition):
  - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A, Part 2, of this Agreement.
  - 2. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Exhibit A of this Agreement.
  - 3. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land or rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other

services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

4. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
5. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates, consultants, subcontractors, or vendors.
6. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
7. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
8. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
9. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
10. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer’s agent or employee and under Engineer’s supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any.
11. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
12. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-

way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### **8.01 *Exhibits Included***

- A. Exhibit A, "Engineer's Services," consisting of 7 pages.
- B. Exhibit B, "Consultant Estimate of Hours and Expenses," consisting of 3 pages.
- C. Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," consisting of 3 pages.
- D. Exhibit D, "Insurance," consisting of 2 pages.
- E. Exhibit E, "Dispute Resolution," consisting of 1 pages.
- F. Exhibit F, "Allocation of Risks," consisting of 1 pages.

### **8.02 *Total Agreement***

- A. This Agreement (consisting of pages 1 to 14 inclusive, together with the exhibits identified above) 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: \_\_\_\_\_  
City of Seward

Engineer: \_\_\_\_\_  
The Schemmer Associates

By: \_\_\_\_\_

By: Douglas G. Holle

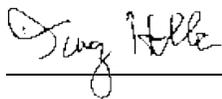
Title: \_\_\_\_\_

Title: Principal

Date: \_\_\_\_\_

Date: May 26, 2023

Signed: \_\_\_\_\_

Signed: 

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices:  
333 S. 21<sup>st</sup> Street  
Suite 102  
Lincoln, NE 68510

This is **EXHIBIT A**, consisting of 6 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated May, 2023.

## **Engineer's Services**

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Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. Engineer shall provide Additional Services as set forth below.

### **PART 1 – SCOPE OF SERVICES**

## **LINDELL AVENUE RECONSTRUCTION FROM JACKSON AVENUE TO EAST SEWARD STREET**

(Project Description)

This project includes work associated with design services related to the completion of final engineering plans to reconstruct Lindell Avenue from Jackson Avenue to East Seward Street in Seward, Nebraska.

The existing pavement is in poor condition and will be removed and replaced with a wider pavement section, along with reconstruction of the storm sewer system and sidewalks.

The required services will include project administration, preliminary and final roadway design, preliminary and final drainage design. The project will be funded with local funding only. The design will conform to all applicable City of Seward and Nebraska Department of Transportation requirements.

### ***Information Provided by the City or Others***

The City will provide all available information including existing studies, reports, mapping, as-built plans, and data.

The City will also provide the following:

- a. As-Built plans including all adjacent and affected infrastructure including existing street, storm and sanitary sewers, watermain, etc.
- b. GIS Information, including existing right-of-way.
- c. Data on existing City control points and benchmarks.
- d. Current list of utility companies and contact information.
- e. Topographic survey, including one-call utility locate records.
- f. Geotechnical reports.

**Tasks specifically not included:**

- Right-of-way appraisal and acquisition services.
- Title searches.
- Topographic survey.
- Traffic engineering.
- Water main design.
- Structural plan related to the construction of concrete box culverts.
- All construction phase services.
- Storm Sewer Video Inspection.
- Wetland Delineation and 404 permitting

***Project Schedule***

- a. June 26<sup>th</sup>, Notice to Proceed (NTP)
- b. September 8<sup>th</sup>, 2023      Plan-in-Hand (30%) Plans
- c. November 30<sup>th</sup>, 2023      Final Submittal

***Design Plan Sheets***

Roadway plan sheets will be prepared in Nebraska Department of Transportation format. The following plan sheets are anticipated to be included in the final plan set:

- a. Cover Sheet
- b. Typical Section
- c. Summary of Quantities
- d. Horizontal Control
- e. General Information
- f. Geometrics Plan
- g. Joints and Grades Plan
- h. Construction Phasing Plan
- i. Construction and Removal Plan
- j. Drainage Plan and Profile
- k. Roadway Plan and Profile
- l. Erosion Control Plan
- m. Miscellaneous Details
- n. Roadway Cross Section Sheets

***Submittals***

The following formal submittals are anticipated:

- a. Plan-in-Hand (30%) Plans
- b. Final Submittal

## ***Project Tasks***

The following tasks are anticipated to complete the work for this project:

***I. Project Administration-*** This task consists of project management activities, agency and stakeholder meetings, utility coordination meetings, kickoff and progress meetings with City staff and internal coordination meetings.

- a. ***Project Management-*** Includes activities required for budget and schedule management, staff assignments, internal cost control, preparation and processing of project correspondence, invoices, and monthly progress reports throughout this phase of the project. For scoping purposes, project management is assumed to last from June through December 2023.
- b. ***Progress Meetings with City Staff-*** Progress meetings with City staff will be conducted to update progress and seek resolution of identified issues. Two (2) progress meetings are anticipated. Meetings will be attended by the ENGINEER's project manager and one additional project team member.

It is assumed all meetings will be held in the City of Seward.

- c. ***Team Coordination Meetings-*** Includes internal staff meetings throughout project development.
- d. ***Property Owner Meetings-*** Includes up to three meetings with adjacent property owners

***II. Preliminary Design-*** This task will include site inspection, data collection, utility coordination, typical section, storm sewer design, drainage plan and profile, roadway plan and profile, preliminary construction phasing, opinion of probable construction costs, and plan-in-hand meeting.

- a. ***Site Inspection-*** Includes site visits during preliminary design to verify site constraints, impacts, and compatibility with proposed design. It is assumed one site visit will be required.
- b. ***Data Collection-*** Existing information and data available for the project will be assembled and reviewed including as-built information for existing streets, structures, utilities, storm sewers, right-of-way, GIS data, and other relevant information available.
- c. ***Construction Phasing-*** A conceptual construction phasing plan will be developed for the roadway.

- d. *Utility Coordination*- Includes coordination with the known utility companies to identify the limits and potential conflicts of all utilities along the project corridor. ENGINEER will request maps of all existing utilities within the project corridor. Preliminary drawings will be supplied to all utility companies requesting design information.
- e. *Hydrologic and Hydraulic Design*- A drainage study of the existing storm sewer system will be conducted along Lindell Avenue in accordance with hydrologic and hydraulic methods described in “NDOT – Drainage Design and Erosion Control Manual” and Hydraulic Engineering Circular 14 (HEC-14) –“Energy Dissipators”. Recommended drainage improvements are anticipated to include reinforced concrete pipe (RCP) and NDOT standard inlet structures. Drainage basin delineation will include topographic survey supplemented with GIS data. It is anticipated that the proposed storm sewer will connect to the existing 24” RCP that discharges into Plum Creek on the south side of Seward Street.
- f. *Drainage Plan and Profiles*- Storm sewer improvements including pipe, inlets, manholes, and energy dissipators will be shown on the drainage plan and profile sheets.
- g. *Opinion of Probable Construction Cost*- NDOT bid items and unit prices will be used to compute quantities and submit an opinion of probable construction cost prior to the plan-in-hand (after selection of preferred design alternative).
- h. *Plan-in-Hand*- A plan in hand meeting will be scheduled and conducted with the City of Seward staff at approximately thirty (30) percent preliminary design plan completion. The plan-in-hand will be documented with minutes summarizing the significant findings and decisions made.

At the completion of preliminary design, plans will be submitted to all utility companies for review and use in developing preliminary relocation plans and schedules if necessary.

Meeting minutes will be prepared for all meetings.

- i. *Quality Assurance/Quality Control (QA/QC)*- The ENGINEER shall perform QA/QC reviews of project documents at various stages of design and prior to any formal submittal.
- j. *Roadway Plan and Profiles* – Roadway reconstruction geometric layout and vertical profile will be shown on the roadway plan and profile sheets. 3 P&P sheets are assumed to be necessary along Lindell Avenue and East Seward Street. This task also includes developing the vertical and horizontal alignment, roadway modeling and sidewalk configuration along this stretch of the project.
- k. *Typical Sections* – The roadway typical section will be developed along Lindell Avenue and East Seward Street.

- I. *Preliminary Right of Way* – Preliminary Right of Way sheets will be developed to show where additional right-of-way taking, or easements are necessary to construct the project.

**III. Final Design-** This task will include construction and removal plans, drainage plan and profile sheets, construction phasing, limits of construction, erosion control, miscellaneous design details, and opinion of probable construction costs.

- a. *Geometric Sheets-* Sheets will be developed that show the coordinate location of all proposed pavement and sidewalks.
- b. *Joints and Grades Sheets* – Pavement grades and concrete jointing sheets will be developed along all reconstructed streets. This task includes detailing the design model at three intersections along the project.
- c. *Construction and Removal Plan-* Sheets will be prepared that detail construction and removals for the project in accordance with NDOT pay items.
- d. *Drainage Plan and Profile-*Plan and profile sheets will be finalized.
- e. *Roadway Plan and Profile* – Roadway plan and profile sheets will be finalized.
- f. *Roadway Cross Sections* – Roadway cross section sheets will be finalized.
- g. *Erosion Control Plans-* A sediment and erosion control plan will be developed to prevent erosion and promote revegetation within the limits of construction.
- h. *Construction Phasing Plan-* A final phasing plan will be developed for the project.
- i. *Miscellaneous Details-*ENGINEER to provide design and drafting of miscellaneous details on the project.
- j. *Right of Way* – Preliminary Right of Way sheets will be finalized. Legal descriptions will be prepared for all affected tracts. Nine tracts are assumed to require additional easements and/or right-of-way.
- k. *Final Opinion of Probable Construction Cost-* NDOT bid items and unit prices will be used to compute quantities and submit an opinion of probable construction cost at the completion of the final plans.
- l. *Utility Coordination-* Final plans will be submitted to utility owners impacted by the construction. ENGINEER to develop status of utilities report.
- m. *Quality Assurance/Quality Control (QA/QC)-* The ENGINEER shall perform QA/QC reviews of project documents at various stages of design and prior to any formal submittal.

- n. *Special Provisions*- ENGINEER to develop special provisions for the project. Special provisions to include recurring NDOT special provisions as well as project specific provisions.
- o. *Permitting*-ENGINEER to apply for permits on the project. The anticipated permits for the project are a City of Seward Floodplain Development Permit.
- p. *Bid-Phase Services* – ENGINEER will assist the City in advertising the Project for bids. ENGINEER will coordinate with A&D Technical Supply to distribute plans to potential contractors. The City will conduct the bid letting.

## PART 2 – ADDITIONAL SERVICES

### A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.
  4. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
  5. Furnishing services of Engineer's Consultants for other than Basic Services.
  6. Providing construction surveys and staking to enable Contractor to perform its work.
  7. Providing Construction Phase services beyond the original date for final completion of the Work.
  8. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.



**LINDELL AVENUE RECONSTRUCTION  
FROM JACKSON AVENUE TO  
EAST SEWARD STREET  
City of Seward**

**Preliminary and Final Design**

EXHIBIT B: FEE SUMMARY SCHEDULE

**Direct Salary Costs**

PROJECT TASK & PERSONNEL CLASSIFICATION	ESTIMATED HOURS	2023 RATE	ESTIMATED LABOR CHARGE	TASK COST
<b>I. Project Administration</b>				\$17,370.00
PRINCIPAL	7	\$245.00	\$1,715.00	
PROJECT MANAGER	44	\$210.00	\$9,240.00	
SENIOR PROJECT ENGINEER	0	\$185.00	\$0.00	
REGISTERED DESIGN ENGINEER	35	\$155.00	\$5,425.00	
ENGINEER/ SENIOR TECHNICIAN	0	\$105.00	\$0.00	
ENGINEERING TECHNICIAN	11	\$90.00	\$990.00	
REGISTERED SURVEYOR	0	\$140.00	\$0.00	
PARTY CHIEF SURVEYOR	0	\$105.00	\$0.00	
ASSOCIATE SURVEYOR	0	\$80.00	\$0.00	
GRAPHIC DESIGNER	0	\$0.00	\$0.00	
ADMINISTRATIVE ASSISTANT	0	\$0.00	\$0.00	
<b>II. Topographic Field Survey</b>				\$0.00
PRINCIPAL	0	\$245.00	\$0.00	
PROJECT MANAGER	0	\$210.00	\$0.00	
SENIOR PROJECT ENGINEER	0	\$185.00	\$0.00	
REGISTERED DESIGN ENGINEER	0	\$155.00	\$0.00	
ENGINEER/ SENIOR TECHNICIAN	0	\$105.00	\$0.00	
ENGINEERING TECHNICIAN	0	\$90.00	\$0.00	
REGISTERED SURVEYOR	0	\$140.00	\$0.00	
PARTY CHIEF SURVEYOR	0	\$105.00	\$0.00	
ASSOCIATE SURVEYOR	0	\$80.00	\$0.00	
GRAPHIC DESIGNER	0	\$0.00	\$0.00	
ADMINISTRATIVE ASSISTANT	0	\$0.00	\$0.00	
<b>II. Preliminary Design</b>				\$31,750.00
PRINCIPAL	0	\$245.00	\$0.00	
PROJECT MANAGER	15	\$210.00	\$3,150.00	
SENIOR PROJECT ENGINEER	0	\$185.00	\$0.00	
REGISTERED DESIGN ENGINEER	98	\$155.00	\$15,190.00	
ENGINEER/ SENIOR TECHNICIAN	66	\$105.00	\$6,930.00	
ENGINEERING TECHNICIAN	72	\$90.00	\$6,480.00	
REGISTERED SURVEYOR	0	\$140.00	\$0.00	
PARTY CHIEF SURVEYOR	0	\$105.00	\$0.00	
ASSOCIATE SURVEYOR	0	\$80.00	\$0.00	
GRAPHIC DESIGNER	0	\$0.00	\$0.00	
ADMINISTRATIVE ASSISTANT	0	\$0.00	\$0.00	

**III. Final Design**

PRINCIPAL	0	\$245.00	\$0.00
PROJECT MANAGER	29	\$210.00	\$6,090.00
SENIOR PROJECT ENGINEER	0	\$185.00	\$0.00
REGISTERED DESIGN ENGINEER	143	\$155.00	\$22,165.00
ENGINEER/ SENIOR TECHNICIAN	86	\$105.00	\$9,030.00
ENGINEERING TECHNICIAN	122	\$90.00	\$10,980.00
REGISTERED SURVEYOR	0	\$140.00	\$0.00
PARTY CHIEF SURVEYOR	0	\$105.00	\$0.00
ASSOCIATE SURVEYOR	0	\$80.00	\$0.00
GRAPHIC DESIGNER	0	\$0.00	\$0.00
ADMINISTRATIVE ASSISTANT	0	\$0.00	\$0.00

\$48,265.00

**Subtotal Labor Costs**

728

\$97,385.00

**DIRECT NON-SALARY COSTS:**

	No.	Rate (\$)	
Printing	1	\$ 300.00	\$ 300.00
Mileage	1014	\$ 0.585	\$ 593.19
Survey Mileage		\$ 0.585	-
Geotech (Field Drilling Subcontractor)		\$ 925.00	-
Geotech (Lab Reimbursable)		\$ 210.00	-
Title Searches		\$ 200.00	-
Lodging		\$ 70.00	-
Per Diem		\$ 39.00	-
Public Meeting		\$ 500.00	-
Storm Sewer Video Inspection		\$ -	-
Wetland Delineation		\$ -	-

**Sub-Total Direct Non-Salary Costs**

**\$ 893.19**

**TOTAL ESTIMATED FEE**

**\$98,278.19**

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Payments to Engineer for Services and Reimbursable Expenses**

---

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

### **ARTICLE 2 – OWNER’S RESPONSIBILITIES**

#### *C2.01 Compensation For Basic Services (other than Resident Project Representative and Post-Construction) – Standard Hourly Rates Method of Payment*

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative and Post-Construction Phase services, if any, as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultant’s charges, if any.
  2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates included in Exhibit B.
  3. The total compensation for services under Paragraph C2.01 is estimated to be \$98,278.19
  4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.
  5. The total estimated compensation for Engineer’s services included Paragraph C2.01.B.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Consultant’s charges.
  6. The amounts billed for Engineer’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer’s Consultant’s charges.
  7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

#### *C2.02 Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Exhibit B.

- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.0.

### C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.0.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. Estimated Compensation Amounts
  - 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall be paid for all services rendered hereunder.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **EXHIBIT D**, consisting of **2** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Insurance**

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Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

Engineers Certificate of Liability insurance is attached to this Exhibit D.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/22/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> FNIC P.O. Box 45279 Omaha NE 68145-0279	<b>CONTACT NAME:</b> Deanne Beltz-Sund <b>PHONE (A/C. No. Ext):</b> 402-861-7000 <b>E-MAIL ADDRESS:</b> deanne.beltz@fnicgroup.com	<b>FAX (A/C. No):</b>
	<b>INSURER(S) AFFORDING COVERAGE</b>	
License#: SCH41058 SCH41058	<b>INSURER A:</b> Continental Casualty Co.	<b>NAIC #</b> 20443
<b>INSURED</b> The Schemmer Associates Inc. 1044 North 115th Street Omaha NE 68154	<b>INSURER B:</b> Continental Insurance Company	35289
	<b>INSURER C:</b> Valley Forge Insurance Co.	20508
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 663563116

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:			6023928716	12/31/2022	12/31/2023	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$ 15,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
C	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			6023928747	12/31/2022	12/31/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			6023928702	12/31/2022	12/31/2023	EACH OCCURRENCE	\$ 6,000,000
							AGGREGATE	\$ 6,000,000
								\$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	6023928733	12/31/2022	12/31/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
A	Professional Liability Claims Made Basis Pollution Legal Liab			AEH288365469	12/31/2022	12/31/2023	\$5,000,000 \$5,000,000	Ea.Claim Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

City of Seward Nebraska  
 142 N. 7th St.  
 Seward NE 68434

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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This is **EXHIBIT E**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Dispute Resolution**

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Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

### *H6.09 Dispute Resolution*

- A. Mediation. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation in accordance with Construction Industry Mediation Rules of the American Arbitration Association currently in effect. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT F**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services**.

## **Allocation of Risks**

---

Paragraph 6.10 of the Agreement is amended and supplemented to include the following agreement of the parties:

### **I6.10.B** *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Engineer's Compensation.* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and Engineer's Consultants, and any of them, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Engineer or Engineer's officers, directors, partners, employees, agents, or Engineer's Consultants, or any of them, shall not exceed the total compensation received by Engineer under this Agreement.

4. Consideration of Roofing Replacements RFP Recommendation and Authorization to Award White Castle Roofing - City Clerk Bargmann



P.O. Box 38, 537 Main Street, Seward, Nebraska 68434. Phone: 402-643-2928. Fax: 402-643-6491. [www.CityofSewardNE.gov](http://www.CityofSewardNE.gov)

Date: June 6, 2023

To: Mayor Eickmeier and City Council

From: Derek Bargmann, City Clerk / HR Director on behalf of Building/Zoning & Code Enforcement  
Director Tim Dworak and Public Properties Director Bob Core

**Re: Recommendation to Award White Castle Roofing in Response to the Roof Replacements of Selected City Properties RFP**

As a result of the storm event on June 14, 2022, the City of Seward sustained significant roofing damage to a number of properties. The insurance adjuster—Signature Adjustment Group—provided an assessment early last fall which was paid out from the City’s insurance carrier. From the assessment, City Administrator Butcher and City Clerk Bargmann collaborated with department heads to determine the best course of action for each respective property impacted. From these meetings, a list of properties were determined to be beyond the ability of City crews to repair and significant enough to pursue replacement. By the time these properties were determined, the 2022 roofing season had completed; therefore, in mid-March, Bargmann began to draft a request for proposals for the identified City properties. At the May 2<sup>nd</sup> meeting, City Council approved the issuance of a RFP for Roof Replacement of Selected City properties with a due date of May 12<sup>th</sup>.

The City received four complete submittals by the original due date. Upon consultation with Mr. Dworak and Mr. Core on May 17<sup>th</sup>, it was determined there was a discrepancy between properties ‘a – City Hall’ and ‘e. – Wastewater Treatment Plant (Admin Building)’. As such, it was requested on May 19<sup>th</sup> that the four respondents provide the following by May 25<sup>th</sup> at noon: property ‘a’ - detailed breakdown of both the shingled and flat roof with the cost of new decking included for the flat roof portion, and property ‘e’ – Bargmann included the wrong building, so the Admin Building was switched out for the ‘Process Unit’ building. This clarification was done so that all proposals could be examined in a like-for-like manner to determine the best price. By the updated deadline, the following firms had submitted a complete proposal for consideration: Connor Roofing Co, Inc.; Nelson Contracting; and White Castle Roofing. Mr. Core and Mr. Dworak believed that all firms were capable and would do a great job if selected. Upon review of the prices—it was determined that White Castle Roofing was the lowest proposal and such is the recommendation of Mr. Bargmann, Mr. Core, and Mr. Dworak. City Administrator Butcher was informed of the recommendation and concurred. A price breakdown is as follows with the adjuster’s estimate included—please note, the City will continue to work with the adjuster to receive further supplemental funds as more repairs are identified and invoices received from White Castle. Prices in labor in material have increased from last summer; therefore, White Castle’s prices reflect the current price to return each structure to its previous state or bring to current building codes:

Property	White Castle Roofing Price	Insurance Adjuster’s Original Est.
A – City Hall	\$25,757.00	\$20,625.84
B - Bandshell	\$11,228.00	\$4,696.26
C – City Garage	\$35,541.00	\$28,665.56
D – Wells 7 & 9	\$5,812.00	\$4,124.05
E – WW Process Unit**	\$54,000.00	\$26,545.78
F – Maint Shop, 2-plex	\$10,570.00	\$9,948.23
G – Pool & Pump House	\$39,579.00	\$32,959.45

H – BoyScout Building	\$5,701.00	\$4,849.87
I – Lied Senior Center	\$45,675.00	\$38,151.45
J – Memorial Library	\$35,223.00	\$37,051.24
K – 4-plex Main Building	\$7,769.00	\$7,341.89
L – Elec Dept Building	\$10,799.00	\$14,445.05
<b>Grand Total</b>	<b>\$290,884.00</b>	<b>\$229,404.67</b>

\*\*Regarding property 'e' – all firms noted the current roofing structure should be completely scrapped and instead be replaced with EPDM style roof; therefore, the higher cost reflects this fact. All other prices are mostly within 25% of the insurance adjuster's price.

With Council's approval of the recommendation, City Administration will work with White Castle Roofing to complete an agreement and begin work on the roof replacements with the objective to complete all properties by the end of the summer. As an aside, Mr. Core will working with his crew to complete roofing of some of the smaller properties that are within their capabilities.

**CITY OF SEWARD - Roofing Replacement City Properties**  
**RFP Opening**  
**05/12/23**

**Date/Time Recd**

**Company Name**

**Complete Response? - Yes/No**

Date/Time Recd	Company Name	Complete Response? - Yes/No
5/12/23 11:45A	White Castle Roofing	Yes
5/12/23 11:30A	Bull Wright Homes	Yes
5/11/23 3:59P	Nelson Contracting	Yes
5/11/23 2:30P	Conner Roofing	Yes

City officials present:


**THE CITY OF SEWARD, NEBRASKA**



P.O. Box 38, 537 Main Street, Seward, Nebraska 68434. Phone: 402-643-2928. Fax: 402-643-6491. [www.CityofSewardNE.gov](http://www.CityofSewardNE.gov)

**REQUEST FOR PROPOSALS (RFP)  
FOR  
ROOF REPLACEMENT OF SELECTED CITY PROPERTIES**

**To All Interested Contractors:**

**Contractors are invited to submit a formal proposal to replace the roofs at specified City locations affected by the June 14, 2022, storms (locations included in RFP). Sealed proposals will be received until 12:00 p.m., local time, on Friday, May 12, 2023. All proposals shall be clearly marked with 'City of Seward – Roof Replacements RFP'. Immediately following the closing date of the RFP, the City of Seward will open the proposals and determine the next steps forward.**

**Proposals are to be submitted to:**

**Seward City Hall  
ATTN: City Clerk  
537 Main Street  
Seward, Nebraska 68434**

**Submission Deadline  
Friday, May 12, 2023 at 12:00PM**

**REQUESTS FOR PROPOSALS (RFP)  
ROOF REPLACEMENT OF SELECTED CITY PROPERTIES  
FOR THE CITY OF SEWARD, NEBRASKA**

**I. REQUEST FOR PROPOSALS**

As a result of the June 14, 2022, severe storms affecting Seward County, the City of Seward (City) sustained heavy damages to various public properties. After review by the insurance adjustor, many affected properties were deemed to have significant roofing damage. As such, the City is advertising to solicit Requests for Proposals (RFP) from qualified contractors to provide roof replacement/repair services for selected properties as deemed by the City. **A qualified contractor shall be a respondent who is able to reference similar local projects; verify significant work within the City; and provides a clean cost break down per property listed.** The City desires to enter into a master agreement with the selected company with the ability to add future properties at an agreed upon rate.

The City will select the respondent whose proposal is most responsive to this RFP and is determined to be in the best interest of the City. Proposals submitted in response to the RFP must provide sufficient detail and information to complete an evaluation of their ability to perform these services.

The City reserves the right to modify this RFP at any time. The bidder is responsible to contact City Clerk Derek Bargmann (402-643-2928 x 121, [derek.bargmann@cityofsewardne.gov](mailto:derek.bargmann@cityofsewardne.gov)), prior to submitting a proposal to determine if any amendments were made to the RFP. Documents, addenda, etc. will be posted to the City's website under Business Resources > Public Bids: <https://cityofsewardne.gov/public-bids/>

The City reserves the right to reject any and all proposals received in response to this RFP. A contract for the accepted proposal will be based upon the factors described in this RFP.

**II. GENERAL INFORMATION**

**A. Conditions of Work**

It is understood that except as otherwise specifically stated in the contract, the contractor shall provide and pay for all materials, labor, tools, equipment, and transportation of every nature and all other services and facilities of every nature whatsoever, necessary to execute, complete and deliver the work within the specified time. Permits and licenses necessary for the execution of work shall be secured by the contractor but no fees will be charged to the contractor. All supplies and material shall be new. Any work necessary to be performed after regular working hours, such as work performed on Sundays or legal holidays shall be performed without additional expense to the City.

Any City facilities shall never be opened to the elements at any time and all openings must be covered in a manner to withstand any weather condition and must be secured to avoid anyone entering the building through roof openings. Further, all outside and inside areas of the building and grounds shall remain clean and free of construction debris as to not interrupt City operations.

**B. Existing Conditions**

The contractor, in undertaking the work under this contract, is assumed to have visited the premises and to have taken into consideration all conditions which might affect the work. No consideration will be given to any assertions based on lack of knowledge of existing conditions.

**C. Pre-Bid Examination**

Interested respondents may examine the facilities upon request and confirmation from Bob Core, Public Properties Director, 402-643-2928 x 204 or [bob.core@cityofsewardne.gov](mailto:bob.core@cityofsewardne.gov).

**D. Insurance**

The contractor shall acquire and carry throughout the contract term any applicable insurance, including workers compensation or employee accident insurance if the respondent has employees. At a minimum the contractor shall secure liability/professional insurance if there are no employees or subcontractors. The following amounts must be under coverage:

- Liability insurance, personal injury, including death up to \$250,000.00 for each person and \$500,000.00 for each accident.
- Property Damage with limits of \$500,000.00 for each accident and \$1,000,000.00 in the aggregate.

Certificate of insurance with the City of Seward listed as additional insured must be sent to the City prior to commencement of work.

**E. Indemnity**

The contractor is acknowledged as an independent contractor of the City and as such will indemnify and hold harmless the City for any and all loss, expense, and/or claims associated with or arising out of such injury or damage due to the activities or from any act or omission of the contractor, its board members (if applicable), employees, representatives, family members, and volunteers.

**F. Statement of Qualifications**

As part of the proposal, the respondent must complete the attached "Statement of Qualification" before awarding of contract, to demonstrate to the complete satisfaction of the City, that the contractor has the necessary certifications, licenses, facilities, ability and financial resources to execute the work in a satisfactory manner within the time specified; the contractor has had experience in work of the same or similar nature; and the contractor has past history to assure the City of the contractor's qualifications for executing the work. **Please list all projects and permits issued by the City within the City in the last 24 months and indicate the three most like projects on the statement of qualifications page.**

**G. Addenda**

If any questions arise from the RFP, contractor may submit questions to Derek Bargmann, City Clerk, at 402-643-2928 x 121 or [derek.bargmann@cityofsewardne.gov](mailto:derek.bargmann@cityofsewardne.gov). Any interpretation documents will be made by addendum to the RFP. Any addenda will be published on the City's website at [www.cityofsewardne.gov/public-bids/](http://www.cityofsewardne.gov/public-bids/). The City will not be responsible for any other explanations or interpretations. The City reserves the right to extend the due date if such information significantly amends this solicitation or makes compliance with the original due date impractical. The City reserves the right to reject any or all proposals and waive technicalities and informalities.

**H. Deviations from Scope of Work**

Any deviations from the scope of work indicated herein must be submitted in writing, clearly noted and explained in detail on a separate form, and attached to the submitted proposal; otherwise, it will be considered that items/services offered are in strict compliance with these specifications and the successful contractor shall be held responsible thereto. Any deviations within a submitted proposal between prices quoted and restated in the summation sheet shall be resolved by the City as being the lower price unless the contractor requested in writing a correction or withdrawal of proposal prior to the date and time set for opening.

**I. Proposal Form and Format**

Proposal Form should be submitted in the format specified within this document, contain information required by the RFP, and submitted in a sealed envelope addressed to:

City of Seward, ATTN: City Clerk, 537 Main Street, Seward, NE 68434

Sealed proposals will be received until 12:00pm on Friday, May 12, 2023. All proposals shall be clearly marked with "City of Seward – Roof Replacements RFP". Immediately following the closing of the RFP, the City will open proposals.

**J. Award of Contract**

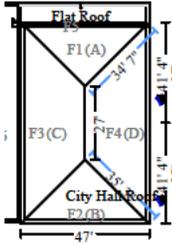
Award of contract will be made to the most responsive/responsible contractor meeting the requirement of the City within 30 days of the proposal opening date. This solicitation does not commit the City to award a contract, to pay any costs incurred in the preparation of the proposal, or to procure or contract for goods services listed herein. The City may accept any proposal offered on an all, partial, or none basis, or within funds available, whichever is in the best interest of the City. Upon contract award, the City and contractor will sign an agreement prior to any work being started.

**III. SCOPE OF SERVICES**

The respondent to be contracted by the City of Seward will be expected to provide the following services:

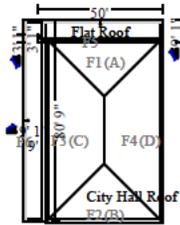
Replace Roofs, as needed, at the following locations (square footage approximate):

**a. City Hall – 537 Main Street; asphalt**



**City Hall Roof**

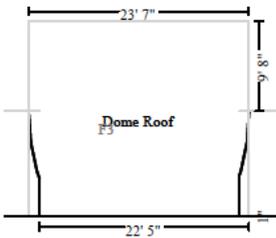
3866.63	Surface Area	38.67	Number of Squares
194.17	Total Perimeter Length	27.00	Total Ridge Length
139.75	Total Hip Length		



**Flat Roof**

1173.66	Surface Area	11.74	Number of Squares
292.86	Total Perimeter Length		

**b. Bandshell – 140 N 5<sup>th</sup> Street; domed roof = asphalt, flat roof = bitumen**



**Dome Roof**

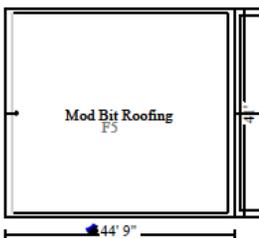
559.57	Surface Area	5.60	Number of Squares
73.75	Total Perimeter Length		

**Flat Roof**



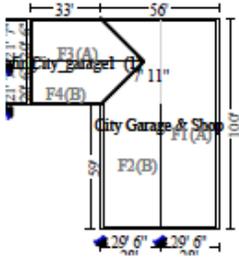
470.27	Surface Area	4.70	Number of Squares
111.05	Total Perimeter Length		

**c. City Garage – 223 N 7<sup>th</sup> Street; pitched roof = asphalt, flat roof = bitumen; north gutter/downspout**



**Mod Bit Roofing**

1835.26	Surface Area	18.35	Number of Squares
171.52	Total Perimeter Length		

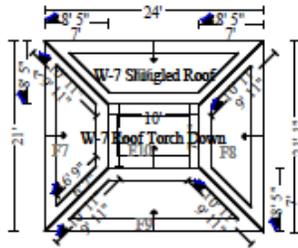


**City Garage & Shop**

7327.90 Surface Area  
386.27 Total Perimeter Length

73.28 Number of Squares  
153.48 Total Ridge Length

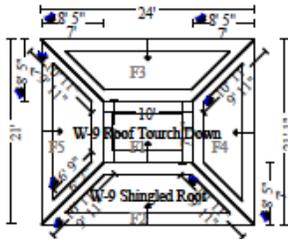
**d. Wells 7 & 9 (on Walker Road between County Roads 322 & 366) - asphalt**



**W-7 Shingled Roof**

522.28 Surface Area  
90.24 Total Perimeter Length  
43.72 Total Hip Length

5.22 Number of Squares  
33.83 Total Ridge Length

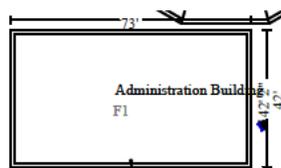


**W-9 Shingled Roof**

522.28 Surface Area  
100.24 Total Perimeter Length  
43.72 Total Hip Length

5.22 Number of Squares  
23.83 Total Ridge Length

**e. Wastewater Treatment Plant (Admin Building) – 1040 S Columbia; bitumen**

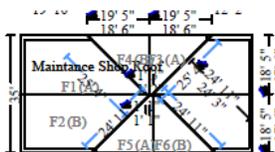


**Administration Building**

3079.87 Surface Area  
230.38 Total Perimeter Length

30.80 Number of Squares

**f. Maintenance Shop, Plum Creek Park Sports 2-plex – 2111 Karol Kay Blvd; asphalt**



**Maintenance Shop Roof**

2545.63 Surface Area  
221.72 Total Perimeter Length

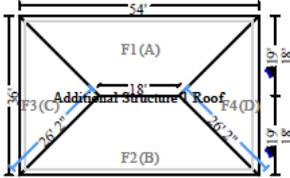
25.46 Number of Squares  
103.58 Total Ridge Length

**g. Moffitt Park – Pool & Pump House – 167 N 14<sup>th</sup> Street; asphalt on both**



**Pool Building Roof**

6462.72	Surface Area	64.63	Number of Squares
481.92	Total Perimeter Length	198.61	Total Ridge Length
185.02	Total Hip Length		



**Additional Structure 1 Roof**

2049.16	Surface Area	20.49	Number of Squares
180.00	Total Perimeter Length	18.00	Total Ridge Length
104.61	Total Hip Length		

**h. BoyScout Building (Moffitt Park) – asphalt; gutters and downspout**



**Boyscouts Building Roof**

1680.00	Surface Area	16.80	Number of Squares
166.00	Total Perimeter Length	48.00	Total Ridge Length

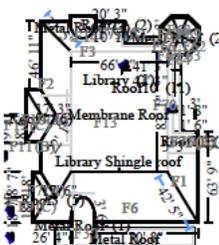
**i. Lied Senior Center – 1010 Manor Drive; asphalt; gutters and downspout**



**Location 31 Roof**

10958.40	Surface Area	109.58	Number of Squares
504.10	Total Perimeter Length	146.65	Total Ridge Length
223.69	Total Hip Length		

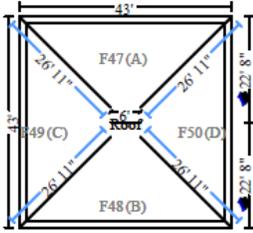
**j. Seward Memorial Library – 233 S 5<sup>th</sup> Street; pitched roof = asphalt; gutters and downspout**



**Library Shingle roof**

9017.81	Surface Area	90.18	Number of Squares
843.50	Total Perimeter Length	15.50	Total Ridge Length
187.15	Total Hip Length		

**k. Plum Creek Sports Complex-4 fields (Main Building) – 2222 Karol Kay Blvd; asphalt**

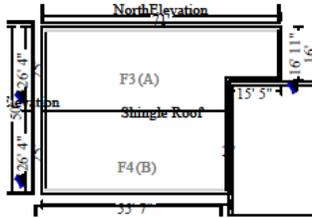


**Roof**

1949.02 Surface Area  
 172.00 Total Perimeter Length  
 107.52 Total Hip Length

19.49 Number of Squares  
 6.00 Total Ridge Length

**I. Electric Department Building – 1345 River Street; asphalt**



**Shingle Roof**

3189.56 Surface Area  
 247.41 Total Perimeter Length

31.90 Number of Squares  
 55.58 Total Ridge Length

**IV. BID DOCUMENTS – TO BE INCLUDED IN THE PROPOSAL**

**PROPOSAL FORM FOR THE ROOF REPLACEMENT OF SELECTED CITY PROPERTIES**

**DUE NO LATER THAN 12:00 PM ON FRIDAY, MAY 12, 2023**

Name of Contractor: \_\_\_\_\_

Having carefully examined the proposal requirements including the General Conditions, and the Request for Proposal for City of Seward 'Roof Replacement of Selected City Properties' RFP, any addenda, and conditions affecting the work, the undersigned proposes to provide the required materials, services, warranties, and delivery of specified in the attached proposal for the total sum not to exceed:

City Hall	\$ _____
Bandshell	\$ _____
City Garage	\$ _____
Wells 7 & 9	\$ _____
Wastewater Treatment Plant (Admin Building)	\$ _____
Maintenance Shop, Plum Creek Park	\$ _____
Moffitt Park – Pool & Pump House	\$ _____
BoyScout Building	\$ _____
Lied Senior Center	\$ _____
Seward Memorial Library	\$ _____
Sports Complex-4 fields (Main Building)	\$ _____
Electric Department Building	\$ _____

**GRAND TOTAL** \$ \_\_\_\_\_

**Itemized bids for each property shall be included to confirm the amount per location.**

-----  
Respectfully Submitted,

Business Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

Name and Title of Contractor's Rep: \_\_\_\_\_

Signature: \_\_\_\_\_

**A statement of contractor qualifications—three references—must be included in the submittal:**

Name of Contractor: \_\_\_\_\_

**Please provide three similar or like projects within the last 24 months, which demonstrate ability to complete the work. Projects should have occurred within the City and permit is required to be included in submission:**

**Project #1:**

Address Location: \_\_\_\_\_

Date Started: \_\_\_\_\_ Date Completed: \_\_\_\_\_

Summarize project completed: \_\_\_\_\_

\_\_\_\_\_

**Project #2:**

Address Location: \_\_\_\_\_

Date Started: \_\_\_\_\_ Date Completed: \_\_\_\_\_

Summarize project completed: \_\_\_\_\_

\_\_\_\_\_

**Project #3:**

Address Location: \_\_\_\_\_

Date Started: \_\_\_\_\_ Date Completed: \_\_\_\_\_

Summarize project completed: \_\_\_\_\_

\_\_\_\_\_

5. Routine Update to the City Engineer Job Description - City Clerk Bargmann



**Job Title:** City Engineer  
**Department:** Engineering  
**FLSA Status:** Exempt, Salaried, Full Time  
**Revised Date:** 6/6/23 (Council Approval)

### **Accountability**

Under the direction of the City Administrator and in compliance with State Statute and City Code.

### **Job Summary**

Oversees the engineering department and performs professional engineering services in connection with planning, organizing, directing, and coordinating activities involving municipal streets, storm sewers, water distribution, and wastewater collection and treatment facilities including plan review, creation of specifications, and ensuring economical construction.

### **Essential Job Functions**

Plans, programs, and directs all City activities involving civil engineering, traffic engineering, land surveying, project management, and construction in close coordination with other City departments; oversees and manages the planning, design, and construction of public works projects, including coordination and/or engagement in the preparation of construction plans and specifications; assists with the development of the annual Five-Year Capital Improvement Program (CIP) Project List and the development of the annual One-and Six-Year Transportation Plan. Oversees the right-of-way permit approval, issuance, inspection, and close-out activities; establishes policies/procedures to govern all construction activities in public rights-of-way to ensure City standards are maintained; and investigates existing right-of-way and easements in the county courthouse or by computer record. Reviews/approves construction plans, specifications, and all documents used in the public bidding process and evaluates bids to provide recommendation of bid award to City Council; collaborates on behalf of the City with contractors/consultants to negotiate contract details and design standards; may prepare, review, or edit professional services agreements or contracts to full execution; coordinates and directs work of consulting engineering firms and staff to ensure uniform standards for public works projects design and construction; reviews, approves and submits invoices from consultant and other engineering services providers for payment; reviews preliminary and final plans to ensure acceptability with city codes and good engineering practices; and directs preparation of engineering feasibility reports and cost estimates. During construction phase, regularly meets with engineers and contractors to monitor construction progress and resolve problems; performs construction inspections per City standards, project plans, and project specifications including measurement of field quantities; coordinates and directs responses to requests for information (RFIs), work change directives (WCDs), and change orders for all active projects; presents and recommends approval of change orders to City Council; reviews, approves, and submits Contractor payment applications for public works projects. Coordinates and directs the update and maintenance of mapping public infrastructure systems within a Geographical Information System (GIS) and system deployment throughout City departments. Creates civil engineering methods and procedures using CAD software and other technology; translates accumulated field data and engineering data into construction plans using standard drafting techniques and CAD software. Supports engineering and construction requirements during emergency operations and assists with infrastructure and utility restoration programs following incidents or emergencies. Oversees upkeep of official City maps, drawings, plats, project documents, and engineering records per uniform engineering standards and technology including establishment of methodologies for keeping all records up to date. Assists contractors and the public with questions or requests for supporting information by retrieval of plat maps, city maps, aerial maps, utility information, and any other documents required; provides oral and written information to owners, builders, and contractors regarding requirements of applicable building codes and ordinances. Prepares annual department budget in coordination with City Administration and monitors department expenditures including claims submittal. Routinely computes surveying and engineering mathematical problems; analyzes and recommends possible solutions to engineering problems; researches property ownerships and legal documents; makes independent field decisions; performs commercial plan reviews; and prepares and files written project status, monthly, and annual reports.

### **Additional Duties and Responsibilities**

Assists with the creation, modification, and enforcement of zoning and subdivision regulations; reviews subdivision plats, zoning amendments and comprehensive plan updates as needed; assists in developing draft revisions to City codes and ordinances when appropriate; assists with floodplain management and performs hydrology studies including the review of studies submitted; interacts and coordinates with Seward County officials regarding public works projects that interconnect City- and County-owned infrastructure; may assist in the inspection and written reports of building and other structures to verify that construction, alteration, maintenance, structural repair work is being done in compliance with provisions of applicable codes and ordinances; may assist with the inspections of

existing buildings to determine hazardous conditions, structural failures or need for maintenance/repair in compliance with housing and building codes; assists City Administrator on projects and performs special assignments as requested; may be asked to attend City Council, City Planning Commission and Committee meetings as requested by the City Administrator including presentation and explanation of reports; may serve as City's designated Street Superintendent; performs other duties as assigned.

### **Knowledge, Abilities and Skills**

Considerable knowledge of CAD mapping software, hydrology assessments, right-of-way permitting, public bidding process, plans review, GIS system development, research practices and techniques, records/database management, and best practices in project management and construction. Knowledge of routine principles, practices, equipment, and materials used in technical civil engineering and line and computerized drafting knowledge of mathematics and survey techniques, instruments, and tools; knowledge of proper inspection methods and building codes; and knowledge of municipal purchasing procedures and policies. Should possess basic surveying and manual drafting skills. Skill in deciphering, understanding, recommending, and acting upon complex information received; basic mathematical and accounting computation; analytical thinking; project and time management; leading others; and facilitation of various activities and meetings with various stakeholders. Good oral and written communication skills required to effectively communicate on a daily basis with elected and appointed officials, contractors and consultants, City employees and the public; proper public relations for project questions/criticism; and high degree of organization skills to effectively administer functions of the department. Ability to read and interpret plans, specifications, plats, maps, and construction plans; make on-site visual inspections; decisively make independent field decisions; learn micro-computer systems and operation of related peripheral devices; perform accurate engineering mathematical calculations; perform routine design and layout work; and prepare clear and concise written reports studies, letters, reports and memoranda. Ability to organize and present facts and opinions with logical reasoning so others will understand; organize files and retrieve data effectively; understand and assess accounting software applications and suggest improvements; work independently, prioritize projects to meet deadlines, work on several projects at once, and work under distracting conditions; and to learn and interpret ever-changing rules, regulations, laws and ordinances. Ability to sit and/or stand for long periods of time; visual stamina and acuity adequate to review alpha/numeric data and spend long periods of time looking at computer screen; operate basic office machines, such as copy machine, computer, calculator, fax machine; and keep confidential information confidential. Ability to drive to work sites and operate a motor vehicle and to attend meetings and/or conferences in town or out of town. Ability to work in adverse weather conditions while performing necessary services; ability to climb up onto and down from step stools, stairs and/or ladders and to work in a stooped, kneeled or crouched position for an extended period of time; and ability to type at a rate of 60 wpm.

### **Education and Experience**

Bachelor of Science degree in civil engineering or a related engineering field of study from an ABET-accredited college or university with at least two (2) years of increasingly responsible experience in municipal utilities civil engineering or a related field including one (1) year of lead supervisory experience; or any equivalent combination of training and experience deemed to be sufficient for the position. Registration as a professional engineer in the State of Nebraska with Civil Engineering as the primary area of practice. Knowledge and experience related to implementation of GIS system and associated CAD mapping is desired. Master's degree in civil engineering, public administration, or business administration preferred.

### **Special Requirements**

Possession of a valid driver's license.

**Note:** *The statements herein are intended to describe the general nature and level of work being performed by employees assigned to this classification. They are not intended to be constructed as an exhaustive list of all responsibilities, duties, and skills required of personnel so classified. This job description may be changed or updated at any time without notice.*

JOB TITLE: CITY ENGINEER (Salary: Exempt)

ACCOUNTABILITY: Under the direction of the City Administrator and in compliance with State Statute and City Code.

JOB SUMMARY: ~~Provide~~ Oversees the engineering department and performs professional engineering services in connection with planning, organizing, directing, and coordinating activities involving municipal streets, storm sewers, water distribution, and wastewater collection and treatment facilities. ~~Perform~~ including plan review, creation of specifications, and ~~insuring~~ ensuring the economical construction related to municipal public works and utility projects. ~~Oversee and maintain the engineering department and its related documents and records. Take direction from and report to City Administrator.~~

ESSENTIAL DUTIES AND RESPONSIBILITIES: Plans, programs, and directs all City activities involving civil engineering, traffic engineering, land surveying, project management, and construction ~~with;~~ closely ~~coordinatione~~ ~~this work with input~~ from other City departments ~~within the City.~~; ~~Oversees and manages the planning, design and construction of public works projects, including. Ccoordinatione and direct and/or engagement in the Ppreparatione of construction plans and specifications for public works projects. Read plats, maps, and construction plans.~~ Translate accumulated field data and engineering data into construction plans using standard drafting techniques and computer-aided-~~designrafting~~ system (CAD) software. Routinely Computes surveying and engineering mathematical problems. ~~—, Analyzes and recommends possible solutions to engineering problems.—; Researches property ownerships and legal documents. Assists contractors and the public with questions or requests for information requested over the phone or in person. Answer questions, provide supporting information by retrieve copiesal of plat sheetmaps, city maps, aerial sheetmaps, utility information, and any other prints documents required. Perform construction inspections per City standards and project specifications. Measure field quantities. Make independent field decisions. Creates civil engineering methods and procedures through the use of computer-aided drafting and designCAD software and other technology. Design drawings and mMaintain records of drawings and other project documents. Assist the public with utility information and/or directing them to proper location in the City. Research utility information; prepare and maintain a variety of status reports and records. Supervise, train, and evaluate subordinates. Organize Department and assign responsibilities to staff members. Provide direction for accomplishment of duties and activities and follow through on staff completion. May Prepare and/or, review, andor edit professional services agreements or contracts to full execution. with consultants for planning, design, or implementation of public works projects.—Coordinates and directs work of consulting engineering firms and staff to ensure uniform standards for public works projects design and construction. Reviews, ~~approve~~ approves, and submits invoices from consultant and other engineering services providers for payment. ~~Prepare and/or review and edit project contracts and assist with full execution of contracts. Meet Collaborates on behalf of the City with contractors/consultants to work outnegotiate contract details and design standards. Reviews preliminary and final plans to ensure acceptability with city codes and good engineering practices. Reviews and approves construction plans, specifications, and all documents used in the public bidding process and.~~ Evaluates bids ~~andto provide reecommdrecommndation of bid award to City Council. During construction phase, Visit regularly meets~~ with engineers and contractors to monitor construction progress and resolve~~

problems. Perform construction inspections per City standards, project plans, and project specifications including. Measurement of field quantities. Makes independent field decisions.; Coordinates and directs responses to requests for information (RFIs), work change directives (WCDs), and change orders for all active projects; presents and recommends approval of change orders to City Council. Reviews, approves and submits Contractor payment applications for public works projects. Implement policy and establishes policies/procedures to govern all construction activities in public rights-of-way. Coordinate with current and potential right-of-way users to ensure City standards for right-of-way construction are maintained; and. Oversees the right-of-way permit approval, issuance, inspection, and close-out activities;.- Coordinate with current and potential right-of-way users to ensure City standards for right-of-way construction are maintained. Investigates existing right-of-way and easements through documents located in the county courthouse or by accessed through city and county computer records. -Review and approve construction plans and bids, consultant agreements, change orders for all projects. Prepares annual Department budget in coordination with City Administration and monitors department expenditures including claims submittal. Directs preparation of engineering feasibility reports and cost estimates. Oversees upkeep of official City maps, plats, and engineering records per uniform engineering standards and technology. Coordinates and directs the update and maintenance of mapping public infrastructure systems within a Geographical Information System (GIS) and system deployment throughout City departments. Including Establishment Department priorities and of methodologies for keeping all records up to date. Supports engineering and construction requirements during emergency operations.— and Assists with infrastructure and utility restoration programs following incidents or emergencies. Assists with the development of the annual Five-Year Capital Improvement Program (CIP) Project List; assists with and the development of the annual One-and Six-Year Transportation Plan; and prepares and files written project status, monthly, and annual reports; performs commercial plan reviews;

ADDITIONAL DUTIES AND RESPONSIBILITIES: May assist in the inspection of building and other structures to make sure that construction, alteration, maintenance, structural repair work is being done in compliance with provisions of applicable codes and ordinances; may assist with the inspections of existing buildings to determine hazardous conditions, structural failures or need for maintenance/repair in compliance with housing and building codes; provide oral and written information to owners, builders and contractors regarding requirements of applicable building codes and ordinances; prepare written reports of inspections made and construction work completed; Co-ordinate and implement GIS services, and system deployment throughout the city departments; assists with the creation, modification, and enforcement of zoning and subdivision regulations; reviews subdivision plats, zoning amendments and comprehensive plan updates as needed; assists in developing draft revisions to City codes and ordinances when appropriate; assists with floodplain management and performs hydrology studies and including the review of studies submitted;+ assists City Administrator on projects and performs special assignments as requested; may be asked to attend City Council, City Planning Commission and Committee meetings as directed-requested by the City Administrator including Present presentation and explanation of in reports as required.; interacts with and coordinates with Seward County officials regarding public works projects that interconnect City- and County-owned infrastructure; may assist in the inspection and written reports of building and other structures to make sure verify that construction, alteration, maintenance, structural repair work

is being done in compliance with provisions of applicable codes and ordinances; may assist with the inspections of existing buildings to determine hazardous conditions, structural failures or need for maintenance/repair in compliance with housing and building codes; provide oral and written information to owners, builders and contractors regarding requirements of applicable building codes and ordinances; ~~prepare written reports of inspections made and construction work completed;~~ may serve as City's designated Street Superintendent; performs other duties as assigned.

SKILLS/ABILITIES: Considerable knowledge of CAD mapping software, hydrology assessments, right-of-way permitting, public bidding process, plans review, GIS system development, research practices and techniques, records/database management, and best practices in project management and construction. ~~Knowledge~~ Knowledge of routine principles, practices, equipment, and materials used in technical civil engineering and line and computerized drafting; knowledge of mathematics and survey techniques, instruments, and tools; knowledge of proper inspection methods and building codes; and knowledge of municipal purchasing procedures and policies.

~~Ability to organize and coordinate the activities of the engineering department; ability to~~ Read and interpret plans, specifications, plats, maps, and construction plans; make on-site visual inspections; ~~ability to~~ learn micro-computer systems and operation of related peripheral devices; ~~ability to~~ perform accurate engineering mathematical calculations; ~~ability to~~ perform routine design and layout work; ~~and ability to~~ prepare clear and concise written reports studies, letters, reports and memoranda; ~~. considerable knowledge of the use of auto-cad~~ CAD software, spreadsheets, word processing, and database software programs; ; ~~ability to effectively communicate by email or phone;~~ Should possess basic surveying skills, and manual drafting skills, computer operation skills, Good oral and written communication skills required to effectively communicate on a daily basis with elected and appointed officials, contractors and consultants, City employees and the public; proper public relations for project questions/criticism; and high degree of organization skills to effectively administer functions of the department. ~~good oral and written communication skills for working within the office and with the general public; leadership skillsing others; Skill in deciphering, understanding, recommending, and acting upon complex information received; public speaking/presentation~~ basic mathematical and accounting skills ~~computation; analytical skillsthinking; public speaking/presentation skills;~~ project management and skills; ~~time management skills;~~ facilitation of various activities and meetings with various stakeholders ~~skills;~~ organizational skills; ~~. knowledge of GIS system development; ability to get in and out of and to operate a vehicle; ability to climb ladders and stairs; ability to read and interpret plans and specifications; ability to supervise others; ability to schedule activities and meetings; ability to establish and maintain effective working relationships with city officials, other governmental agencies, employees, and the general public;~~ Ability to organize and present facts and opinions with logical reasoning so others will understand; organize files and retrieve data effectively; understand and assess accounting software applications and suggest improvements; work independently, prioritize projects to meet deadlines, work on several projects at once, and work under distracting conditions; and to learn and interpret ever-changing rules, regulations, laws and ordinances.

Ability to drive to work sites and operate a motor vehicle and to attend meetings and/or conferences in town or out of town. Ability to work in adverse weather conditions while

performing necessary services; ability to climb up onto and down from step stools, stairs and/or ladders and to work in a stooped, kneeled or crouched position for an extended period of time; keep confidential information confidential; and ability to type at a rate of 60 wpm.

EXPERIENCE AND TRAINING: ~~High school diploma or equivalent.~~ Bachelor's of Science degree in civil engineering or a related engineering field of study from an ABET-accredited ~~four year~~ college or university with at least tTwo (2) years of increasingly responsible experience in municipal utilities civil engineering or a related field including one (1) year of lead supervisory experience; or any equivalent combination of training and experience deemed to be sufficient for the position. Registration as a professional ~~civil~~ engineer in the State of Nebraska with Civil Engineering as the primary area of practice. Knowledge and experience related to implementation of GIS system and associated ~~auto-cad~~CAD mapping is desired. Master's degree in civil engineering, public administration, or business administration preferred.

SPECIAL REQUIREMENTS: Possession of a valid Driver's License.

~~Approved 02/2018~~

6. Consideration of a Resolution Setting a Fee for Junk Dealers as Per City Code Chapter 271-1.3 - City Administrator Butcher

**RESOLUTION NO. 2023-7**

WHEREAS, the City Council of the City of Seward, Nebraska may affix a license fee charged for the application to keep, conduct, or operate a junk business, junkyard, or the storage of iron as per Chapter 271 of Seward Municipal Code, and

WHEREAS, it is deemed advisable by resolution to establish and affix fees for such a license;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEWARD, NEBRASKA THAT:

The amount charged as the license fee to keep, conduct, or operate a junk business, junkyard, or the storage of iron shall henceforth be and are hereby fixed as follows to be in full force and effect on and after June 6, 2023:

<u>Description</u>	<u>Fee for Service</u>
License to operate junk business, junk yard or storage of iron	\$500.00

The Mayor declared the resolution adopted.

Dated: June 6, 2023

THE CITY OF SEWARD, NEBRASKA

ATTEST:

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Derek Bargmann  
City Clerk

(SEAL)

7. Update on the Wellness Center - City Administrator Butcher  
**CITY ADMINISTRATOR'S REPORT**

## CITY ADMINISTRATORS REPORT – 6/6/23

- Monitoring a number of street projects on East Seward (construction), design on East Hillcrest, and drainage near Park Street & Bradford Street (contracts), Karol Kay box culvert.
- Assisting City Attorney with a number of real estate items and related matters.
- Assisted with Civic Center items and issues, working with Commission on Building Design and Rules and Regulations.
- Reviewed additional DTR items and worked with applicants on needed documents.
- Continued to work with RDG Planning to complete blight study.
- Met with BVH, Sampson and Wellness Center Committee on design updates. Reviewed updated estimate for the building from Sampson, reviewed weight and cardio room layout, met with gym systems vendor.
- Continued 2023 comparability study with staff.
- Worked on a potential project for the Seward Rail Campus.
- Continued process to replace Finance Director after receipt of Nick Wolf's notice.
- Met with representatives of the fire department on internal matters.
- Gathered documents for SCCDP/Langworthy trust civil case related to the Civic Center.
- Reviewed roofing RFP for June 2022 damage with City Clerk and staff.
- Assisted with a police item related to stolen property return.
- Reviewed updated CIP items with Department Heads for FY 2023-2024 budget.
- Met with NMPP about future services.
- Assisting with payroll, claims, and TIF payments while we are without a finance director.
- Met with staff and Olsson on the Water Tower project schedule.
- Did a line by line estimate review with SWC Committee, BVH and Sampson.
- Met with electric utility staff to assist with troubleshooting the workflow program and new meter installation.
- Met with SCCDP staff on upcoming potential LB 840 reauthorization vote.

The departments are working on the following projects to name a few:

### **Police Department**

- 4<sup>th</sup> of July Kickoff Celebration at the Nebraska National Guard Museum (NENG).
- Storytime at the library.
- Accepting police officer applications.
- Reaching out to prospective PO-I candidates.

### **City Clerk/Human Resources/City Hall**

- Work with Adam B. for pool paperwork and activate on Gworks for 2023 seasonal employees.
- Incorporating final changes and plotting next steps for Employee Personnel Handbook.
- Finalize department head performance evaluation system (distributed on 5/30).
- Still receiving apps and second round of reviews for finance director/treasurer.
- Still receiving apps and recruitment on going for police officer opening.

### **Water/Wastewater Department**

- Pool assistance.
- Hwy 34 trunk sewer.
- S.W. #3 well house delivery.
- Prep for Sanitary Survey on 6/20.

### **Parks and Rec/Cemetery/Golf/Pool**

- Working on pool leaks.

- Pouring the last section of cart path on golf course, hole 1 on Wednesday.
- Irrigation maintenance.
- Mowing and spraying weeds.

#### **Civic Center**

- Regular meetings.
- Interviews for part-time workers.
- Redesign meetings w/ Clark Enersen.
- Working w/ Civic Center Commission on updated rules and regulations.

#### **Electric Department**

- Lay in primary wire and secondary on Prairie View.
- Work on streetlights.
- Spray substations and yards.

#### **Street Department**

- Tree removal.
- Paint streets.
- Install signs.
- Mow ROW.
- Start street repair on Meadow Lane.

#### **Library**

- Still waiting on some electrical work to be finished to complete the room organization for the Heritage Room.
- Gutter and light work on exterior of library, still from hail damage, and City dealing with shingle issue.
- Material ordering.
- Finalizing 2023 anniversary details.

#### **Building Inspection/Planning Department**

- June Agenda for Planning Commission includes: Ringler minor plat and rezone, Hendrix major plat and rezone, Matzke special use permit (bldg. over 900sf), 1&6 roads plan.
- Concordia's Music Building inspections are set: final inspection June 14<sup>th</sup> & State Fire Marshall June 15<sup>th</sup>.
- Meeting in Kelly's office regarding the dilapidated building checklist/procedure.
- Roofing RFP.

#### **Engineering**

- Base concrete work ongoing and completion est. July 2 for Karol Kay Box Culvert.
- 10" water main extension, Windstream installing 100-pr cable, excavation delayed, 24in. trunk sewer delayed, ROW documentation for East Seward Street (County).
- Approve design agreement with Schemmer and ROW acquisition for Jackson/Lindell/E. Seward.
- Finalize contracts for Park St.
- Finalize contracts for Bradford.
- Execute agreements with Iseler, site work begins mid-July, radio antenna, send communication tenant agreements to City Attorney for the Water Tower.

#### **Finance Dept.**

- Budget meetings with all Departments and City Administrator.
- Nick's last day was 5/12/23.

**FUTURE REQUESTS FOR COUNCIL AGENDA ITEMS OR ADMINISTRATIVE  
ACTION  
ANNOUNCEMENT OF UPCOMING EVENTS  
STRATEGY SESSION**

1. Strategy Session with City Attorney Regarding Real Estate Interests at the Seward Rail Campus - City Attorney Hoffschneider

**MOTION TO ADJOURN**

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I, Derek Bargmann, the duly appointed qualified and acting City Clerk of the City of Seward, Nebraska, hereby certify that the foregoing Notice of Meeting and Agenda for such meeting has been posted in the following places: Seward City Hall, Seward Municipal Building, Seward County Courthouse, Seward Memorial Library and CityofSewardNE.gov

IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City.

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Derek Bargmann, City Clerk

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Date