



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

---

**Tuesday, November 21, 2023**

**7:00 PM**

**Municipal Building Council Chambers**

---

**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, November 21, 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. City Codes Director Report

# OPEN Property Maintenance Code Violation Report

					Updated 11-16-2023
Property Address	Violation Type	Deadline	Owner Information	Delivery Type	Status
<b>2023</b>					
546 North Ave	Landscaping height in sight triangle	11/6/2023	Samantha Fitzpatrick	Phone Call	CSO Arena made contact with the landowner. She stated she has contacted Andrew Schluter to address the issue. As of 11-6-2023 the issue as been resolved.
149 N 1st	Grass/Weeds	9/19/2023	Steve Butler/Tison Dixon		
429 S Columbia	Weeds	7/8/2023	Christopher Yates 8630 Oakmont Dr Lincoln, NE 68526	Certified letter, Posted notice on property	Certified Letter mailed to last known address. City has mowed previously and invoice went uncollected and turned over to collections. CSO Arena will post 5 day mowing nuisance letter.
437 S 6th Street	Weeds, trash, litter	7/4/2023	Verlin Miller	In Person to tenant/Certified Mail	CSO Arena spoke with the tenants. Mr. Miller spoke with CSO Arena in response to the letter. The propoerty was mowed and cleared of weeds and brush, debris was removed.
406 N 7th St	Weeds	7/4/2023	Wess & Shannon Robotham	Posted/Certified Mail	CSO Arena posted the notice of violations

**CURRENT YEAR:                      October                      2023**

Permits	Quantity	Permit Fee	Valuation
NEW CONST.	2	\$ 7,507.65	\$ 2,210,081.39
REMODEL/ADDIT.	13	\$ 1,147.25	\$ 230,609.10
ACCESSORY	20	\$ 672.93	\$ 101,535.00
RELOCATE	8	\$ 443.00	\$ 101,913.98
ELECTRIC			
PLUMBING	17	\$ 6,215.00	
MECHANICAL	17	\$ 2,495.00	
SEWER TAP	2	\$ -	
TEMP. WATER	1	\$ -	
WATER TAP	2	\$ -	
TEMP. ELEC.	2	\$ -	
ELECTRIC SER.	2	\$ -	
<b>TOTALS</b>	<b>86</b>	<b>\$ 18,480.83</b>	<b>\$ 2,644,139.47</b>

**YEAR TO DATE      January to      December                      2023**

Permits	Quantity	Permit Fee	Valuation
NEW CONST.	22	\$ 48,386.42	\$23,926,774.03
REMODEL/ADDIT.	170	\$ 20,427.29	\$ 5,338,258.51
ACCESSORY	135	\$ 15,746.66	\$ 692,916.27
RELOCATE	414	\$ 24,696.00	\$ 8,095,698.84
ELECTRIC		\$ -	\$ -
PLUMBING	133	\$ 14,155.00	\$ -
MECHANICAL	113	\$ 21,688.00	\$ -
SEWER TAP	21	\$ 4,500.00	\$ -
TEMP. WATER	4	\$ 240.00	\$ -
WATER TAP	21	\$ 19,405.00	\$ -
TEMP. ELEC.	18	\$ 750.00	\$ -
ELECTRIC SER.	21	\$ 3,700.00	\$ -
<b>TOTALS</b>	<b>1072</b>	<b>\$ 173,694.37</b>	<b>\$ 38,053,647.65</b>

**LAST YEAR:                      October                      2022**

Permits	Qty.	Permit Fee	Valuation
NEW CONST.	1	\$ 1,026.30	\$ 510,769.08
REMODEL/ADDIT.	16	\$ 2,042.55	\$ 573,890.18
ACCESSORY	14	\$ 4,985.36	\$ 59,683.69
RELOCATE	126	\$ 6,554.50	\$ 1,500,311.58
ELECTRIC			\$ -
PLUMBING	17	\$ 1,130.00	\$ -
MECHANICAL	3	\$ 1,020.00	\$ -
SEWER TAP	0	\$ -	\$ -
TEMP. WATER	0	\$ -	\$ -
WATER TAP	0	\$ -	\$ -
TEMP. ELEC.	0	\$ -	\$ -
ELECTRIC SER.	0	\$ -	\$ -
<b>TOTALS</b>	<b>177</b>	<b>\$ 16,758.71</b>	<b>\$ 2,644,654.53</b>

**YEAR TO DATE      January to      December                      2022**

Permits	Qty.	Permit Fee	Valuation
NEW CONST.	19	\$ 51,641.64	\$ 10,387,480.66
REMODEL/ADDIT.	126	\$ 87,540.47	\$ 56,996,842.60
ACCESSORY	147	\$ 20,927.71	\$ 2,884,216.61
RELOCATE	911	\$ 49,689.50	\$ 13,883,991.32
ELECTRIC			\$ -
PLUMBING	132	\$ 14,497.00	\$ -
MECHANICAL	71	\$ 9,850.00	\$ -
SEWER TAP	16	\$ 4,500.00	\$ -
TEMP. WATER	0	\$ -	\$ -
WATER TAP	16	\$ 18,032.25	\$ -
TEMP. ELEC.	10	\$ 950.00	\$ -
ELECTRIC SER.	18	\$ 7,630.00	\$ -
<b>TOTALS</b>	<b>1466</b>	<b>\$ 265,258.57</b>	<b>\$ 84,152,531.19</b>

2. City Treasurer Report
3. Claims & Payables Reports

CLAIMS LIST

11-21-23

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.

Alert-All Corp	SU	2,943.00
AKRS Equipment Inc	RE	1,463.55
All Copy Products Inc	MA	36.10
Allegiant Utility Service	FA	532.89
Amazon Business	SU	1,064.84
Badger Meter	SE	232.81
Baker & Taylor	SU	2,872.72
Baker Becky J	MI	61.57
Barco Municipal Products	SU	1,466.96
Bern's Body Shop	RE	125.98
Biblionx LLC	MS	4,300.00
Birkels Rock And Gravel	MA	5,826.56
Bizco Technologies	IT	13,761.31
Black Hills Energy	UT	977.93
Blackburn Manufacturing C	SU	444.79
Burlington Northern Santa	MC	1,623.26
Cattle Bank	FA	24,245.00
Chapters Books & Gifts	SU	43.08
Cincinnati Insurance Co	FA	24,241.00
City Seward Library Petty	PO	142.81
City Seward Merchant Serv	SE	3,470.29
City Seward Payroll Accou	SA	202,221.96
City Seward Perpetual Fd	SL	450.00
Clarion Events Inc	TG	3,549.00
Commonwealth Electric Co	BU	1,005.25
Consolidated Water Soluti	MA	1,876.24
Constellation Newenergy	UT	42.04
Credit Solutions	SE	79.83
Cuttin It Close Lawncare	GU	770.00
Danko Emergency Equipment	UN	55.91
Davis Design	FA	1,010.00
Dowling Adam	MC	1,200.00
Eakes Office Solutions	SU	106.96
Ed Shulz LLC	MA	3,500.98
Electronic Contracting Co	BU	81.00
Farmers Coop Seward	GS	5,667.39
Firstar Fiber Inc	SE	477.26
Fyr-Tek	EQ	16,462.55
G & P Development Landfil	SE	286.81

Galls LLC	UN	90.99
General Code	MS	1,195.00
General Excavating	SU	3,760.00
Gerhold Concrete Co Inc	GU	511.39
GPM	OP	5,489.00
Great Plains Communicatio	SE	490.00
Gworks	MS	8,518.00
Hanson Mark	MC	1,200.00
Hawkins Inc	MA	1,527.11
Helmlink Printing/Grph Inc	SU	149.63
Hireright LLC	SE	354.20
Hobson Automotive & Tire	RE	668.98
Holliday Kurt	SE	300.00
Home Depot Pro	SU	10.31
Husker Electric Supply Co	RE	303.02
Kirkegaard Addie	SE	100.00
Last Mile Network Consult	IT	75.30
Lee's Refrigeration	BU	755.28
Life Fitness LLC	FA	117,246.16
Lincoln Winwater Works	TO	322.50
Maguire Iron Inc	CI	73,742.76
Mailand's Clothing	UN	30.00
Matheson Tri-Gas Inc	OP	143.40
McMaster-Carr	SU	305.62
Meyer Automotive	RE	386.50
Mid-American Benefits Inc	BE	3,831.47
Midwest Auto Parts	RE	1,243.60
Midwest Automotive Inc	RE	562.12
Midwest Laboratories Inc	MA	2,219.11
Midwest Petroleum Equip	EQ	317.97
Midwest Turf & Irrigation	RE	163.42
Miracle Recreation Equip	GU	396.00
Municipal Supply Omaha	IV	779.55
Nagel Maddy	SE	150.00
Nebraska Dept Env/Energy	MS	805.00
Nebraska Municipal Power	SE	30,800.00
Nebraska Pub Pow-Desmoine	UT	455,654.50
Nebraska Secretary/State	MS	60.00
Nebraska Treasurer	OP	4.88
Nextlink	SE	100.00
Norris Public Power Distr	UT	600.98
One Billing Solutions LLC	SE	2,556.49
One Call Concepts Inc	SE	197.42
One Source Background Che	SE	58.00
O'Reilly Automotive Inc	SU	31.98
Pac 'N' Save Discount Foo	SU	302.96
Police Officers Assoc Neb	MS	220.00
Quality Brands Of Lincoln	SU	344.12
Riverside Portables LLC	SE	375.55
Schaefer Concrete LLC	CI	145,675.00

Schemmer Architects Engin	CI		100,421.13
Seward County Clerk/Reg D	SE		89.59
Seward County Independent	PU		850.97
Seward County Treasurer	SE		23,507.08
Seward Electronics	SU		172.60
Seward Lumber & Home Cent	GU		658.29
Seward Public Schools	MC		1,228.33
Seward Veterans Foreign W	SU		45.00
Seward Wind LLC	UT		48,054.41
Sonetics	EQ		9,710.78
Sports Express	SU		497.95
State Fire Marshal Train	TG		400.00
Suhr & Lichty Insurance A	MS		80.00
Terracon Inc	CI		3,468.75
TK Elevator Corp	MS		2,154.96
Total Fire & Security Inc	MS		420.00
Tractor Supply	SU		868.69
Transunion Risk	MC		75.00
Verizon Wireless	SE		517.29
Visa - Pinnacle Bank			2,160.86
Amazon	SU	42.80	
DEMCO	SU	664.51	
Dollar General	SU	7.50	
Nextlink	SE	115.00	
Taste of the South	MS	-21.00	
TechSoup	IT	720.01	
Wall Street Journal	MS	574.88	
Walmart	SU	41.17	
Zoom	MS	15.99	
Voehl Cindy	MI		20.96
Wesco Distribution Inc	IV		51,702.13
White Cap	SU		195.60
White Castle Roofing	BU		1,787.00
Windstream Nebraska Inc	SE		1,788.51
Wt.Cox	MS		699.39
York Equipment	RE		57.64
	CLAIMS TOTAL		\$1,445,477.81

#### 4. Police Department Report



*City of Seward*  
**Police Department**  
Chief Brian W. Peters

**Monthly Statistics**  
\_\_\_\_\_ 20 \_\_\_\_\_

Service Calls	
Accidents	
Arrests	
Citations	
Warnings	
Parking Tickets	

\*\*Does not include red tag warnings, yellow tag warnings or verbal warnings\*\*

5. Draft Minutes of November 7, 2023, City Council Meeting

**November 7, 2023**

The Seward City Council met at 7:00 p.m. on Tuesday, November 7, 2023, with Mayor Joshua Eickmeier presiding and Administrative Assistant Mindy Meier recording the proceedings. Upon roll call, the following Councilmembers were present: Megan Kahler, Jessica Kolterman, John Singleton, Matt Stryson, Rich Wergin, Jonathon Wilken, Karl Miller, Tatum Tonniges. Councilmembers Absent: None. Other officials present: City Administrator Greg Butcher, City Attorney's representative Connor Madsen, City Engineer Mike Oneby, Public Properties Director Bob Core, Assistant Parks Director Adam Bode, Executive Director of Wellness Center Joel Brase, 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 Stryson, seconded by Councilmember Singleton.

1. Claims & Payables Report (totaling \$768,867.04)
2. Draft Minutes of October 17, 2023 City Council Meeting.
3. Mayor's Appointments to Boards and Commissions:
  - a. Kurth Brashear (replaces Jeremy Tonniges) to LB 840 Sales Tax Application Review Board for Remainder of Term

Aye: Kahler, Kolterman, Miller, Singleton, Stryson, Tonniges, Wergin, Wilken.  
Nay: None. Absent: None. Motion carried.

**ADMINISTRATIVE ITEMS**

**1. CONSIDERATION OF AN ORDINANCE TO EXTEND THE FRANCHISE AGREEMENT WITH SPECTRUM MID-AMERICA, LLC FOR CABLE TELEVISION**

City Administrator Butcher indicated the ordinance is to extend the franchise agreement for 10 years with Spectrum Mid-America LLC for cable television.

Councilmember Kolterman introduced Ordinance No. 2023-25. Councilmember Wergin moved, seconded by Councilmember Tonniges, to dispense with the statutory rule.

Aye: Kahler, Kolterman, Miller, Singleton, Stryson, Tonniges, Wergin, Wilken.  
Nay: None. Absent: None. Motion carried.

Councilmember Tonniges moved, seconded by Councilmember Singleton that the minutes of the proceedings of the Mayor and Council of the City of Seward, Seward County, Nebraska in the matter of passing: **Ordinance No. 2023-25, AN ORDINANCE BETWEEN THE CITY OF SEWARD AND SPECTRUM MID-AMERICA, LLC EXTENDING A NON-EXCLUSIVE FRANCHISE TO SPECTRUM MID-AMERICA, LLC TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN SEWARD, NEBRASKA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATION AND USE OF THE SYSTEM; TO REPEAL ANY ORDINANCE OR PARTS THEREOF IN CONFLICT WITH THIS ORDINANCE; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.**

Aye: Kahler, Kolterman, Miller, Singleton, Stryson, Tonniges, Wergin, Wilken.  
Nay: None. Absent: None. Motion carried.

Councilmember Wergin moved, seconded by Councilmember Tonniges that all ordinances be added to the permanent record.

Aye: Kahler, Kolterman, Miller, Singleton, Stryson, Tonniges, Wergin, Wilken.  
Nay: None. Absent: None. Motion carried.

**2. CONSIDERATION OF A LEASE AGREEMENT WITH BLACK HILLS NEBRASKA GAS LLC FOR PROPERTY LOCATED AT 841 ASPEN STREET**

City Administrator Butcher advised the City is growing and is starting to meet maximum natural gas capacity at the current station. As such, a second station will need to be built in the future, however, to alleviate temporary

**November 7, 2023**

capacity concerns, construction of a temporary site was discussed in the Rail Campus across from WCR. This site would be a liquid natural gas holding station that would be used to back up the system.

Jennifer Peters, Community Relations Manager with Black Hills Energy, spoke to the need of this temporary solution until a longer-term station could be constructed.

Councilmember Singleton moved, seconded by Councilmember Stryson, to approve the lease agreement with Black Hills Nebraska Gas LLC for property located at 841 Aspen Street.

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

Nay: None. Absent: None. Motion carried.

**3. CONSIDERATION OF A REVISION TO THE CEMETERY RULES/REGULATIONS**

Public Properties Director Bob Core advised they have been working with the Cemetery Board to update the Veterans Section of the Cemetery Rules/Regulations. The Cemetery Board had approved these changes at their most recent meeting.

Councilmember Stryson moved, seconded by Councilmember Wergin, to approve the revision to the cemetery rules/regulations, as presented.

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

Nay: None. Absent: None. Motion carried.

**4. CONSIDERATION OF A RESOLUTION ADJUSTING RECREATION FEES, INCREASING FEES FOR YOUTH PROGRAMS**

Assistant Parks Director Adam Bode informed they would like to update the fees since they have not been changed since 2016 and to keep up with rising operations costs. The Parks & Rec Board approved these fees at their most recent meeting.

Councilmember Wergin introduced **Resolution 2023-20**, to adjust recreation fees, increase fees for youth programs. Councilmember Miller moved, seconded by Councilmember Kahler, to approve Resolution 2023-20.

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

Nay: None. Absent: None. Motion carried.

**5. DISCUSSION OF REMOVAL OF CENTENNIAL PARK BATHROOMS**

Public Properties Director Bob Core advised that the septic tank at the Centennial park bathroom is leaking into underground water and to remove and replace it would cost \$15,000- \$20,000. As such, Mr. Core recommends removal of the structure since it is lightly used by the public and vandalized often. A porta-potty will be made available in Centennial Park if/when this structure is removed.

Councilmember Stryson moved, seconded by Councilmember Tonniges, to approve the removal of Centennial Park bathrooms.

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

Nay: None. Absent: None. Motion carried.

**6. UPDATE ON THE WELLNESS CENTER**

Executive Director Joel Brase noted all the fundraising for the Seward Wellness Center has been secured; though the Committee is still seeking funding, particularly the Civic and Community Center Financing Fund (CCCCF).

**CITY ADMINISTRATOR'S REPORT**

Councilmember Wergin moved, seconded by Councilmember Tonniges, that the City Administrator's report of November 7, 2023, be accepted.

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

Nay: None. Absent: None. Motion carried.

**MOTION TO ADJOURN**

Councilmember Miller moved, seconded by Councilmember Singleton, that the November 7, 2023, City Council Meeting be adjourned.

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

Nay: None. Absent: None. Motion carried.

Adjourned approximately 7:35 p.m.

**November 7, 2023**

THE CITY OF SEWARD, NEBRASKA

---

Joshua Eickmeier, Mayor

---

Derek Bargmann  
City Clerk

**ADMINISTRATIVE ITEMS**

1. Consideration of a Resolution to Establish a Master Fees Schedule - City Clerk Bargmann

RESOLUTION NO. 2023-21

WHEREAS, the City Council of the City of Seward, Nebraska may by resolution fix the amount of certain rates, fees, and charges for purposes of raising operating revenue and covering City costs and operating overhead;

WHEREAS, it is deemed advisable to establish a master fee schedule to conglomerate existing rates, fees and charges into one document;

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

The attached schedule of rates, fees, and charges found in Attachment #1 are hereby amended and shall henceforth, if not already in effect, be in full force and effect on and after the date of passage.

The Mayor declared the resolution adopted.

Dated: November 21, 2023

THE CITY OF SEWARD, NEBRASKA

ATTEST:

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

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

(SEAL)



## TABLE OF CONTENTS

### **Part I: General Administration**

Administrative Services .....	1
Businesses and Organizations.....	1
Library Services .....	1
Parks and Recreation	
Programs .....	2
Municipal Pool .....	2
Facilities Rentals.....	3
Golf Course .....	3
Campgrounds .....	4
Cemeteries .....	4
Public Safety and Code Enforcement	
Rescue Squad & Ambulance Services .....	4
Police Department .....	5
Code Enforcement .....	5
Street Department .....	5

### **Part II: Building and Construction**

Building Permits-Commercial/Residential.....	7
Accessory Permits .....	7
Other Inspections & Fees.....	7
Roll-Off Dumpsters .....	8
Plumbing Code.....	8
Mechanical Code .....	8
Specialized Trade and Contractor Licensing.....	9
Public Property & Right-of-Way .....	10

### **Part III: Land Development, Planning, and Zoning**

Subdivision Development.....	11
Zoning.....	11
Recording .....	11

### **Part IV: Public Works and Utilities**

Utility Billing .....	12
Electric Service .....	12
Sewer Service.....	12
Water Service .....	13

**PART I: GENERAL ADMINISTRATION**

**A. General Administrative Services**

<b>Description: Service Rates</b>		<b>Last Revised: 11/21/23</b>	<b>Established Thru: Res. No. 2023-21</b>
Returned Check Fee			\$35.00
<b>Copier/Printer Rates – <u>For Public Records ONLY</u></b>			
Black/White			\$0.20 per page + tax
Color			\$0.75 per page + tax
<b>Fax Machine – <u>For Public Records ONLY</u></b>			
Incoming – 10 pages or less			\$3.00 + tax
Incoming – every page after 10			\$1.00 per page + tax
Outgoing – 10 pages or less			\$3.00
Outgoing – every page after 10			\$1.00 per page
Election Filing Fee			1% of annual salary of elected position (est. by NE Statute 32-608)
Downtown Parking Permit	\$50.00 (annually)	3/15/05	Ord. No. 17-05

**B. Businesses and Organizations**

<b>Description:</b>	<b>Fee:</b>	<b>Last Revised:</b>	<b>Established Through:</b>
Bingo Permit (Profit)	\$10.00	9/4/84	Ord. No. 27-84
<b>Sale of Alcoholic Beverages:</b>			
Annual License	2x of State fees	11/21/06	Ord. No. 27-06
Spec. Des. License	\$40.00 (per use)	12/5/00	Ord. No. 55-00
Junk Dealer License	\$500.00	6/6/23	Res. No. 2023-7
Refuse Hauler License	\$25.00 annual/vehicle	9/21/93	Ord. No. 36-93
Tobacco Dealer License	\$15.00 (annually)	4/3/18	Ord. No. 2018-10
<b>Firework Sales:</b>			
Local Nonprofit	\$100.00 (annually)	3/15/05	Ord. No. 16-05
Retail Vendor	\$500.00 (annually)	3/15/05	Ord. No. 16-05
Natural Gas Franchisee	\$1,000.00 per filing	10/20/87	Ord. No. 26-87
<b>Tax Increment Financing:</b>			
Application Fee	Lessor of 1% of TIF indebtedness; or \$1,000.00	11/21/23	Res. No. 2023-21
Administrative Fee	3% of Note principal	11/21/23	Res. No. 2023-21

**C. Library Service**

<b>Description: Service Rates</b>		<b>Last Revised: 11/21/23</b>	<b>Established Thru: Res. No. 2023-21</b>
<b>Copier/Printer Rates</b>			
Black/White			\$0.20 per page
Color			\$0.75 per page
<b>Fax Machine</b>			

Incoming – 10 pages or less	\$3.00
Incoming – every page after 10	\$1.00 per page
Outgoing – 10 pages or less	\$3.00
Outgoing – every page after 10	\$1.00 per page
Fines, 14-day items	\$1.00 per day
Laminating	\$0.50 per page
Memberships – Seward County & Adjacent Counties (residents can use for free)	
Annual	\$25.00
Semi-Annual	\$15.00
Meeting Room Use (LL conference only)	\$25.00 per use

## **D. Parks and Recreation**

### *1. Recreation Programs*

<b>Description: Fees</b>	<b>Last Revised: 11/7/23</b>	<b>Established Thru: Res. No. 2023-20</b>
Volleyball (Adult)		\$50.00
Baseball		\$50.00
Baseball (Legion)		\$100.00
Basketball		\$30.00
Flag Football		\$40.00
Tackle Football		\$50.00
Soccer		\$40.00
Softball		\$50.00
Tennis		\$25.00
Volleyball		\$40.00
Wrestling		\$30.00

### *2. Seward Dowding Swimming Pool*

<b>Description: Fees</b>	<b>Last Revised: 1/17/23</b>	<b>Established Thru: Res. No. 2023-1</b>
Pool - Daily Admissions		
2 yrs. old & under		FREE
3 to 17 yrs. old		\$4.00
18 to 54 yrs. old		\$5.00
55 to 64 yrs. old		\$4.00
65 yrs. old & over		FREE
Pool – Season Passes		
Individual		\$75.00
Family		\$150.00
Water Exercise Pass		\$55.00
Water Exercise Pass – 10-Class Card		\$30.00
Pool Parties Rental Fee (Non-hours)		\$300.00
Swimming Lessons – Per Session Price		

Pre-K & Parent	\$25.00
Youth-Group	\$40.00
Private	\$80.00

### 3. Recreation Facilities Rentals

<b>Description: Fees</b>	<b>Last Revised: 1/17/23</b>	<b>Established Thru: Res. No. 2023-1</b>
<b><i>Sports Complex Concession Stand</i></b>		
One Day Rental		\$150.00
Two Day Rental		\$250.00
Three Day Rental		\$300.00
Damage Deposit - \$100.00, to be returned or subtracted if stand is cleaned and no damages		
<b><i>Plum Creek Park Softball Concession Stand</i></b>		
One Day Rental		\$75.00
Two Day Rental		\$125.00
Three Day Rental		\$150.00
<b><i>Cattle Athletic Training Facility</i></b>		
Seward-based Team Registration		\$400.00, per season (Dec 1 – May 1)
Non-Seward-based Team Registration		\$100.00, per hour
Private Instruction (1 per week)		\$25.00, per hour
Single Use		
Building (Team/Group)		\$20.00, per hour
Batting Cage (individual)		\$10.00, per hour

### 4. Seward Community Golf Course

<b>Description: Fees</b>	<b>Last Revised: 1/17/23</b>	<b>Established Thru: Res. No. 2023-1</b>
<b><i>Daily Fees</i></b>		
9 Holes (including tax)		\$20.00
Golf Cart Rental Per Player (including tax)		\$9.00
18 Holes (including tax)		\$27.00
Golf Cart Rental Per Player (including tax)		\$13.00
Trail (Cart Stored Off-Site)		\$10.00
Driving Range Bucket of Golf Balls (including tax)		
Small Bucket		\$4.50
Medium Bucket		\$6.50
Large Bucket		\$8.50
<b><i>Annual Fees</i></b>		
Single		\$630.00
Golf Cart Lease		\$315.00
Driving Range Pass		\$100.00
Family		\$813.75
Golf Cart Lease		\$420.00
Driving Range Pass		\$150.00

Age 19-25	\$288.75
Grade/High School	\$157.50
Trail (Cart Stored Off-site)	\$200.00
Golf Cart Storage (with Trail Fee)	
Gas Cart (does not include gas)	\$375.00
Electric Cart	\$400.00
Locker Rent	\$35.00

5. *Blue Valley Campground & Plum Creek Campground*

<b>Description:</b> Fees	<b>Last Revised:</b> 1/17/23	<b>Established Thru:</b> Res. No. 2023-1
Maximum length of stay is seven (7) consecutive days with a 48-hour interim between visits		
Camper Unit	\$25.00 per night	
Senior Citizens (65+)	\$15.00 per night	
Tent Unit ( <b>Blue Valley only</b> )	\$10.00 per night	

6. *Cemeteries*

<b>Description:</b> Fees	<b>Last Revised:</b> 1/7/20	<b>Established Thru:</b> Res. No. 2020-1
<b>Burial Space</b>		
Adult	\$600.00	
Infant (under 2 yrs. old)	\$200.00	
<b>Grave Opening and Closing</b>		
Adult Traditional	\$600.00	
Infant Traditional	\$275.00	
<b>Cremation</b>		
Adult	\$300.00	
Infant	\$275.00	
<b>Monument and Marker</b>		
Stone Setting	\$75.00 per setting	
<b>Miscellaneous</b>		
Perpetual Care	25% of Burial Space	
Saturday Funeral Closing	\$300.00	
Sunday and Holiday Funeral Closing	\$500.00	
Sunday and Holiday Grave Opening	\$290.00 per hour (2 hr. minimum)	
Overtime Incurred (after 4:00P)	\$100.00 per hour	
Deed Transfer	\$100.00	
Scattering of Ashes in Designated Area	\$75.00	
Entering a Name on Cemetery Records	\$75.00	

**E. Public Safety and Code Enforcement**

1. *Rescue Squad and Ambulance Services*

<b>Description:</b> Service Rates	<b>Last Revised:</b> 9/20/22	<b>Established Thru:</b> Res. No. 2022-27
Treatment without Transport	\$125.00	

<b>Basic Life Support (BLS)</b>	
Ambulance, non-emergency	\$700.00 + mileage
Ambulance, emergency	\$1,000.00 + mileage
Mileage, per mile patient travels	\$20.00 per mile
<b>Advanced Life Support (ALS)</b>	
Ambulance, non-emergency	\$1,000.00 + mileage
Ambulance, emergency (1)	\$1,200.00 + mileage
Ambulance, emergency (2)	\$1,200.00 + mileage
Specialty Care Transport (SCT)	\$1,200.00 + mileage

## 2. Police Department

Description:	Fee:	Last Revised:	Established through:
Accident Reports			
Email, Faxed or In-Person	\$3.00	11/21/06	Res. No. 23-06
Mailed	\$4.00	11/21/06	Res. No. 23-06
Itinerant Sales	\$10.00	10/3/95	Ord. No. 39-95
<b>Copier/Printer Rates – –For Public Records ONLY</b>			
Black/White	\$0.20/page + tax	11/21/23	Res. No. 2023-21
Color	\$0.75/page + tax	11/21/23	Res. No. 2023-21
Golf-Cart/Low-Speed Vehicle Registration	\$0.00 (annually)	10/4/22	Ord. No. 2022-16
Gun Permit	\$5.00 (estab. thru NE Statute 69-2404)		
Explosives Permit			
Storage	\$100.00		Res. No. 27-94
Discharge	\$100.00		Res. No. 27-94
Parking Tickets – if not paid within thirty (30) days of issuance, will be reissued as a citation			
Violation < 5 days	\$10.00	11/21/06	Ord. No. 28-06
Violation > 5 days	\$20.00	11/21/06	Ord. No. 28-06
Dog License Fee – annually, each January 1 <sup>st</sup> + \$1.25 State Fee (Neb. RS 54-603)			
Spayed female/male	\$4.00	8/3/10	Ord. No. 18-10
Unspayed Female	\$6.00	8/3/10	Ord. No. 18-10
Dog Impound/Board	\$10.00 more than local vet rate charge	11/17/98	Res. No. 20-98

## 3. Code Enforcement

<b>Description:</b> Fee Schedule	<b>Last Revised:</b> 11/21/23	<b>Established thru:</b> Res. No. 2023-21
Nuisance Abatement	Manpower Rates as kept current by City Administration	

## F. Street Department

Description:	Last Revised:	Established thru:
Wood Chips – per load type		
Pickup Load		\$20.00
Medium-Size Trailer		\$40.00
Farm Truck Load		\$60.00

Large (Gravel) Truck	\$75.00
Semi-Truck Trailer	\$200.00
<b>Description:</b> Fee Schedule	<b>Last Revised:</b> 4/18/23
<b>Established thru:</b> Res. No. 2023-3	
Burn Site Fees	
<b>DAILY</b> – due back twenty-four (24) hours from time of issuance	
Individual (City limits)	\$15.00
Business (City limits)	\$100.00
Individual (County limits)	\$30.00
Business (out of City limits)	\$100.00
<b>ANNUAL</b> – requires \$75.00 returnable deposit at issuance, renewal each January 1st	
Deposit Fee	\$75.00 (9/6/11, Res. No. 20-11)
Individual (City limits)	\$75.00
Individual (County limits)	\$150.00
Business (within County limits)	\$500.00

## PART II: BUILDING AND CONSTRUCTION

### A. Building Permits – Commercial & Residential

For the purpose of determining the estimated cost of work for residential projects, the following minimum square footage valuations will be used for new residential construction, additions, remodels, and residential accessory buildings:

Description: Fee Schedule	Last Revised: 2/21/17	Established thru: Ord. No. 2017-05
Finished New Construction		\$112.65 per sq. ft.
Finished Basement		\$56.30 per sq. ft.
Unfinished Basement		\$15.00 per sq. ft.
Garage		\$44.63 per sq. ft.

Once the valuation of the building has been established the fee will be calculated from the Fee Schedule provided below:

Description: Fee Schedule	Last Revised: 2/21/17	Established thru: Ord. No. 2017-05
<b>Estimated Cost of Work</b>		<b>Permit Fee</b>
\$0.00 to \$500.00		No permit fee required
\$501 to \$2,000		\$25.00
\$2,001 to \$25,000		\$25.00 plus \$4.00 per \$1,000 or fraction > \$2,000
\$25,001 to \$50,000		\$117.00 plus \$3.00 per \$1,000 or fraction > \$25,000
\$50,001 to \$100,000		\$192.00 plus \$2.50 per \$1,000 or fraction > \$50,000
\$100,001 to \$500,00		\$317.00 plus \$2.00 per \$1,000 or fraction > \$100,000
\$500,001 to \$1,000,000		\$1,117.00 plus \$1.50 per \$1,000 or fraction > \$500,000
\$1,000,001 and over		\$1,867.00 plus \$1.00 per \$1,000 or fraction > \$1,000,000
Additional costs associated with the residential permit fee are as follows:		
Plan Review Fee		10% of building permit
Energy Fees		\$25.00 per dwelling
Additional costs associated with the commercial permit fee are as follows:		
Plan Review Fee		25% of building permit
Energy Fees		\$25.00 minimum or \$0.01 per sq. ft. of building

### B. Accessory Permit Fees

Description: Fee Schedule	Last Revised: 2/21/17	Established thru: Ord. No. 2017-05
Fences (regardless of valuation)		\$25.00
Utility Buildings (up to 200 sq. ft)		\$25.00
Signs		\$1.00 per sq. ft. (\$50.00 minimum)
Building Move		\$50.00
Demolition		\$50.00
Re-Roofing		\$50.00

### C. Other Inspections and Fees

Description: Fee Schedule	Last Revised: 2/21/17	Established thru: Ord. No. 2017-05
Inspections (outside of normal hours)		\$40.00 per hour

Re-Inspections	\$40.00 per hour
Additional Plan Review (changes, alterations, revisions)	\$40.00 per hour
Use of Outside Consultants	Actual Cost
Investigation – Work without a Permit	Double the Permit Fee
Property Maintenance Inspector:	
Failure to Meet 1 <sup>st</sup> or 2 <sup>nd</sup> Compliance Deadline	\$300.00 each time

#### **D. Roll-Off Dumpsters**

<b>Description:</b> Fee Schedule	<b>Last Revised:</b> 2/21/17	<b>Established thru:</b> Ord. No. 2017-05
Refundable Deposit – due at permit issuance		\$200.00
Days: 1-7		\$ 0.00
Days: 8-12		\$ 15.00 per day
Days: 13+		\$ 25.00 per day

#### **E. Plumbing Code**

<b>Description:</b> Fee Schedule	<b>Last Revised:</b> 2/21/17	<b>Established thru:</b> Ord. No. 2017-05
<b>Commercial Plumbing Permits</b>		
\$0.00 to \$500		\$ 50.00
\$500.01 to \$5,000.00		\$100.00
\$5,000.01 to \$10,000.00		\$200.00
\$10,000.01 to \$50,000.00		\$300.00
\$50,000.01 to \$100,000.00		\$400.00
\$100,000 and over		\$400.00 + \$2.00 per \$1K > \$100K
<b>Residential Plumbing Permits</b>		
Base Permit Issuance Fee		\$25.00 plus individual costs below:
Residential Package		\$55.00 per new dwelling unit
Bathtub or Shower		\$15.00
Drinking Unit (RO)		\$15.00
Garbage Disposal		\$15.00
Lavatory - Bath		\$15.00
Lawn Sprinkler System		\$25.00
Sewer Service Line		\$25.00
Sink – Kitchen or Laundry		\$15.00
Water Closet		\$15.00
Water Conditioning Unit		\$15.00
Hot Water Heat System (Geothermal)		\$15.00
Water Heater System		\$15.00
Water Service Line		\$25.00

#### **F. Mechanical Code**

<b>Description:</b> Fee Schedule	<b>Last Revised:</b> 2/21/17	<b>Established thru:</b> Ord. No. 2017-05
<b>Commercial Mechanical Permits</b>		

Estimated Cost of Work	
\$ 0.00 to \$ 500.00	\$ 50.00
\$ 500.01 to \$ 5,000.00	\$100.00
\$ 5,000.01 to \$ 10,000.00	\$200.00
\$10,000.01 to \$ 50,000.00	\$300.00
\$50,000.01 to \$100,000.00	\$400.00
Over \$100,000.00	\$400.00 + \$2.00 per \$1K value
<b>Residential Mechanical Permits</b>	
Permit Issuance Fee – New or Replacement	\$25.00 plus individual costs below:
Residential	\$50.00 per new dwelling unit
Air Conditioning Unit	\$25.00
Furnace	\$25.00
Heat Pumps	\$25.00
Wall or Floor Heaters	\$25.00
Decorative Fireplace	\$25.00
Wood Burning System	\$25.00
Humidifier	\$15.00
Kitchen or Bath Exhaust	\$15.00
Ventilation Fans	\$15.00
Clothes Dryers	\$15.00
Alterations to Existing System	\$25.00

### **G. Specialized Trade and Contractor Registration and Licensing**

<b>Description:</b> Fee Schedule	<b>Fee:</b>	<b>Last Revised</b>	<b>Established Thru:</b>
Registration/License Fees (Annual unless otherwise listed)			
Late Registration Fees: \$20.00 (<30 days); \$40.00 (31-60 days); \$60.00 (61 – 90 days)			
Drain Layer Contractor	\$ 75.00	2/21/17	Ord. No. 2017-05
Owner/Master Electrician Contractor	\$ 20.00	11/15/22	Res. No. 2022-31
Journeyman Electrician Contractor	\$ 10.00	11/15/22	Res. No. 2022-31
Electrician’s Apprentice	\$ 1.00	11/15/22	Res. No. 2022-31
Master Mechanical Contractor	\$ 75.00	2/21/17	Ord. No. 2017-05
Journeyman Mechanical Contractor	\$ 50.00	2/21/17	Ord. No. 2017-05
Special Master Mechanical <b>(One-Job Only)</b>	\$150.00	2/21/17	Ord. No. 2017-05
Master Plumber Contractor	\$ 75.00	2/21/17	Ord. No. 2017-05
Journeyman Plumber	\$ 50.00	2/21/17	Ord. No. 2017-05
Plumber’s Apprentice	\$ 5.00	2/21/17	Ord. No. 2017-05
Special Master Plumber <b>(One-Job Only)</b>	\$150.00	2/21/17	Ord. No. 2017-05
Lawn Sprinkler Installer Contractor	\$ 75.00	2/21/17	Ord. No. 2017-05
Water Conditioning Contractor/Installer	\$ 75.00	2/21/17	Ord. No. 2017-05

**H. Public Property and Right-of-way**

<b>Description:</b> Fee Schedule	<b>Fee:</b>	<b>Last Revised</b>	<b>Established Thru:</b>
Construct Utilities in City Right-of-Way (ROW)			
Base Permit plus:	\$25.00	6/7/22	Res. No. 2022-21
Trenching, Boring, & Overhead Lines	\$ 0.12/foot	6/7/22	Res. No. 2022-21
Replacement of Existing Lines	\$ 0.06/foot	6/7/22	Res. No. 2022-21

## PART III: LAND DEVELOPMENT, PLANNING, AND ZONING

### A. Subdivision Development

<b>Description:</b> Fee Schedule	<b>Last Revised:</b> 7/15/03	<b>Established Thru:</b> Res. No. 27-03
Administrative Subdivision	\$100.00 + filing fees	
Minor Subdivision	\$100.00 + \$100.00 notification fee + filing fees	
Preliminary Plat	\$400.00 + \$40.00 per lot + \$100.00 notification fee (\$2,000.00 max fee)	
Final Plat	\$100.00 + \$10.00 per lot + filing fees	
Replat	\$100.00 + \$10.00 per lot + filing fees	
Corrected Plat	\$100.00 + filing fees	
*For fee purposes, lots exclude outlots.		

### B. Zoning

<b>Description:</b> Fee Schedule	<b>Last Revised:</b> 7/15/03	<b>Established Thru:</b> Res. No. 27-03
Board of Zoning Appeals	\$100.00 + \$100.00 notification fee + filing fees	
Change of Zone	\$200.00 + \$100.00 notification fee	
Text Change	\$200.00 + \$100.00 notification fee	
Special Use Permit	\$200.00 + \$100.00 notification fee + filing fees	
Planned Unit Development		
Pre-Application	\$100.00	
Preliminary Plan	\$200.00	
Final Plan	\$200.00	
Home Occupation Permit	\$10.00 (Established 6/18/91, Res. No. 16-91)	

### C. Recording Fee

Pursuant to NE Statute 33-109	
Recording Fee	\$10.00 (1 <sup>st</sup> page) + \$6.00 each add. Page

## PART IV: PUBLIC WORKS AND UTILITIES

### A. Utility Billing—Electric, Water Services

Description:	Fee:	Last Revised:	Established through:
<b><i>Deposit Fees: (returned to customer if no delinquencies for two years)</i></b>			
Domestic Electric and Water	\$140.00	5/20/14	Res. No. 2014-14
Domestic Electric only	\$100.00	5/20/14	Res. No. 2014-14
Domestic Water Only	\$ 40.00	5/20/14	Res. No. 2014-14
Commercial Service	12-mo avg of similar user	5/20/14	Res. No. 2014-14
<b><i>Late Fee Charge</i></b>	10% of bill, NTE \$50.00	10/5/99	Ord. No. 47-99
<b><i>Reconnect Fee (if disconnected due to non-payment or consumer request)</i></b>			
During Regular Business Hours	\$25.00	8/17/99	Ord. No. 39-99
Outside Regular Business Hours	\$65.00	11/21/06	Ord. No. 29-06

### B. Electric Service

A tariff of monthly rates will be charged for each meter installed in the electric distribution system of the City. One meter shall be installed to service one user. If additional buildings are required for a given user, they shall be interconnected by the customer to obtain one meter. If additional meters and services are requested by the customer, each shall be treated as a separate customer. It will be at the City's sole discretion to determine what installation of service is most appropriate and beneficial to the system as a whole, which decision will be based on, but not limited to, proximity, continuity, similarity and compatibility of service.

The rate schedule for users is established through City Code: **§ 237-3.2, § 237-3.3, § 237-3.4, § 237-3.5, § 237-3.6, § 237-3.7, § 237-3.8.**

### C. Sewer Service

The use charge shall be applied separately to each individual user having a separate water meter which measures water contributed to or discharged into the sanitary sewerage system and shall be determined by the water meter reading for water furnished by the Water Department of the City or by privately owned water supply which may contribute to or discharge into the sanitary sewerage system. In the case of an unmetered water supply, the quantity of water used and discharged into the sanitary sewerage system shall be determined to the satisfaction of the Council and at the expense of the owner of the unmetered water supply. If the quantity of unmetered water discharged into the sanitary sewerage system is estimated by the Council to be ordinarily in excess of the amount permitted to be used under the minimum charge as applied to said user, the Council may require such water supply to be metered at the expense of the owner or user.

The rate schedule for users is established through City Code: **§ 325-8.1, § 325-8.2, § 325-8.3.**

#### 1. *Fees and Charges*

Description:	Fee:	Last Revised:	Established Thru:
<u>Tap Fees for Sewer Connections</u>			
Connect Fee – Customer required to provide materials and make tap under City supervision	\$250.00 per connection	10/4/05	Res. No. 20-05
Septic Hauler License	\$5.00/K gal (\$15 min)	8/1/89	Ord. No. 33-89

Septage Dump Fee	\$25.00/3,000 gallons	11/21/23	Res. No. 2023-21
------------------	-----------------------	----------	------------------

**D. Water Service**

A tariff of monthly water rates will be charged for each meter installed in the water system of the City. The Water/Wastewater Director or his duly authorized agent may make a determination to forego the meter charge on irrigation systems when the meter is winterized and shut-off, if it is in the best interest of the City to do so. The rate schedule for users is established through City Code: **§ 390-1.26.**

*1. Fees and Charges*

<b>Description:</b> Fees	<b>Last Revised:</b> 5/16/23	<b>Established Thru:</b> Ord. No. 2023-6	
<u>Tap Fees for Water Connections</u>			
Temporary Connect Fee	\$120.00 (non-refundable)		
Up to 2" connection	City will provide materials and make taps. Fees based on the cost of materials and labor supplied by the City.		
> 2" connection	Customer will provide materials and make taps under City supervision. Fees based on materials and labor supplied by the City.		
<u>Unmetered Fire Service Lines</u>			
Connect Fee	\$100.00		
Up to 2" connection	City will provide materials and make taps. Fees based on the cost of materials and labor supplied by the City.		
> 2" connection	Customer will provide materials and make taps under City supervision.		
<b>Description:</b> Fees	<b>Last Revised:</b> 4/4/95	<b>Established Thru:</b> Ord. No. 22-95	
Well Permit Application	\$100.00		
Temporary Well Permit	\$ 50.00	5/4/93	Ord. No. 15-93
Well-Driller Registration (annually)	\$ 25.00		

2. Consideration of a Professional Services Agreement with The Schemmer Associates for Preliminary Design Services of the Recycling Center Retaining Wall and Authorization for Mayor to Sign All Documents - City Engineer Oneby

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

RECYCLING CENTER RETAINING WALL ANALYSIS

**PRELIMINARY DESIGN**

**Professional Services Provided: Retaining Wall Preliminary Design**

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – SERVICES OF ENGINEER .....	1
1.01 Scope.....	1
ARTICLE 2 – OWNER’S RESPONSIBILITIES.....	1
2.01 General .....	1
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES.....	1
3.01 Commencement .....	1
3.02 Time for Completion .....	2
ARTICLE 4 – INVOICES AND PAYMENTS .....	2
4.01 Invoices .....	2
4.02 Payments .....	2
ARTICLE 5 – OPINIONS OF COST .....	3
5.01 Opinions of Probable Construction Cost .....	3
5.02 Opinions of Total Project Costs .....	3
ARTICLE 6 – GENERAL CONSIDERATIONS .....	3
6.01 Standards of Performance .....	3
6.02 Design Without Construction Phase Services .....	4
6.03 Use of Documents .....	5
6.04 Insurance .....	6
6.05 Suspension and Termination .....	6
6.06 Controlling Law.....	8
6.07 Successors, Assigns, and Beneficiaries.....	8
6.08 Dispute Resolution.....	8
6.09 Environmental Condition of Site.....	9
6.10 Indemnification and Mutual Waiver .....	9
6.11 Miscellaneous Provisions .....	10
ARTICLE 7 – DEFINITIONS .....	11
7.01 Defined Terms .....	11
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS .....	12
8.01 Exhibits Included.....	12
8.02 Total Agreement .....	13

**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 design services for:

Retaining wall analysis along east property line of the Seward Recycling Center.

\_\_\_\_\_ (“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 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 1 page.

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

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

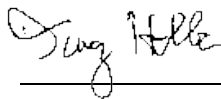
Title: \_\_\_\_\_

Title: Principal

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

Date: 11/7/2023

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 6 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 3 , 2023.

## **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**

## **RECYCLING CENTER RETAINING WALL ANALYSIS**

(Project Description)

This project includes work associated with design services related to the completion of preliminary engineering plans to construct a retaining wall along the east property line of the Seward Recycling Center located in Seward, Nebraska.

The east property boundary of the Seward Recycling Center parallels a vacated alleyway where erosion and bank sloughing has occurred. There is no existing retaining wall.

The required services will include project administration, alternatives analysis, preliminary retaining wall design, and geotechnical engineering. 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 including the Nebraska DOT Construction Specifications.

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

**Tasks specifically not included:**

- Right-of-way appraisal and acquisition services.
- Title searches.
- Topographic survey.
- All construction phase services.
- Final design of construction drawings for retaining wall.
- Sanitary sewer design.
- Permitting.
- Bid Phase Services.

***Project Schedule***

- |    |                                 |   |
|----|---------------------------------|---|
| a. | November 8 <sup>th</sup> , 2023 | Notice to Proceed (NTP)                   |
| b. | February 9 <sup>th</sup> , 2024 | Alternatives Analysis & Preliminary Plans |

***Design Plan Sheets***

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

- a. Cover Sheet
- b. Typical Section (3 alternatives)
- c. Horizontal Control
- d. General Information
- e. Retaining Wall Plan and Profile (3 alternatives)
- f. Miscellaneous Details

***Submittals***

The following formal submittals are anticipated:

- a. Alternatives Analysis & Preliminary (30%) Plans

***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 November 2023 through February 2024.

- b. *Progress Meetings with City Staff*- Progress meetings with City staff will be conducted to update progress and seek resolution of identified issues. One (1) progress meeting is 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.

**II. Geotechnical Engineering-** A geotechnical report will be prepared detailing recommendations for retaining wall design. This task includes:

- a. *Data Research*: The fee associated with these borings assumes the project site is easily accessible for truck-mounted drilling equipment and rights of access can be obtained from adjacent owners. These test borings will be in accordance with schedules located in the most recent NDOT Geotechnical Policy and Procedures Manual. The field exploration program consists of 2 borings near the east property line. Boring depths are assumed to be 25 feet.
- b. *Design Recommendations*
- c. The Consultant shall provide geotechnical recommendations for the primary purpose of developing geotechnical design criteria for use in designing retaining walls for the project.
- d. *Geotechnical Report*
- e. The Consultant shall submit a copy of the geotechnical report to the City of Seward for review.

**III. Preliminary Design-** This task will include site inspection, data collection, utility coordination, geotechnical analysis, retaining wall alternatives analysis, typical sections, retaining wall plan and profile, opinion of probable construction costs, and plan-in-hand (30% design) review 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. *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.

- d. *Retaining Wall Alternatives Analysis*- Three alternatives for stabilizing the failing slope will be prepared:
  - a. Stabilized fill slope scenario which would not include a retaining wall.
  - b. Tall retaining wall scenario along east property line. This scenario would consider both gravity block wall and cast-in-place concrete retaining walls.
  - c. Shorter height retaining wall will stabilize fill slope between wall and property line. This alternative would locate a wall near the existing building.
- e. *Typical Sections* – Retaining wall typical sections will be developed for each alternative.
- f. *Retaining Wall Plan and Profiles* – Wall geometric layout and vertical profile will be shown on plan and profile sheets for each alternative. 3 P&P sheets are assumed to be necessary.
- g. *Opinion of Probable Construction Costs*- NDOT bid items and unit prices will be used to compute quantities and submit an opinion of probable construction cost for each 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.

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.



**RECYCLING CENTER RETAINING WALL**

City of Seward

Preliminary Design

EXHIBIT B: FEE SUMMARY SCHEDULE

**Direct Salary Costs**

<b>PROJECT TASK &amp; PERSONNEL CLASSIFICATION</b>	<b>ESTIMATED HOURS</b>	<b>2023 RATE</b>	<b>ESTIMATED LABOR CHARGE</b>	<b>TASK COST</b>	
<b>I. Project Administration</b>					
PRINCIPAL	4	\$245.00	\$980.00	\$5,695.00	
PROJECT MANAGER	22	\$170.00	\$3,740.00		
SENIOR PROJECT ENGINEER	0	\$186.67	\$0.00		
REGISTERED DESIGN ENGINEER	6	\$162.50	\$975.00		
ENGINEER/ SENIOR TECHNICIAN	0	\$121.00	\$0.00		
ENGINEERING TECHNICIAN	0	\$83.33	\$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	\$80.00	\$0.00		
<b>II. Geotechnical Engineering</b>					
PRINCIPAL	0	\$245.00	\$0.00		\$6,059.67
PROJECT MANAGER	0	\$170.00	\$0.00		
SENIOR PROJECT ENGINEER	27	\$186.67	\$5,040.00		
REGISTERED DESIGN ENGINEER	0	\$162.50	\$0.00		
ENGINEER/ SENIOR TECHNICIAN	3	\$121.00	\$363.00		
ENGINEERING TECHNICIAN	5	\$83.33	\$416.67		
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	3	\$80.00	\$240.00		
<b>III. Preliminary Design</b>					
PRINCIPAL	2	\$245.00	\$490.00	\$17,912.50	
PROJECT MANAGER	14	\$170.00	\$2,380.00		
SENIOR PROJECT ENGINEER	8	\$186.67	\$1,493.33		
REGISTERED DESIGN ENGINEER	49	\$162.50	\$7,962.50		
ENGINEER/ SENIOR TECHNICIAN	20	\$121.00	\$2,420.00		
ENGINEERING TECHNICIAN	38	\$83.33	\$3,166.67		
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	\$80.00	\$0.00		
<b>Subtotal Labor Costs</b>	<b>201</b>		<b>\$29,667.17</b>		

<b>DIRECT NON-SALARY COSTS:</b>	<b>No.</b>	<b>Rate (\$)</b>	
Printing	1	\$ 300.00	\$ 300.00
Mileage	426	\$ 0.585	\$ 249.21
Survey Mileage		\$ 0.585	\$ -
Geotech Mileage	310	\$ 0.585	\$ 181.35
Geotech (Field Drilling Subcontractor)	1	\$ 1,740.00	\$ 1,740.00
Geotech (Lab Reimbursable)	1	\$ 210.00	\$ 210.00
Title Searches		\$ 200.00	\$ -
Lodging		\$ 70.00	\$ -
Per Diem		\$ 39.00	\$ -
Public Meeting		\$ 500.00	\$ -
Storm Sewer Video Inspection		\$ -	\$ -
Wetland Delineation		\$ 5,000.00	\$ -
<b>Sub-Total Direct Non-Salary Costs</b>			<b>\$ 2,680.56</b>

**TOTAL ESTIMATED FEE** **\$32,347.73**

This is **EXHIBIT C**, consisting of 1 page, 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) – Lump Sum Method of Payment*

B. 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. A Lump Sum amount of **\$32,347.73** based on the hours/fee distribution identified in Appendix B.
2. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and mileage. Other reimbursable expenses (permit fees, etc.) outside of mileage are not included in the Lump Sum and are to be paid by the Owner.
3. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

C2.02 [Not used]

C2.03 [Not used]

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.	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

© 1988-2015 ACORD CORPORATION. All rights reserved.

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 an Agreement with Clark & Enersen for Design Services of the Civic Center and Authorization for Mayor to Sign All Documents - City Administrator Butcher



# AIA® Document B102® – 2017

## Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

**AGREEMENT** made as of the Eighth day of November in the year Two Thousand Twenty-Three  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, legal status, address and other information)*

City of Seward  
537 Main Street  
Seward, Nebraska 68434

and the Architect:  
*(Name, legal status, address and other information)*

Clark & Enersen, Inc.  
1010 Lincoln Mall, Suite 200  
Lincoln, Nebraska 68508

for the following (hereinafter referred to as "the Project"):  
*(Insert information related to types of services, location, facilities, or other descriptive information as appropriate.)*

Seward Civic Center

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

## TABLE OF ARTICLES

1	ARCHITECT'S RESPONSIBILITIES
2	OWNER'S RESPONSIBILITIES
3	COPYRIGHTS AND LICENSES
4	CLAIMS AND DISPUTES
5	TERMINATION OR SUSPENSION
6	COMPENSATION
7	MISCELLANEOUS PROVISIONS
8	SPECIAL TERMS AND CONDITIONS
9	SCOPE OF THE AGREEMENT

### ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:

*(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2.)*

Design and Construction Services to be determined during design meetings.

§ 1.1.1 The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 1.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 1.3 The Architect identifies the following representative authorized to act on behalf of the Architect with respect to the Project.

*(List name, address, and other contact information.)*

Tim Rogers

§ 1.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 1.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 6.2.3.

Init.

/

§ 1.5.1 Commercial General Liability with policy limits of not less than Two Million (\$ 2000000 ) for each occurrence and Four Million (\$ 4000000 ) in the aggregate for bodily injury and property damage.

§ 1.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1000000 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 1.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 1.5.1 and 1.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 1.5.4 Workers' Compensation at statutory limits.

§ 1.5.5 Employers' Liability with policy limits not less than One Million (\$ 1000000 ) each accident, One Million (\$ 1000000 ) each employee, and One Million (\$ 1000000 ) policy limit.

§ 1.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Five Million (\$ 5000000 ) per claim and Five Million (\$ 5000000 ) in the aggregate.

§ 1.5.7 **Additional Insured Obligations.** If requested by the Owner, to the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 1.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 1.5.

## ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 2.2 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

*(List name, address, and other contact information.)*

§ 2.3 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of

the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 2.4 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 2.5 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 2.6 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

### **ARTICLE 3 COPYRIGHTS AND LICENSES**

§ 3.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 3.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 3.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the purposes of evaluating, constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 5 and Article 6. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 5.4, the license granted in this Section 3.3 shall terminate.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1. The terms of this Section 3.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 5.4.

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 3.5 Except as otherwise stated in Section 3.3, the provisions of this Article 3 shall survive the termination of this Agreement.

### **ARTICLE 4 CLAIMS AND DISPUTES**

#### **§ 4.1 General**

§ 4.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1.

§ 4.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 4.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 5.7.

#### § 4.2 Mediation

§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 4.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 4.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box.)*

Arbitration pursuant to Section 4.3 of this Agreement

Litigation in a court of competent jurisdiction

Other *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

*(Paragraphs deleted)*

§ 4.4 The provisions of this Article 4 shall survive the termination of this Agreement.

#### ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the

Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 5.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 5.6 If the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the Architect terminates this Agreement pursuant to Section 5.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 5.7 In addition to any amounts paid under Section 5.6, if the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the Architect terminates this Agreement pursuant to Section 5.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 Termination Fee:

0

.2 Licensing Fee, if the Owner intends to continue using the Architect's Instruments of Service:

0

§ 5.8 Except as otherwise expressly provided herein, this Agreement shall terminate  
*(Check the appropriate box.)*

One year from the date of commencement of the Architect's services

One year from the date of Substantial Completion

Other

*(Insert another termination date or refer to a termination provision in an attached document or scope of service.)*

If the Owner and Architect do not select a termination date, this Agreement shall terminate one year from the date of commencement of the Architect's services.

§ 5.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 5.7.

Init.

## ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect as set forth below for services described in Section 1.1, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.

*(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)*

8.5% of Construction Costs at the time of Construction

### § 6.2 Compensation for Reimbursable Expenses

§ 6.2.1 Reimbursable Expenses are in addition to compensation set forth in Section 6.1 and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 6.2.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent ( 0 %) of the expenses incurred.

§ 6.2.3 **Architect's Insurance.** If the types and limits of coverage required in Section 1.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 1.5, and for which the Owner shall reimburse the Architect.)*

### § 6.3 Payments to the Architect

#### § 6.3.1 Initial Payments

§ 6.3.1.1 An initial payment of Zero (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

#### § 6.3.2 Progress Payments

§ 6.3.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Forty-Five ( 45 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

%

Init.

§ 6.3.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 6.3.2.3 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3.

§ 7.2 Except as separately defined herein, terms in this Agreement shall have the same meaning as those in AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 7.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 7.4 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 7.4.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.5 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 7.6 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 7.7 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 7.8 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 7.8 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 5.4.

§ 7.9 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 7.9.1. This Section 7.9 shall survive the termination of this Agreement.

§ 7.9.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of

Init.

compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 7.9.

§ 7.10 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

**ARTICLE 8 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:  
*(Include other terms and conditions applicable to this Agreement.)*

**ARTICLE 9 SCOPE OF THE AGREEMENT**

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 9.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B102™-2017, Standard Form Agreement Between Owner and Architect  
*(Paragraphs deleted)*

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

  
\_\_\_\_\_  
**ARCHITECT** *(Signature)*

\_\_\_\_\_  
Tim Ripp Senior Principal

\_\_\_\_\_  
*(Printed name, title, and license number, if required)*

# Additions and Deletions Report for AIA® Document B102® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:10:26 ET on 11/08/2023.

## PAGE 1

**AGREEMENT** made as of the Eighth day of November in the year Two Thousand Twenty-Three

...

City of Seward  
537 Main Street  
Seward, Nebraska 68434

...

Clark & Enersen, Inc.  
1010 Lincoln Mall, Suite 200  
Lincoln, Nebraska 68508

...

Seward Civic Center

## PAGE 2

Design and Construction Services to be determined during design meetings.

...

Tim Rogers

## PAGE 3

§ 1.5.1 Commercial General Liability with policy limits of not less than Two Million (\$ 2000000) for each occurrence and Four Million (\$ 4000000) in the aggregate for bodily injury and property damage.

§ 1.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1000000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 1.5.5 Employers' Liability with policy limits not less than One Million (\$ 1000000) each accident, One Million (\$ 1000000) each employee, and One Million (\$ 1000000) policy limit.

§ 1.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Five Million (\$ 5000000) per claim and Five Million (\$ 5000000) in the aggregate.

Litigation in a court of competent jurisdiction

**§ 4.3 Arbitration**

~~§ 4.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 4.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 4.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 4.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 4.3.4 Consolidation or Joinder~~

~~§ 4.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 4.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

0

...

0

...

One year from the date of Substantial Completion

8.5% of Construction Costs at the time of Construction

...

§ 6.2.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent ( 0 %) of the expenses incurred.

...

§ 6.3.1.1 An initial payment of Zero (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

...

§ 6.3.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Forty-Five ( 45 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

**PAGE 8**

§ 7.4 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

§ 7.4.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth ~~in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form,~~ shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

**PAGE 9**

~~.2 — AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203 2013 incorporated into this Agreement.)~~

~~.3 — Exhibits:  
(Check the appropriate box for any exhibits incorporated into this Agreement.)~~

~~— AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204 2017 incorporated into this Agreement.)~~

~~— Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement.)~~

~~.4 — Other documents:  
(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)~~

...

Tim Ripp Senior Principal



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Myriah Stansberry, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:10:26 ET on 11/08/2023 under Order No. 4104239681 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B102™ – 2017, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
*(Signed)*

Special Projects Coordinator

*(Title)*

November 8, 2023

*(Dated)*

4. Update on the Wellness Center:

A. Discussion Regarding Financing Options - Executive Director Brase

**CITY ADMINISTRATOR'S REPORT**

## CITY ADMINISTRATORS REPORT – 11/21/23

- Monitoring a number of street projects on East Seward (construction), design on East Hillcrest, and drainage near Park Street & Bradford Street (construction).
- Water Tower project underway, working on final paint design.
- Assisted with Civic Center items and issues, working with Commission on Building Renovation next steps. Working on getting sewer information for restroom remodels and sewer upgrades. Attended third formal design meeting for Phase I with Clark Enersen.
- Reviewed additional DTR items and worked with applicants on needed documents.
- Continued to work with RDG Planning to complete blight study.
- Working with Wellness Center Executive Director Brase on numerous items and follow ups. Working on final bonding and cashflows with local banks and bonding agency.
- Finalizing items related to closeout of 2019 Flood FEMA items.
- Met with City Attorney to discuss a number of items.
- Met with potential tenants for the Seward Community Golf Course restaurant.
- Attended updated construction meeting with Sampson, BVH, Shane Baack and Joel Brase for the Wellness Center.
- Attended Seward Public Schools Strategic Planning Meetings.
- Met with a potential Project Team for an economic development project in the Rail Campus.
- Offices Closed for Veterans Day on November 10<sup>th</sup>.
- Met on a number of personnel issues.
- Presented to the Kiwanis Club and Rotary Club on the LB 840 Special Election.
- Attended meeting with HDR Engineers, JEO and City Staff to work on the updates to the 10<sup>th</sup> Street Pump House upgrade project.
- Met with Bond Counsel Mike Rogers, Kelly Hoffchneider, Joel Brase on Wellness Center final financing, leases, and agreements.
- Met with a citizen about yard repairs due to a waste water backup excavation project.
- Met with an engineering Team, City Staff, Councilmembers Stryson and Wergin to discuss design planning for updates to the Water Treatment Plant RO System.
- Two full days of audit took most of the time for the City Hall Staff.
- Police Officer I interviews with Mayor Eickmeier and Chief Peters.
- Took a day off to tend to my father's estate.

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

### **Police Department**

- Suicide prevention coalition meeting 11/14.
- Continuing background investigations on PO I applicants.
- PO I interviews at the PD 11/16.

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

- Hosting Southern 7 Clerks on 11/16 at La Cocina.
- Looking to finalize the Master Fees Resolution.
- Final police officer interviews this week.

### **Water/Wastewater Department**

- Clarifier Cleaning.
- SW. 3 Communications Issue.

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

- Safety meeting 11/17.

- Cattle Training Facility draft on 11/14.
- Demo Centennial Restroom.

#### **Civic Center**

- Quiz Bowl Wednesday.
- Finalized timelines for closing of the building at renovation meeting.
- Contacted Terracon about asbestos survey.

#### **Electric Department**

- Check and install Christmas decorations.
- Follow up of Allo installations and Windstream.
- Read meters.

#### **Street Department**

- Tree removal.
- Cold mix patch work.
- Clean up burn pile (move ash).

#### **Library**

- Bonus movie for grownups, Baker to CASTL all day and puzzle tournament 11/16/23.
- Jerry Pfabe presentation of Seward County during WWII 11/19/23.
- Gutter and light work on exterior of library still need completed from 2022 hail damage.

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

- Nebraska Code Officials meeting Nov. 6 & 7.
- Starting civil action at 434 S. 2<sup>nd</sup> St.
- Reviewing final Row plan for Nextlink.

#### **Engineering**

- Design services proposal for Recycling Center retaining wall.
- Altitude valve/submittal 012 issues, CO #1, logo (identify subcontractor) and temp power.
- Complete application for Street Superintendent.

#### **Finance Dept.**

- Payroll processing this week.
- Claims.
- Auditors will be here Wednesday and Thursday.

#### **Seward Wellness Center**

- Finalize funding decision.
- Finalize decision on signage company.

**FUTURE REQUESTS FOR COUNCIL AGENDA ITEMS OR ADMINISTRATIVE  
ACTION  
ANNOUNCEMENT OF UPCOMING EVENTS  
MOTION TO ADJOURN**

---

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.

---

Derek Bargmann, City Clerk

---

Date