



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

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**Tuesday, May 7, 2024**

**7:00 PM**

**Municipal Building Council Chambers**

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**NOTICE IS HEREBY GIVEN** that a meeting of the City Council of the City of Seward, Nebraska will be held at 7:00 PM on Tuesday, May 7, 2024, in the Council Chambers, 142 N 7th Street, Seward, Nebraska in which the meeting will be open to the public. The Mayor and City Council reserve the right to adjourn into Closed Session as per Section 84-1410 of the Nebraska Revised Statutes. An Agenda for such meeting, kept continually current, is available at the Office of the City Clerk, 537 Main Street, Seward, Nebraska, during normal business hours. Individuals requiring physical or sensory accommodations, who desire to attend or participate, please contact the City Clerk's Office at 402.643.2928 no later than 3:30 PM on the Friday preceding the Council Meeting.

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

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

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

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

**ROLL CALL**

**CONSENT AGENDA**

1. Claims & Payables Reports

CLAIMS LIST  
4/30/2024  
COUNCIL MEETING

Abbreviations: AF-Annual Fee; BE-Benefits; BU-Building Upkeep; CI-Capital Improve  
EQ-Equipment; ENG-Engineering; EX-Expense; FA-Fixed Asset; GS-Gas; GU-Ground Upk  
INV-Inventory; LG-Legal; MA-Maintenance; MC-Miscellaneous; MH-Merchandise; MI-Mil  
Memberships; OI-Oil; OP-Operations; PF-Postage; PU-Publications; RE-Repairs; RI-  
Restaurant; SA-Salaries; SE-Services; SL-Sales; ST-Sales Tax; Su-Supplies; TE-Te  
TO-Tools; UN-Uniforms; UT-Utilities

ADE	GU	85.78
AKRS Equipment	ER	119.77
Allegiant	CI	285.6
Allo	UT	401.58
Amazon Business	MAT	456.23
Anderson Auto Group	AR	2,404.46
Aqua-Chem Inc	SU	5,675.15
Awards Unlimited Inc	SE	16.62
Barco Municipal Products	SU	91.32
Bizco Technologies	IT	6,125.30
Blue Cross Blue Shield Ne	BE	67,237.80
Border States Industries	WR	2,830.16
Bound Tree Medical Llc	MS	1,870.78
Bridgestone Golf	MH	67.84
Callaway Golf	MH	255.18
Campbell Cleaning	SE	1,405.00
Capital Business-Dallas	SE	1,013.33
Cash-Wa Distributing Co	SU	896.24
Chase Card Service		12,572.49
Harbor Freight	SU	267.12
Amazon.com	SU	203.52
Amazon.com	SU	136.12
SP Astra Cases	CI	267.68
Walmart	SU	21.47
Sam's Club	SU	157.51
4Imprint	SU	206.41
Phillips 66	MC	12.00
Go Daddy	SE	55.16
Office Max/Office Depot	SU	23.48
Emergency Solutions	SE	160.86
IOFM	TR	895.00
Microsoft	MS	274.94
NLE	TR	400.00
WPY	TR	150.00
Amazon.com	SU	35.79
Walmart	SU	39.42
Rock Auto	RE	74.57
Sam's Club	SU	429.97
Sparetime	ML	84.09
Dragon Palace	ML	102.93
Herpolsheimers	RE	77.75
Sam's Club	SU	48.70

Valentino's	ML	120.76	
Stauffers	ML	236.25	
Party America	SU	46.58	
Runza	ML	143.74	
Amazon.com	EQ	317.14	
Uline	SU	295.26	
Amazon.com	EQ	339.90	
Amazon.com	SU	144.96	
UNL Marketplace	TR	72.34	
Constant Contact	SE	23.00	
Pac N Save	BU	11.58	
Super Saver	SU	26.09	
Sam's Club	SU	64.46	
ForeUP	IT	686.08	
Golf Course Superintendent	MS	465.00	
NE Turf Assoc	MS	50.00	
NE GCSAA	MS	160.00	
Walmart	BU	36.92	
On Deck Sports	EQ	2299.98	
Amazon.com	RE	25.79	
Amazon.com	EQ	211.81	
Event Groove	SU	348.26	
AED Brands	SU	760.03	
Walmart	SU	154.80	
Sam's Club	SU	412.13	
Amazon.com	SU	49.95	
Uline	SU	46.50	
Walmart	SU	25.94	
Walmart	SU	152.50	
Tracfone	SE	34.50	
Amazon.com	SU	198.08	
American Red Cross	TR	175.00	
USPS	PF	93.60	
ELDT.com	TR	77.63	
Nebraska Health Lab	TE	141.44	
City Seward Buildings/Gr	RI		6,000.00
City Seward Electric Fund	UT		42,622.92
City Seward Library Petty	PO		176.3
City Seward Payroll Accou	SA		264,986.47
Codr Plumbing/Excavation	SE		2,424.84
Commonwealth Electric Co	RE		2,279.63
Consolidated Management	ML		80.45
Creative Prod Sourcing	SU		101.53
Danko Emergency Equipment	SU		96.62
Davis Design	SE		880.00
Digital Theater Experts	IT		11,024.00
Eakes Office Solutions	SU		162.6
Emergency Medical Product	MS		50.8
Farmers Coop Seward	DF		452.06
Farmers Valley Football	MS		150
Fastenal Company	SU		477.73

Feld Fire Inc	ER	855
Galls Llc	UN	88.15
Gehring Construction	CI	33,074.25
Gerhold Concrete Co Inc	CI	343.62
H&S Plumb Heat & Air Inc	BU	99.5
Hach Company	TE	106
Harrison Chris	IT	90
HDR Engineering Inc	CI	9,013.40
Hobson Automotive & Tire	OI	128
Hoffschneider Law Pc Llo	SE	5,437.32
Husker Electric Supply Co	SU	5,164.96
Johnson Bros Of Nebraska	MH	823.35
Jones Bank	UT	184.5
K & Z Distributing	MH	514.8
K2 Construction	CI	905,492.97
Last Mile Network Consult	IT	75.3
Lee'S Refrigeration	RE	863.97
Lincoln Winwater Works	INV	808.55
Maguire Iron Inc	CI	172,670.00
Mailand'S Clothing	RE	30
Martin Harrison	RI	922.5
Matheson Tri-Gas Inc	MS	98.85
McMaster Carr	GU	766.84
Mid-American Benefits Inc	BE	5,624.46
Mid-State Engineer/Test	TE	2,453.00
Nebraska D A S Acct Ocio	MA	245
Nebraska Fire Marshal	SE	120
Nebraska Health Lab	TE	108
Nextlink	UT	200
Norris Public Power Distr	UT	1,170.79
Nunn Chris	MC	15
O'Donnell Olivia	RI	40
Olsson	ENG	1,016.54
One Billing Solutions Llc	SE	2,680.67
O'Reilly Automotive Inc	SU	17.99
Peterson Sierra	RI	50
Plunkett'S Pest Control	BU	69.65
Policky Brandon A	RI	52
Principal Financial Group	BE	2,572.26
Purpose Associates	CI	28,166.00
Quality Brands Of Lincoln	MH	1,230.00
Quill Corp	SU	150.48
Rathjen Shad	RI	52
Reed Electric	BU	490.63
Resco	INV	11,954.00
Rose Equipment Inc	RE	1,070.83
Schemmer Architects Engin	CI	79,387.86
Seward Co Chamber/Develop	UT	211.04
Seward Kiwanis Club	SU	45
Short Elliott Hendrickson	CI	35,549.01
Sides Mckenna	SE	300

Small Engine Specialists	ER	20.89
Sol Cards/Unfolding Comms	SE	1,210.00
Sparetime Lounge & Grill	ML	625
Sports Express	SU	831.5
St Louis Michelle	RI	113.73
State Distributing Co	MH	481.95
Terziu Naim	RS	28,497.83
The Fort	UN	424.66
Todd Valley Farms Inc	CI	4,277.00
U S Cellular	UT	142.15
Varner Marilyn D	SE	10
Verizon Wireless	IT	281.64
Wesco Distribution Inc	INV	104,780.25
	CLAIMS TOTAL	1,890,167.22

ments; DO-Donations;  
eep; IT-Technology;  
leage; ML-Meals; MS-  
-Reimbursement; RS-  
sting; TR-Training;

2. Draft Minutes of April 16, 2024, City Council Meeting

**April 16, 2024**

The Seward City Council met at 7:00 p.m. on Tuesday, April 16, 2024, with Mayor Joshua Eickmeier presiding and City Clerk Derek Bargmann recording the proceedings. Upon roll call, the following Councilmembers were present: Megan Kahler, Karl Miller, Tatum Tonniges, John Singleton, Matt Stryson, Rich Wergin, Jonathon Wilken. Councilmembers Absent: Jessica Kolterman. Other officials present: City Administrator Greg Butcher, City Attorney Kelly Hoffschneider, City Engineer Mike Oneby, Wellness Center Director Joel Brase, Building/Zoning & Code Enforcement Director Tim Dworak, and Police Sergeant Russ Frazey.

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

**CONSENT AGENDA CONSIDERATION ITEMS**

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

1. City Codes Director Report
2. City Treasurer Report
3. Claims & Payables Report (totaling \$1,746,271.44)
4. Police Department Report
5. Draft Minutes of April 2, 2024, City Council Meeting.

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

**PUBLIC HEARING**

**1. ORDINANCE TO VACATE THE CITY RIGHT-OF-WAY (ROW) ROAD BETWEEN THE EAST ROW LINE OF COLUMBIA AVE AND THE WEST ROW LINE OF PLUM CREEK LANE IN SUNNY SIDE ADDITION**

Building/Zoning & Code Enf. Director Dworak identified the item as a platted road that never came to fruition for public use. The roadway currently does, and has in the past, served as a driveway for the property owner with no City maintenance provided. The Planning Commission approved the request of vacation of road unanimously. The City will maintain an easement of the sewer line underneath the driveway.

The Mayor opened the public hearing at 7:04 p.m. With no public comment received, the public hearing was closed at 7:04 p.m.

Councilmember Singleton introduced Ordinance No. 2024-7. Councilmember Miller moved, seconded by Councilmember Singleton, to dispense with the statutory rule.

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

Councilmember Wergin moved, seconded by Councilmember Stryson 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. 2024-7, AN ORDINANCE TO VACATE THE CITY RIGHT-OF-WAY OF ROAD BETWEEN THE EAST ROW LINE OF COLUMBIA AVE AND THE WEST ROW LINE OF PLUM CREEK LANE IN SUNNY SIDE ADDITION. AS HEREINAFTER SET FORTH; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.**

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

**2. CONSIDERATION OF AN ORDINANCE RE-ZONING PROPERTY IDENTIFIED AS BIG BLUE SUNSET ADDITION FROM 'AG-AGRICULTURAL DISTRICT' TO 'RR – RURAL RESIDENTIAL DISTRICT'**

Mr. Dworak noted the proposed rezone is not within City limits, but rather, the extra-territorial jurisdiction (ETJ) of the City. The rezone would separate an existing residence from agricultural land via minor plat revision. The Planning Commission approved the request unanimously.

The Mayor opened the public hearing at 7:06 p.m. With no public comment received, the public hearing was closed at 7:06 p.m.

**April 16, 2024**

Councilmember Miller introduced Ordinance No. 2024-8. Councilmember Wergin moved, seconded by Councilmember Tonniges, to dispense with the statutory rule.

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

Councilmember Tonniges moved, seconded by Councilmember Kahler 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. 2024-8, AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF SEWARD, NEBRASKA; TO REZONE CERTAIN PROPERTY WITHIN THE EXTRA TERRITORIAL JURISDICTION OF THE CITY OF SEWARD, NEBRASKA NOW ZONED AG AGRICULTURAL DISTRICT, TO RR RURAL RESIDENTIAL DISTRICT; SPECIFICALLY, A TRACT OF LAND SOUTH OF IZAAK WALTON ROAD AND WEST OF IZAAK WALTON ROAD; TO DESCRIBE THE PROPERTY REZONED; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.**

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

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

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

**ADMINISTRATIVE ITEMS**

**1. CONSIDERATION TO APPROVE A CONSTRUCTION CONTRACT WITH BIC CONSTRUCTION IN THE AMOUNT OF \$2,498,000 FOR THE CIVIC CENTER PHASE I IMPROVEMENTS PROJECT**

City Administrator Butcher noted that Council had approved the awarding of a construction contract at the April 2<sup>nd</sup> meeting. Further, he noted that at the execution of the contract, a change order was expected to reduce the contracted amount to \$2.2 million as was budgeted by the Langworthy Trust.

Councilmember Stryson moved, seconded by Councilmember Singleton, to approve a construction contract with BIC Construction in the amount of \$2,498,000 for the Civic Center Phase I Improvements Project as presented.

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

**2. CONSIDERATION OF AN AMENDMENT (#3) TO A PROFESSIONAL SERVICES AGREEMENT WITH THE SCHEMMER ASSOCIATES FOR THE WORTHMAN BOULEVARD EXTENSION PROJECT IN THE AMOUNT OF \$79,665.15**

City Engineer Oneby described the amendment as an extension of work to include a preliminary/final designs and bid letting of the Worthman Boulevard extension, to the end of the City-owned property.

Councilmember Singleton moved, seconded by Councilmember Wergin, to approve amendment #3 to the professional services agreement with The Schemmer Associates for the Worthman Boulevard Extension Project in the amount of \$79,665.15 as presented.

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

**3. CONSIDERATION OF A SUPPLEMENTAL LETTER AGREEMENT WITH SHORT ELLIOTT HENDRICKSON (SEH), INC. FOR THE E SEWARD STREET IMPROVEMENTS PROJECT IN THE AMOUNT OF \$33,700**

Mr. Oneby identified the supplement as quantification of construction engineering services provided by SEH as the project was completed last summer/fall. Additionally, SEH will complete as-built drawings for the completed construction work.

Councilmember Stryson moved, seconded by Councilmember Singleton, to approve a supplemental agreement with SEH in the amount of \$33,700 for additional services provided for the E Seward Street Improvements Project as presented.

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

**4. CONSIDERATION OF A RESOLUTION TO APPROVE DISCRETION FOR ADMINISTRATION TO ADD PROCESSING FEES FOR CREDIT CARD TRANSACTIONS BY PATRONS OF CITY SERVICES**

**April 16, 2024**

Mr. Butcher described that currently the City is being charged fees for the processing of credit/debit card transactions for payment of City services by patrons. Those fees are lessening the amount of revenues collected for said services; therefore, Administration is seeking discretion to charge applicable fees to patrons to ensure the stated amounts of fees are collected by the City. Administration will work with department heads to inquire fees/programs in which these fees could be established with a formal policy to follow.

Councilmember Wergin introduced **Resolution 2024-14**, to allow Administration discretion to establish card processing fees for users of City services/programs. Councilmember Stryson moved, seconded by Councilmember Kahler, to approve Resolution 2024-14.

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

Nay: None. Absent: Kolterman. Motion carried.

**5. CONSIDERATION OF A RESOLUTION TO FORMALLY ESTABLISH A FEE FOR SPECIAL DESIGNATED LIQUOR (SDL) LICENSES**

City Clerk Bargmann noted this was a fee that has been charged but had not been established by resolution to date. This fee will be added to the master fees schedule if approved.

Councilmember Singleton introduced **Resolution 2024-15**, to formally establish a fee for Special Designated Liquor (SDL) licenses. Councilmember Tonniges moved, seconded by Councilmember Kahler, to approve Resolution 2024-15.

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

Nay: None. Absent: Kolterman. Motion carried.

**6. UPDATE ON THE WELLNESS CENTER**

Wellness Center Director Brase informed that the roof decking on the pool structure had mostly been completed, and the pool dig will begin shortly. Cement pouring of the parking lot has begun and will continue.

**A. CONSIDERATION TO ACCEPT A \$562,000 GRANT FROM THE NEBRASKA CIVIC AND COMMUNITY CENTER FINANCING FUND (CCCF) AND AUTHORIZATION FOR MAYOR TO SIGN ALL DOCUMENTS**

Councilmember Wergin moved, seconded by Councilmember Stryson, to accept the CCCFF grant and authorization for the Mayor to sign all documents as requested.

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

Nay: None. Absent: Kolterman. Motion carried.

**CITY ADMINISTRATOR'S REPORT**

Councilmember Wergin moved, seconded by Councilmember Stryson, that the City Administrator's report of April 16, 2024, be accepted.

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

Nay: None. Absent: Kolterman. Motion carried.

**STRATEGY SESSION**

**1. STRATEGY SESSION WITH CITY ATTORNEY REGARDING REAL ESTATE INTERESTS AT THE SEWARD RAIL CAMPUS**

No strategy session was held.

**MOTION TO ADJOURN**

Councilmember Miller moved, seconded by Councilmember Stryson, that the April 16, 2024, City Council Meeting be adjourned.

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

Nay: None. Absent: Kolterman. Motion carried.

Adjourned approximately 7:35 p.m.

THE CITY OF SEWARD, NEBRASKA

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Joshua Eickmeier, Mayor

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Derek Bargmann, City Clerk

3. Mayor Appointments to Boards and Commissions:
  - A. Re-Appoint Dr. Jerrald Pfabe, Robert Dahms, and Stephanie Croston to the Library Board for a 4-Year Term

**ADMINISTRATIVE ITEMS**

1. Consideration of a Request from the Seward Arts Council for Approval of Sale and Consumption of Alcoholic Beverages at the Seward Bandshell for 'Second Saturday Art Connections' Series During Summer 2024 - Alison Koch, Seward Arts Council

# SEWARD NEBRASKA

P.O. Box 38, 537 Main Street, Seward, Nebraska 68434. Phone: 402-643-2928. Fax: 402-643-6491. www.CityofSewardNE.gov

## APPLICATION FOR PARADE, MARCH OR SPECIAL EVENT

**IF THIS PARADE, MARCH, OR SPECIAL EVENT INVOLVES THE TEMPORARY USE OF ANY PORTION OF THE STATE HIGHWAY SYSTEM OR CITY FACILITIES, FORMAL ACTION BY THE CITY COUNCIL IS REQUIRED. THE CITY IS REQUIRED TO PROVIDE 30 DAYS NOTICE TO THE STATE OF NEBRASKA REGARDING HIGHWAY USE. THE COUNCIL MEETS THE 1ST & 3RD TUESDAYS OF EVERY MONTH AND REQUESTS MUST BE RECEIVED BY NOON ON WEDNESDAY PRIOR TO THE NEXT COUNCIL MEETING AND MUST INCLUDE A COPY OF THE INSURANCE POLICY FROM THE SPONSORING ORGANIZATION.**

We, the undersigned, hereby apply for a permit for a **(CIRCLE ONE)**:

on June 8, July 13, August 3, 2024 from 3pm to 10pm for the purpose of 5th Street  
(DATE) (TIME) (TIME)

Summer Music Series-Concert for approximately 200 people.

The location of the event will be held at the following address(es): 140 N 5th St.  
Seward Bandshell & 1/2 of 5th Street

Additionally, we request the following from the City:  barricades  picnic tables  
 to be delivered to the site by (Date/Time) June 8, July 13, August 3 - morning at the following location(s):

140 N 5th St. Seward Bandshell

Lastly, we intend to sell or offer the following during the event **(CHECK ALL THAT APPLY)**:

Food  Alcohol  Other: Art/books

Additional Comments: Food trucks, alcohol, book sales, Art projects

Seward Arts Council-Alison Koch alison.redpath.gallery@gmail.com 402-641-8211  
APPLICANT'S/ORG. NAME EMAIL ADDRESS TELEPHONE NO.

11693 224th Rd Seward NE 68434  
APPLICANT'S/ORG. ADDRESS CITY STATE ZIP

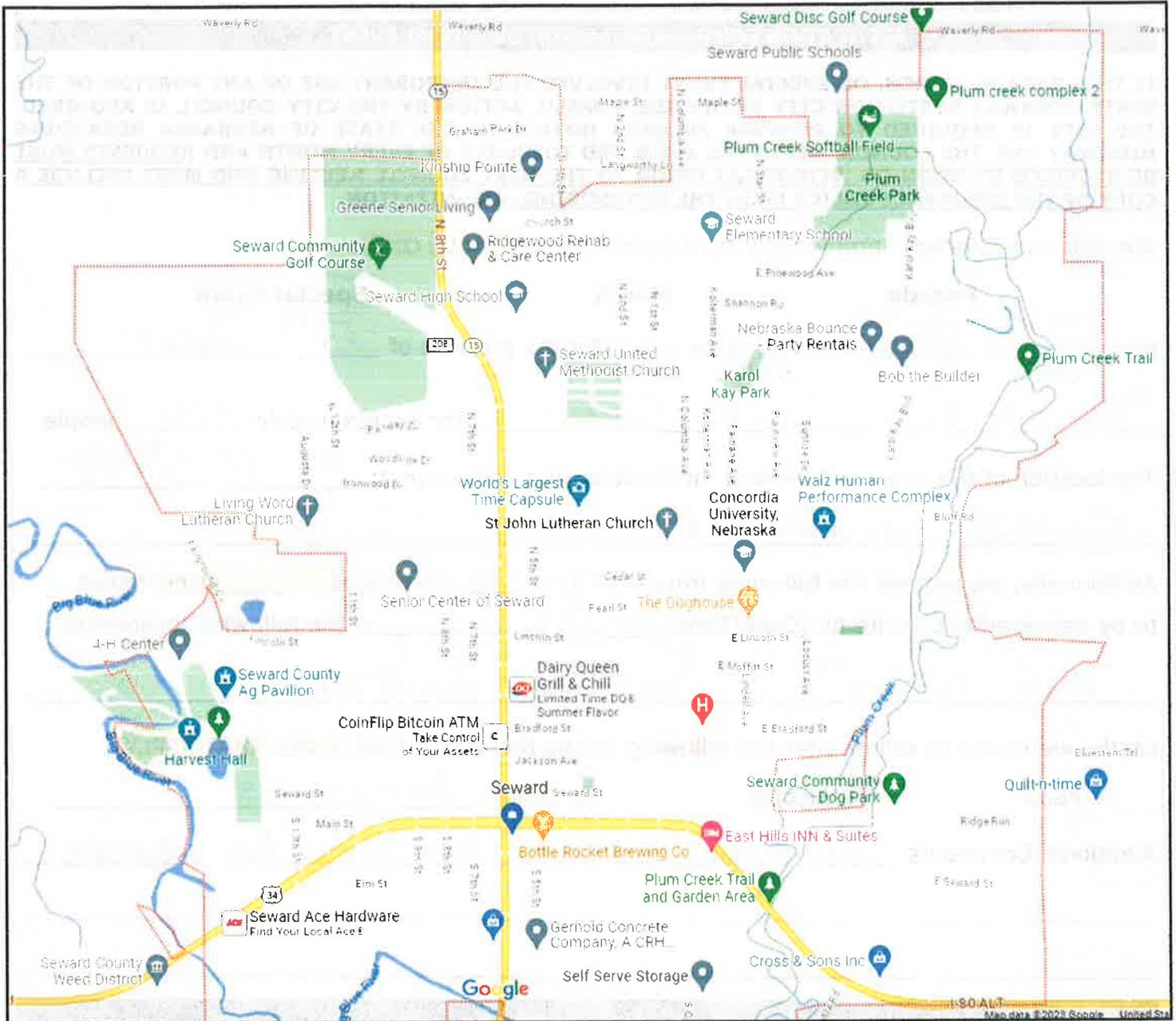
Alison Koch 5/2/24  
APPLICANT'S SIGNATURE DATE

A Certificate of Liability Insurance naming the City of Seward as additionally insured in the amount of \$1,000,000 is required. The insurance certificate must show evidence of coverage specific to the event and activities to be conducted. The City Clerk must have the insurance certificate in hand before a permit is issued.

**If an event involves a street closure, please complete the appropriate 'street closure' form and return to: City Clerk, 537 Main Street, Seward, NE 68434.**

If a parade or march, please indicate the route of the event below and note the following:

- No alcoholic beverages in street or public right-of-way
- No excessive and prolonged noise or music
- Assurance that clean-up of streets is performed by organization



<p><b><u>FOR CITY OF SEWARD USE ONLY</u></b></p>	<p><b>DATE SENT TO STATE:</b> _____</p> <p><b>DATE INS. INFO RECD:</b> _____</p> <p><b>DATE PERMIT ISSUED:</b> _____</p>
<p><b>MAYOR APPROVAL:</b></p>	<p>_____</p>
<p><b>CHIEF OF POLICE APPROVAL:</b></p>	<p>_____</p>
<p><b>STREET SUPERINTENDENT APPROVAL:</b></p>	<p>_____</p>

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

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

Red Path Gallery + Tasting Room  
Retail Liquor License Name or \*Non-Profit Organization (\*Must include Form #201 as Page 2)  
514 Seward Street P.O. Box 293 Seward, NE 68434  
Retail Liquor License Address or Non-Profit Business Address  
121948  
Retail License Number or Non-Profit Federal ID #

Consecutive Dates only  
Event Date(s): 6/8/24  
Event Start Time(s): 3:00pm  
Event End Time(s): 11:00pm  
Alternate Date: NA

Alternate Location Building & Address: NA  
Event Building Name: Seward Bandshell  
Event Street Address/City: 140 N 5<sup>th</sup> St, Seward, NE 68434

Indoor area to be licensed in length & width:      X       
Outdoor area to be licensed in length & width: 188' X 110' (Diagram Form #109 must be attached)

Type of Event: Concert Estimate # of attendees: 200

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

Event Contact Name: Alison Koch Event Contact Phone Number: 402-641-8211

Event Contact Email: alisonredpathgallery@gmail.com

\*Signature Authorized Representative: Alison Koch Printed Name Alison Koch

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

\*Retail licensee – Must be signed by a member listed on permanent license

\*Non-Profit Organization – Must be signed by a Corporate Officer

**Local Governing Body completes below:**

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

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

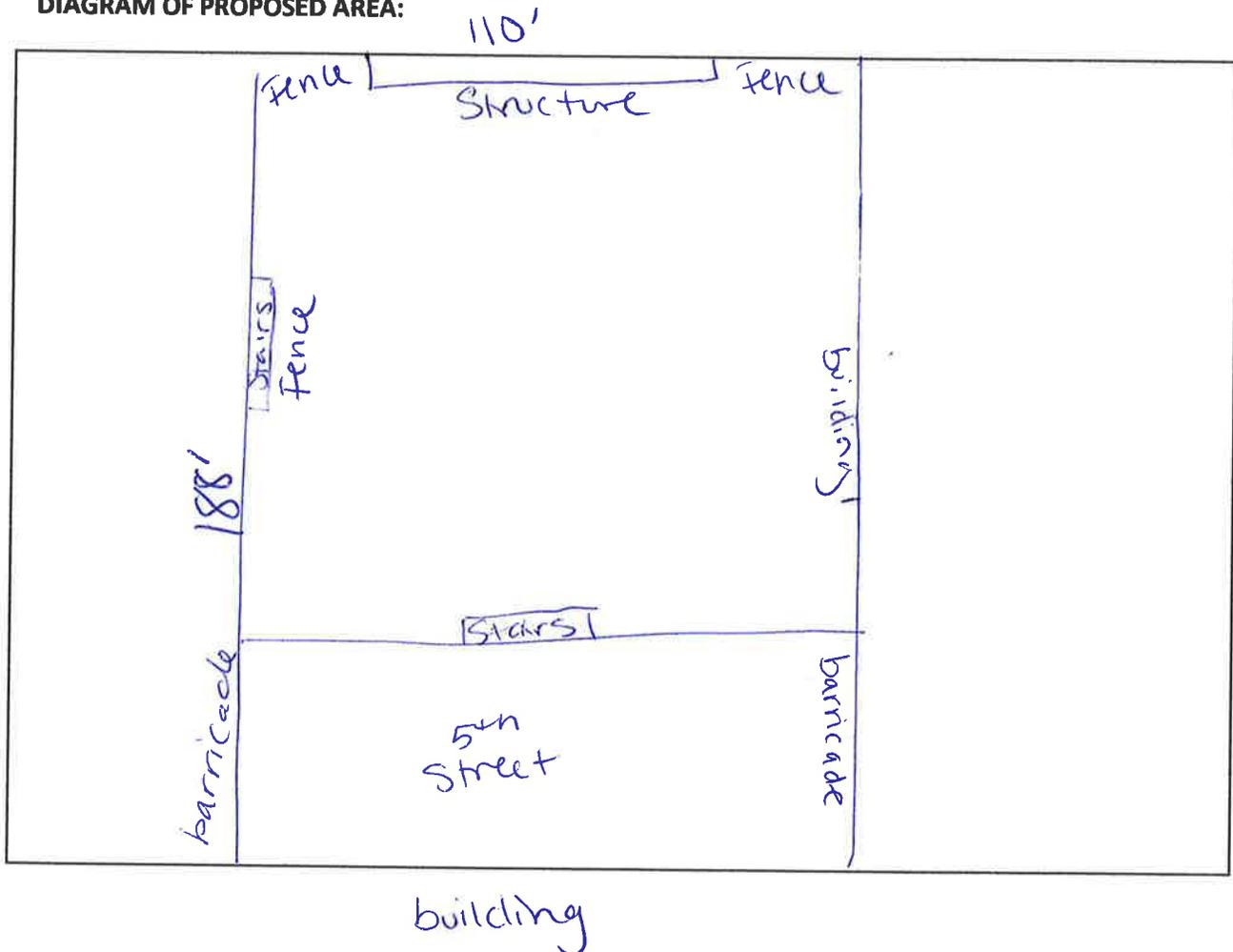
Date \_\_\_\_\_

# OUTDOOR AREA DIAGRAM

HOW AREA WILL BE PATROLLED All entrances patrolled, wristbands 21+, barricades  
Fencing

- IF APPLICABLE, OUTDOOR AREA MUST BE CONNECTED TO INDOOR AREA IF INDOOR AREA IS TO LICENSED
- MEASUREMENT OF OUTER WALLS OF AREA TO BE LICENSED MUST INCLUDED LENGTH & WIDTH IN FEET
- DOUBLE FENCING IS REQUIRED FOR ALL NON-PROFIT ORGANIZATIONS UNLESS FORM #140 IS FILED WITH THIS FORM AND IS APPROVED BY THE COMMISSION
- RETAILER LIQUOR LICENSE HOLDERS ARE NOT REQUIRED TO DOUBLE FENCE, ALTHOUGH MEASURES NEED TO BE TAKEN TO SECURE THE AREA

DIAGRAM OF PROPOSED AREA:



2. Consideration of a Resolution to Approve Supplement #1 to a Professional Services Agreement, signed November 15, 2022, to Provide Environmental Services for the Plum Creek Bridge Replacement Project - City Engineer Oneby

Agreement No.	BK2267-001
Effective (NTP) Date	
Supplement Amount	\$50,343.54
Total Agreement Amount	CPFF \$68,509.08

## PROFESSIONAL SERVICES AGREEMENT SUPPLEMENT NO. 1

CITY OF SEWARD  
HDR ENGINEERING, INC.  
PROJECT NO. BRO-7080(56)  
CONTROL NO. 13524  
SEWARD EAST  
ENVIRONMENTAL SERVICES

**THIS SUPPLEMENTAL AGREEMENT** is between the City of Seward ("LPA") and HDR Engineering, Inc. ("Consultant"), collectively referred to as the "Parties".

**WHEREAS**, Consultant and LPA entered into an agreement ("Original Agreement") executed by LPA on November 15, 2022 for Consultant to provide Environmental Services for LPA's project, and

**WHEREAS**, it is necessary that services as outlined in Exhibit "A" be added under this Supplemental Agreement, and

**WHEREAS**, it is necessary to increase Consultant's compensation by this Supplemental Agreement for the additional work necessary to complete the services under this Agreement, and

**WHEREAS**, LPA desires that this project be developed and constructed under the designation of Project No. BRO-7080(56) and formally authorizes the signing of this Agreement, as evidenced by the Resolution of LPA dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, attached as Exhibit "C" and incorporated herein by this reference.

**NOW THEREFORE**, in consideration of these facts and mutual promises, the Parties agree as follows:

### **SECTION 1. SCOPE OF SERVICES**

Consultant will perform the additional work as set out in Exhibit "A", Scope of Services, and Exhibit "B", Consultant's Fee Proposal, attached and incorporated herein by this reference.

### **SECTION 2. NOTICE TO PROCEED AND COMPLETION**

- 2.1 LPA will issue Consultant a written Notice-to-Proceed upon full execution of this Supplemental Agreement. Any work or services performed by Consultant on the project prior to the date specified in the written Notice-to-Proceed is not eligible for reimbursement.
- 2.2 Consultant will complete all work stipulated in the Original Agreement, and this Supplemental Agreement by May 14, 2026.

### **SECTION 3. FEES AND PAYMENTS**

Section 7 in Exhibit "C" of the Original Agreement is hereby amended in accordance with Exhibit "B" and as shown below.

PROFESSIONAL SERVICES AGREEMENT – SUPPLEMENT

<u>Previous Amount*</u>	<u>This Supplement Amount</u>	<u>Amended Agreement Amount</u>	
\$ 6,307.82	\$ 17,406.88	\$23,714.70	For actual direct labor costs
\$ 9,992.75	\$ 27,741.67	\$37,734.42	For indirect labor costs & direct expenses
\$ 1,864.97	\$ 5,194.99	\$7,059.96	For a fixed fee for profit
\$18,165.54	\$50,343.54	\$68,509.08	Total agreement amount

\*includes all prior supplements

**SECTION 4. CONFIDENTIAL INFORMATION**

Documents submitted to LPA, including invoices, supporting documentation, and other information are subject to disclosure by LPA under the Nebraska Public Records Act found at Neb.Rev.Stat. § 84-712 et.seq. Accordingly, Consultant shall redact or not submit to LPA information that is confidential, including, but not limited to, financial information such as social security numbers, tax ID numbers, or bank account numbers. Consultant understands that LPA does not have sufficient resources to review and redact confidential information submitted by Consultant. If such confidential information is submitted, Consultant shall have no right of action of any kind against LPA for the disclosure of such information.

**SECTION 5. CONSULTANT CERTIFICATION AND REAFFIRMATION**

The undersigned duly authorized representative of Consultant, by signing this Supplemental Agreement, hereby reaffirms, under penalty of law, the truth of the certifications set out in the Original Agreement and all Supplements thereto, including this Supplement. Further, Consultant has a duty to inform LPA of any material changes in the accuracy of all assertions set out in the Original Agreement and all Supplements thereto.

**SECTION 6. CERTIFICATION BY LPA**

By signing this Supplemental Agreement, I do hereby certify that, to the best of my knowledge, Consultant or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this agreement to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay or agree to pay to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this certification is to be furnished to the FHWA, upon their request, in connection with this agreement involving participation of Federal-Aid highway funds and is subject to applicable state and federal laws, both criminal and civil.

**SECTION 7. ENTIRE AGREEMENT**

The Original Agreement, any and all other previous supplements thereto, and this Supplemental Agreement, constitute the entire agreement ("The Agreement") between the Parties. The Agreement supersedes any and all other previous communications, representations, or other understandings, either oral or written; all terms and conditions of the Original Agreement and all previous supplements thereto, to the extent not superseded, remain in full force and effect, and are incorporated herein as if set forth in their entirety.

PROFESSIONAL SERVICES AGREEMENT – SUPPLEMENT

**IN WITNESS WHEREOF**, the Parties hereby execute this Supplemental Agreement pursuant to lawful authority as of the date signed by each party. Further, the Parties, by signing this Supplemental Agreement, attest and affirm the truth of each and every certification and representation set out herein.

**EXECUTED** by the Consultant this 25 day of April, 2024.

HDR ENGINEERING, INC.  
Matthew Tondl



Senior Vice President

STATE OF NEBRASKA )  
  )ss  
DOUGLAS COUNTY     )

**SUBSCRIBED AND SWORN** to before me this 25 day of April, 2024.



Notary Public

**EXECUTED** by LPA this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF SEWARD  
Joshua Eickmeier

\_\_\_\_\_  
Mayor

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk

STATE OF NEBRASKA  
DEPARTMENT OF TRANSPORTATION  
Form of Agreement Approved for  
Federal Funding Eligibility:

\_\_\_\_\_

\_\_\_\_\_  
Date

**ENVIRONMENTAL SERVICES**

PROJECT NO.: BRO-7080(56)

CONTROL NO.: 13524

LOCATION: Seward County

STATE PC: Christina Bavougian, christina.bavougian@nebraska.gov

LPA POINT OF CONTACT: Paul Kieper, paul.kieper@nebraska.gov

CONSULTANT: HDR Engineering, Inc.

CONSULTANT POINT OF CONTACT: Lisa Richardson, lisa.richardson@hdrinc.com

STRUCTURE NUMBER(S): U220002015

**A. PROJECT DESCRIPTION**

This bridge project is located on Bluff Road, approximately 0.11 mile east of Karol Kay Boulevard, in Seward County, within the city of Seward. The project includes the length of the bridge and 80 feet beyond the west approach section and 134 feet beyond the east approach section. Construction may begin and/or end approximately 500 feet ahead of or beyond the actual project limits to accommodate transitioning the road surface. The existing bridge over Plum Creek (Structure Number U220002015) is a 101-foot-long, triple span bridge with one 40-foot-long steel thru truss and two 30-foot-long rolled steel beam spans with a 23.7-foot roadway. The existing roadway generally consists of two 12-foot-wide lanes with 4-foot-wide earth shoulders.

The proposed improvements include of bridge replacement, bank stabilization, rock riprap, grading and surfacing for guardrail, a temporary waterway crossing for construction, and roadway surfacing.

This scope provides for environmental services related to compliance with the Environmental National Policy Act (NEPA) for the Project named above. Consultant shall serve as the agent for the City of Seward, hereafter referred to as the LPA (Local Public Agency), representing them in all matters related to environmental services for this Project.

**B. LPA OR STATE, ON LPA'S BEHALF, TO PROVIDE (to the extent that the items listed are available or needed for the scope checklist above):**

1. Project location, Program documents (NDOT-530, NDOT-53), Threatened and Endangered species (T&E) Activity Checklist, and general project location map. When appropriate, detour route information will be provided (including a list of property owners along the project and detour route).
2. If available, electronic files of current aerial photographs with Project alignment and preliminary design, existing and new rights-of-way (ROW) and easements, topographic survey, utilities data, and Limits of Construction (LOC).
3. Roadway Feature File, Alignment File, Feature Codes and SMD (Simple Method Description) File (downloadable from NDOT's website).
4. County-wide plat (ownership) or TAM (occupancy) maps for Consultant's use if landowner notification is needed. A notification letter, on LPA's letterhead for the consultant's use in landowner contact and site access will also be provided.
5. Waterway Permit Data Sheet (NDOT 290)
6. E (aerial) plan Sheets from design consultant.
7. Wetland Delineation Data Sheets and Photographs (if already available and not part of this scope of work).
8. Environmental Justice/Limited English Proficiency Memo (provided by State).
9. Section 106 documentation (if not part of this scope of work)
10. Section 106 PQS Memo (provided by State).
11. HMR PQS Memo (provided by the State).
12. Threatened and Endangered Species PQS Memo (provided by State).
13. Wetlands PQS Memo (provided by State).
14. Floodplain PQS Memo

C. APPLICABLE PUBLICATIONS:

Work shall be done in accordance with the most current version of the following materials:

1. Nebraska Categorical Exclusion Guidance (October 2018).
2. Guidance for Completing the Section 4(f) Review Process in Nebraska for Federal-Aid Projects (September 2018).
3. Programmatic Categorical Exclusion Agreement between the Federal Highway Administration and the Nebraska Department of Transportation (April 2015).
4. Nebraska Department of Transportation. Hazardous Materials Review Guidance Manual (March 2023).
5. NDOT National Historic Preservation Act Section 106 Guidelines (October 2019).
6. Nebraska Biological Evaluation Process, Prepared in Support of the Programmatic Agreement that was developed and updated between FHWA, NDOT, USFWS and NGPC (January 2023).
7. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1. Environmental Laboratory, Department of the Army Waterways Experiment Station, US Army Corps of Engineers, Vicksburg, Mississippi, 1987.
8. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region, ERDC/EL TR-08-27. Wetlands Regulatory Assistance Program, US Army Engineer Research and Development Center, Vicksburg, Mississippi, 2010.
9. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region, ERDC/EL TR-08-12. Wetlands Regulatory Assistance Program, US Army Engineer Research and Development Center, Vicksburg, Mississippi, 2010.
10. Regulatory Guidance Letter No. 05-05: Ordinary High Water Mark Identification. US Army Corps of Engineers, 2005.
11. Cowardin et al. Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS 79/31. Biological Services Program, Fish and Wildlife Service, US Department of the Interior, 1979.
12. Nebraska Department of Transportation. Wetland and Water Resource Procedure Document (April 2020).
13. USACE. 2016b. Nebraska Stream Condition Assessment Procedure (NeSCAP). Eds. M.C. Gilbert, K.L. Lawrence, and M.T Wray. CENWO-OD-RF Technical Report 05-12. Omaha District. October 2016.
14. Nebraska Department of Transportation. Nebraska Public Involvement Procedure. (September 2015).

D. CE DOCUMENT:

1. CE Document and Resource Reviews. Consultant shall develop applicable documentations as determined in this contract in accordance with Nebraska Categorical Exclusion Guidance and applicable NDOT technical resource guidance or procedures found at <https://dot.nebraska.gov/projects/environment/pubs/docs/> unless specified elsewhere within this contract.
  - a. CE Documentation for Federal-Aid Projects. Consultant shall produce the required CE documentation using the NDOT CE Smartform. Consultant shall notify the NDOT NEPA PM if a threshold has been crossed which elevates the level of CE documentation. Consultant shall obtain or produce supplemental information to attach to the NDOT CE Smartform, or to be placed into the Project file as back-up reference material for the document. Figures and resource maps are required to be attached to the NEPA Form. If not required as an attachment, Consultant shall produce them for the NEPA project file.
  - b. Plan in Hand Site Visit. NEPA consultant shall coordinate with design consultant to prepare and submit agenda and meeting minutes to NDOT. NEPA consultant (one staff member) shall also attend the on-site or virtual Plan-in-Hand meeting coordinated and led by the design consultant and LPA Project Coordinator.
  - c. Project Location Maps. Consultant shall prepare Project location maps that include the following: An aerial image depicting the project location with start and end points

labeled, an inset map with the project location or county identified within the state, North arrow, Scale bar, Legend, Project Name, Control Number, and Project Number.

- d. Documentation and Revisions. CE documentation shall be submitted to NDOT for review and approval (assume 3 rounds of comments).
  - e. NEPA Re-evaluations. Consultant shall complete up to 2 NEPA re-evaluations. Consultant's effort shall also include determining if there are any project changes that require additional resource reviews. Re-evaluations may be documented with the NDOT Re-evaluation Form, email, memo to file, or other written summary. Consultant shall coordinate with NDOT NEPA PM prior to completing any re-evaluation.
2. Farmland.
- a. Farmland Conversion Form. Consultant shall prepare a Natural Resource Conservation Service (NRCS) Farmland Conversion Form CP-106
  - ~~b. Consultant shall perform coordination with NRCS.~~
3. Section 106.
- a. Section 106 Review Request Letter. The NEPA Consultant shall complete the Section 106 Review Request Letter and submit it as a PDF to the State's Section 106 Professionally Qualified Staff (PQS), copy the LPA Project Coordinator and NDOT NEPA PM. The Section 106 Review Request Letter shall include a Vicinity Map and a Location Figure, showing the project's start and end points.
  - ~~b. Section 106 Identification and Evaluation of Properties. This task is for undertakings within the Omaha, Metropolitan Planning Agency (MAPA), Lincoln City and Lancaster County (LCLC) metropolitan planning area, and the South Sioux City Metro planning area.~~
    - ~~1) The NEPA Consultant shall complete the cultural resource identification and evaluation in accordance with NDOT Section 106 guidance document: [https://dot.nebraska.gov/media/12086/ndot\\_section\\_106\\_guidelines.pdf](https://dot.nebraska.gov/media/12086/ndot_section_106_guidelines.pdf)~~
    - ~~2) Cultural resource identification and evaluation shall be completed and/or supervised by individuals meeting or exceeding qualifications set forth by the U.S. Secretary of the Interior's Standards for Professional Qualification Standards [https://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](https://www.nps.gov/history/local-law/arch_stnds_9.htm). The qualifications (36 CFR 61) define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. Illustrative examples include an architectural historian with specialized experience in evaluating post-WWII architecture, a geoarchaeologist with specialized experience in assessing the potential for deeply buried cultural deposits in alluvial settings, or a paleobotanist with specialized experience in assessing floral material recovered from a prehistoric pit feature. The Principal Investigator (PI) shall submit their resume to the State's Section 106 PQS for review and approval prior to execution of this agreement.~~
    - ~~3) Area of Potential Effect. Upon execution of this agreement, and prior to completing fieldwork, the NDOT Section 106 PQS shall review and approve the proposed area of potential effects (APE) as well as the proposed level of effort.~~
    - ~~4) NDOT Guidelines. The NEPA Consultant and the PI shall follow the report guidelines discussed in NDOT's Section 106 Guidance document (2019) when compiling and submitting documentation, including identifying potential consulting parties. The identification of consulting parties shall be done in consultation with the NDOT Section 106 PQS.~~
    - ~~5) Consultation and Approval. The report shall be submitted to the NDOT Section 106 PQS for review and approval. The State (or FHWA, when applicable) will complete all formal consultation, SHPO, tribal, etc. The State will complete the Section 106 PQS memo.~~
4. Section 4(f).
- a. NDOT Section 4(f) Initial Assessment Form. Consultant shall determine if adjacent Section 4(f) properties such as public parks, recreation areas, and wildlife/waterfowl

refuges, or historic sites of local, state or national significance are present, as part of the resource review. Consultant shall prepare the NDOT Section 4(f) Initial Assessment Form and submit to NDOT NEPA PM for review and approval.

- b. Section 4(f) Documentation. Consultant shall determine a 'use' of land from the identified Section 4(f) property (assume one property) within the Project area. If it is determined that there is a 'use' of the land, then coordination with NDOT must occur and one or more of the following documents will be prepared by the Consultant:
    - 1) NDOT Section 4(f) Exceptions Form
    - 2) NDOT Section 4(f) De Minimis Form
    - 3) Coordinate with the Official With Jurisdiction for the Section 4(f) resource, to obtain concurrence that the impact will/will not adversely affect the resource.
  - c. Individual Section 4(f) Evaluation is not included as part of this scope of work.
5. Section 6(f).
- a. Section 6(f) Review. Consultant shall conduct coordination with the Nebraska Game and Parks Commission (NGPC) to determine if LWCF funds were used for the property requiring the additional Section 4(f) analysis. ~~If Section 6(f) resources are present, then Consultant will determine if a conversion will occur.~~
  - b. ~~Coordination. Consultant shall conduct coordination with jurisdictional agencies and provide documentation for the Section 6(f) conversion and replacement land.~~
6. Quality Control
- a. Consultant QC Certification Statement. At the time of CE submittal to NDOT, the consultant shall submit to NDOT a "QC Certification Statement" in accordance with NDOT's NEPA Documentation Quality Assurance/Quality Control Manual which will attest to the accuracy and completeness of each NEPA document submitted for NDOT review.
  - b. QC Comment/Response Matrix. The consultant shall provide a completed QC Comment/Response Matrix or other approved review method with each document submittal that is responding to NDOT review comments.
7. Deliverables for the CE Document and Resource Review task include:
- a. The CE documentation (and supporting attachments and file data)
  - b. Farmland Conversion Form CPA-106
  - c. Section 106 Documentation
  - d. NDOT Section 4(f) Initial Assessment Form
  - e. 4(f) Exception/De Minimis Documentation
  - f. Section 6(f) Documentation
  - g. Quality Control Documentation

**E. THREATENED AND ENDANGERED SPECIES (T&E) REVIEW**

1. Resource Reviews. Consultant shall review the project for T&E species impacts (both state and federally listed species) protected by the Endangered Species Act and the Nebraska Non-game and Endangered Species Conservation Act. The Consultant will also review the project for impacts to bald and golden eagles protected by the Bald and Golden Eagle Protection Act.
2. ~~The consultant shall determine if a review under the Fish and Wildlife Coordination Act is required. If the project has wetlands/waters of the U.S. impacts that require an Individual Permit Application to the U.S. Army Corps of Engineers, coordination is needed. At the direction of NDOT, the consultant will summarize any consultation comments or recommendations between NDOT and USFWS and document in the Overview of Effects and Required Conversation Conditions form.~~
3. ~~Consultant shall determine if American Burying Beetle (ABB) early coordination with the U.S. Fish and Wildlife Service and the Nebraska Game and Parks Commission is required. Projects with any soil disturbing activities that occur outside the hinge point within the USFWS and/or the NGPC range for ABB requires early coordination. Consultant shall utilize most recent guidance from USFWS and NGPC to assess permanent and temporary soil disturbances in suitable and unfavorable habitat, and estimate potential ABB take. On behalf of NDOT, consultant shall initiate early coordination by providing ABB early~~

~~coordination memo, spreadsheet of habitat disturbances, and Google Earth KMZ file of habitat disturbances to the USFWS and NGPC. Consultant shall assume one round of comment/response with the resource agencies.~~

4. Consultant shall determine if Project is within the range of Northern Long-eared Bat (NLEB) and will require consultation. Consultation for NLEB will utilize the USFWS/FHWA Range-wide Programmatic Consultation and the USFWS Information for Planning and Consultation (IPaC) website for review. Consultant shall evaluate Project using IPaC determination key for NLEB and produce a consistency letter for the NDOT T&E Biologist to review and sign for concurrence verification.
  - a. If Project includes work on bridges or culverts larger than four feet diameter that are in suitable habitat, Consultant shall complete a bridge/culvert and structure bat assessment form for each structure to document bat occupancy. Assessments of bat use will follow the USFWS/FHWA Range-wide Programmatic Consultation for Indiana Bat and Northern Long-eared Bat and associated guidance documents and appendices.
5. Biological Assessment. Consultant shall prepare the Biological Assessment and related documentation, submit them (in Word and Excel format as well as a compiled PDF), to NDOT, and revise them in response to NDOT comments as needed. If all of the Species Evaluation Parameter (SEP) questions are checked "No", Consultant will prepare the Overview of Effects and Required Conservation Conditions (OERCC). If any of the SEP questions are checked "Yes", Consultant will prepare the Matrix Spreadsheet for those species and the activities found in the Activity Checklist. If the Matrix determination is "No Effect", Consultant will submit the Matrix, SEP Form and OERCC Form. If determination for an individual species is Not Likely to Adversely Affect with Conservation Conditions (NLAA-CC), then Consultant prepares the OERCC Form with appropriate Conservation Conditions included for those species. Consultant's effort shall also include up to 3 progress meetings with NDOT, by telephone.
- ~~6. Individual Project Level Evaluation (will be supplemented as necessary). Consultant shall prepare an Individual Project Level Evaluation (IPL) supported by figures, literature review, and other supplemental information such as aerial photos and resource agency correspondence, including appropriate conservation conditions in the OERCC for species with a "May Affect" determination. If the determination for an individual species is "MA" or "NLAA-CC" but this determination appears wrong due to existing habitat conditions, species range information, or other factors, an IPL shall be prepared by the Consultant to justify a change in determination.~~
7. Quality Control Documentation
  - a. Quality Control Statement
  - b. QC Comment/Response Matrix. The consultant shall provide a completed QC Comment/Response Matrix or other approved review method with each document submittal that is responding to NDOT review comments.
8. Deliverables for the T&E Review Include:
  - a. Biological Assessment and related documentation
  - ~~b. Individual Project Level Evaluation~~
  - c. Quality Control Documentation
  - ~~d. ABB Early Coordination Documentation~~
  - ~~e. ABB early coordination memo~~
  - ~~f. Excel spreadsheet of habitat disturbances~~
  - ~~g. Google Earth KMZ file of habitat disturbances~~
  - h. NLEB Consultation
    - 1) IPaC Concurrence Verification Letter

~~F. HAZARDOUS MATERIALS REVIEW (HMR)~~

- ~~1. The Consultant shall demonstrate competency by fulfilling NDOT's training requirements and providing the appropriate documentation as stipulated within the 2023 HMR Guidance Manual prior to award of Hazardous Material Review (HMR) contract.~~

2. ~~Consultant shall complete an HMR within the HMR Study Area in accordance with the NDOT Hazardous Material Review Guidance Manual. This includes the review of sites that are known to be, or may potentially be, contaminated with hazardous materials. Conditions that indicate an existing release, a past release, or a material threat of a release, of any hazardous substances or petroleum products into structures, on the property or into the soils, groundwater, or surface water should be evaluated and assessed for potential impacts on the Project and discussed in the project's HMR technical report. The Consultant's effort shall also include up to 3 progress meetings with NDOT, by telephone.~~
  - a. ~~The Consultant shall review local, state, and federal environmental database records, searching for regulated sites within the HMR Study Area.~~
  - b. ~~The Consultant shall conduct an on-site visual reconnaissance survey and complete the HMR Visual Reconnaissance Form and photo log.~~
  - c. ~~The consultant shall conduct analysis on regulated sites per the HMR Guidance. Analysis shall include (1) conducting a regulatory file review (NDEE, SFM, etc.) and, if necessary, (2) reviewing readily available historical record sources (aerial photographs, topographic maps, Sanborn Fire Insurance maps, etc.).~~
  - d. ~~A subsurface investigation is not included as part of this scope of work.~~
  - e. ~~The Consultant shall prepare a written Hazardous Materials Review Technical Report. The Report shall be submitted by the Consultant to NDOT for inclusion in the Project file.~~
3. ~~Quality Control Documentation~~
  - a. ~~Quality Control Statement documenting their procedures to ensure the accuracy of the HMR Technical Report~~
  - b. ~~The Consultant shall develop a QC Comment/Response Matrix or other approved review method. The matrix or other approved review method shall be provided with each document submittal to NDOT to track resolutions to review comments.~~
4. ~~The Consultant shall provide the following Deliverables for the Hazardous Materials Review:~~
  - a. ~~Hazardous Materials Review Report~~
  - b. ~~Visual Recon Form and Photolog~~
  - c. ~~Quality Control Documentation~~

~~G. NOISE STUDY AND REPORT.~~

1. ~~The Consultant shall complete a noise study, to include modeling and field work, in accordance with 23 CFR 772 and the Nebraska Noise Analysis and Abatement Policy. The consultant shall utilize the Nebraska Noise Analysis Guidance Manual when completing the study and complete the training and certification requirements as described within. Coordination with an NDOT Noise Specialist shall occur prior to beginning the study.~~
2. ~~The Consultant shall complete a Noise Study Report which shall include, but is not limited to the following:~~
  - a. ~~General information regarding the nature of noise and measurement of sound, 23 CFR Part 772 Standards, noise abatement criteria and noise prediction method used;~~
  - b. ~~Project Description;~~
  - c. ~~Table showing existing and future (at least 20+ years from date of construction) traffic counts (Average Daily Traffic and Design Hourly Volume) as well as medium and heavy truck percentages, all to be used in conjunction with FHWA's Traffic Noise Model (TNM);~~
  - d. ~~Field noise measurements are required; Consultant shall prepare a table to include such items as location, distance from Project centerline, noise levels, and other appropriate information;~~
  - e. ~~Information about land use adjacent to Project;~~
  - f. ~~Table showing the following:~~

- 1) ~~receptor ID (home address or business name if possible);~~
  - 2) ~~modeled existing noise level (TNM results);~~
  - 3) ~~predicted future no-build noise level (TNM results);~~
  - 4) ~~predicted future build noise level (TNM results);~~
  - 5) ~~Leq noise abatement criteria (66 or 71 dBA);~~
  - 6) ~~Specify if build situation approaches or exceeds Leq criteria (if substantial noise increase > 15dBA) (yes or no).~~
- ~~g. Analyze noise abatement for feasibility and reasonableness if necessary (determined by noise impacts).~~
- ~~h. Address construction noise.~~
- ~~i. Provide setback recommendations to local officials.~~
- ~~j. Consultant will provide conclusions—stating findings (how many impacted receptors in existing, no-build and build situations, noise abatement results).~~
- ~~k. List references.~~
1. ~~Prepare diagram using aerials or topographic map identifying:~~
    - 1) ~~Receivers adjacent to project;~~
    - 2) ~~Areas for possible noise abatement;~~
    - 3) ~~66 and 71 dBA noise contour lines~~
3. ~~The Consultant shall submit the Noise Study to the NDOT Noise Specialist. Consultant shall revise materials per NDOT comments and resubmit subsequent drafts to NDOT for review and approval.~~
4. ~~Quality Control Documentation~~
- a. ~~Quality Control Statement~~
  - b. ~~QC Comment/Response Matrix. The Consultant shall provide a completed QC Comment/Response Matrix or other approved review method with each document submittal that is responding to NDOT review comments.~~
5. ~~Deliverables for the Noise Study and Report include:~~
- a. ~~Noise Study Report~~
  - b. ~~Quality Control Documentation~~

~~H. WETLAND AND STREAM DELINEATION SERVICES.~~

1. ~~Consultant shall complete a wetland/water resource delineation and prepare documents in accordance with the NDOT Wetland and Water Resource Procedure Document found at <https://dot.nebraska.gov/projects/environment/pubs/docs/>.~~
2. ~~Site Visit. The Consultant shall visit the Project site to determine if waters of the United States (US), including wetlands, are present within the Project Delineation Limits as described below. The site visit will be conducted by a qualified wetland scientist and during the recognized growing season unless otherwise approved by the NDOT Wetlands Project Manager.~~
3. ~~Review Existing Resources/Databases. Consultant shall review existing resources prior to field delineation. For projects requiring new Right of Way (ROW) beyond existing, into agricultural land, NDOT Wetlands PM shall be contacted for direction.~~
4. ~~Wetlands in an Agricultural Setting (WIAS) Review. Consultant shall review WIAS historic aerial photography with recorded wetland delineations when required for permitting.~~
5. ~~Nebraska Stream Condition Assessment Procedure (NeSCAP). Consultant shall complete the USACE developed assessment of streams and floodplain/riparian areas to determine functional units of impacts and mitigation stream channels (USACE 2016b). NeSCAP shall include the collection of desktop and on-site data.~~
6. ~~A Wetland Mitigation Plan is not included as part of this scope of work.~~

- ~~7. Delineation Limits. For purpose of scope and fee development, the Consultant shall assume the following study area for a Full Delineation. Along the project alignment, the study area extends 50 feet beyond LOCs or within ROW whichever is farther from the roadway centerline. At bridge or bridge-sized structures along the project alignment, the study area extends 150 feet beyond designed LOCs or 150 feet beyond ROW, whichever is farther from the roadway centerline.~~
- ~~8. Plot Boundaries. Consultant shall plot the data on aerial photographs. Data plotted on aerial photographs will include project wetland delineation limits (environmental study area), roadway alignment and mile markers. Data will include wetland boundaries (hollow line-style), wetland I.D., wetland types, OHWM for channels (and channel name if available), other water resources, and location of data and photo collection points. NEPA Consultant will be provided Design Consultant's survey files prior to delineation.~~
- ~~9. Documentation of Findings. Consultant shall prepare documents according to NDOT procedures (April 2020).~~
- ~~10. Electronic Files (GIS). Consultant shall submit the delineation materials in electronic format plot(s) to NDOT Wetlands PM, copy the LPA Project Coordinator and NDOT NEPA PM. Submittal shall include environmental study area boundaries, wetland delineation boundaries, wetland types, acres, other water resources and location of data collection points and photo points in NDOT's GIS file Geodatabase (.gdb). Coordinate system projections for all submittals shall be: NAD 1983 State Plane Nebraska FIPS 2600 (Feet). The submittal will include a completed attribute table with relevant information, such as wetland name and type, for each feature, as described in NDOT (2020) procedure. All geospatial data shall be post-processed to correct GPS data inaccuracies, compile all required information in the NDOT geodatabase attribute tables, and checked for completeness, accuracy, and conformance to NDOT data standards. Geospatial data shall provide an accurate representation of field observations.~~
- ~~11. Coordination. Consultant shall coordinate with Design Consultant to create wetland .dgn file to be used in E-(aerial) plan sheets. This effort may include creating a .dgn file and labeling the wetlands/water resources.~~
- ~~12. Quality Control Documentation
  - ~~a. Quality Control Statement~~
  - ~~b. QC Comment/Response Matrix. The consultant shall provide a completed QC Comment/Response Matrix or other approved review method with each document submittal that is responding to NDOT review comments.~~~~
- ~~13. Deliverables for Wetland and Water Resource Delineation Services Include:
  - ~~a. Wetland Delineation Report and associated geospatial data~~
  - ~~b. Wetland in an Agricultural Setting (WIAS) Report~~
  - ~~c. NeSCAP Documentation~~
  - ~~d. Quality Control Documentation~~~~

**I. SECTION 404 PERMITTING SERVICES**

1. Pre-Application Meeting. Consultant shall arrange for, attend, and conduct, a pre application meeting with the USACE and other interested resource agencies to discuss the wetland delineation and other issues relating to fill and disturbance impacts. Consultant shall prepare and distribute minutes.
2. 404 Nationwide Permit Application Package.
  - a. Consultant shall prepare a 1st Draft of the 404 Permit Application Package consisting of 404 Permit Application and Wetland Delineation Report. Electronic files of the documents will be submitted to NDOT Wetlands PM for review and approval. The Consultant shall revise materials per NDOT comments and resubmit subsequent drafts to NDOT for review and approval.
  - b. Consultant shall prepare and submit to LPA, or State on LPA's behalf, the electronic files and hard copies of all materials. For the final package, the Consultant shall submit one bound copy to LPA and electronic files to State on NDOT's ftp site. The Consultant shall submit a hard copy of the 404 permit application package to the USACE and NDEE (when required) unless otherwise directed by LPA, or State on LPA's behalf.

3. Agency Coordination. Consultant shall correspond with the USACE, whether in writing or personal contact documented in a telephone memo or meeting notes.
  - a. Consultant shall be available to provide additional information and answer questions. All correspondence with the USACE and other agencies, if necessary, shall be submitted to the NDOT in draft form for approval from LPA, or State on LPA's behalf at least 10 days before final submittal.
  - b. Consultant shall coordinate with NDEE and obtain a letter of 401 Water Quality Certification. If wetlands are non-jurisdictional, Consultant shall obtain a Letter of Opinion from NDEE, stating compliance with the non-degradation clause of Title 117 Nebraska Surface Water Quality Standards.
4. Quality Control Documentation
  - a. Quality Control Statement
  - b. QC Comment/Response Matrix. The consultant shall provide a completed QC Comment/Response Matrix or other approved review method with each document submittal that is responding to NDOT review comments.
- ~~5. Section 404 Individual Permit Application~~
  - ~~a. Alternatives Analysis and Sequencing Demonstration. All tasks specified above for Nationwide permits also apply to Individual Permits with the following additional tasks: Consultant shall prepare an Alternatives Analysis and Sequencing Demonstration for inclusion in the Individual Permit Application. This task involves incorporating materials provided by the LPA's design consultant. The Consultant will also coordinate activities with the USACE and other regulatory and resource agencies, as needed.~~
  - ~~b. Public Comments. Consultant shall respond to public comments from the USACE Public Notice comment period.~~
6. Deliverables for Section 404 Permitting Services Include:
  - a. 404 Nationwide Permit Application
  - b. 404 Individual Permit Application - including Alternatives Analysis and Sequencing Demonstration
  - c. Section 404 Authorization Letter
  - d. Quality Control Documentation

J. PUBLIC INVOLVEMENT

1. A Public Involvement Plan will be submitted to the NDOT Public Involvement Coordinator for review and approval through the NDOT Local Projects Coordinator.
2. Additional hours will be negotiated with the Consultant, by supplement to this Agreement, for preparation of public involvement materials required to support the determined level of Public Involvement.

CONSULTANT SHALL PROVIDE:

1. Public Involvement Plan
  - a. Consultant will prepare a Public Involvement Plan in accordance with NDOT's template to be submitted to the NDOT Public Involvement Coordinator for review and approval.

DELIVERABLES

- 1) Public Involvement Plan
2. Work shall be done in accordance with the most current version of the following materials. The most current versions of the NDOT materials can be obtained from the NDOT website.
  - a. NDOT Public Involvement Procedure

K. PROJECT MANAGEMENT

1. This task includes activities to initiate and monitor project schedules, workload assignments and internal cost controls throughout the project, assumed to be 12 months. Also included are efforts to prepare and process invoices, prepare project correspondence with the LPA or State on LPA's behalf; and maintain project records. Monthly Progress Reports shall be prepared and submitted according to the schedule provided by LPA, which may or may not coincide with Consultant's invoicing schedule.
2. Consultant will meet with the LPA and NDOT to discuss the status of plan development and coordinate design activities at different stages throughout the project. The consultant should anticipate six virtual meetings (PCMs 20, 30, 35, 50, 70, and 90).
3. Send Deliverables to the LPA Project Coordinator and applicable NDOT Resource Project Manager

L. DATA TRANSFER

1. It shall be the Consultant's responsibility to obtain the necessary software to translate to and from the specified format for all electronic files supplied by the LPA and/or NDOT and for all electronic files prepared by the Consultant and supplied to the LPA and/or NDOT.
2. Electronic files shall be submitted with each submittal or revision. PDF copies of all materials and final electronic files (i.e. geodatabases for wetland delineations) as stated above. All supporting information shall be submitted to the NDOT via NDOT's Sharefile site (and/or email when requested by NDOT).

M. COMMUNICATION

1. Files shall be accompanied by a transmittal letter or email with Project Name, Project Number, and Control Number in the subject line and body.
2. **All correspondence regarding scope items outlined in this section shall be addressed to the NDOT LPA Project Coordinator and applicable NDOT Resource PM.**

N. ASSUMPTIONS

1. ~~Wetland Delineations assume 2 staff for field work.~~
2. Consultant shall coordinate/consolidate site visits, as appropriate.
3. Tasks that are shown stricken-through are not considered part of this scope of services. If these tasks are required at a later date, they may be added through a supplemental agreement.
4. If bat activity is detected during the bat assessment, NDOT shall perform additional testing and agency coordination as appropriate.

O. SCHEDULE

1. Notice to Proceed: see Section 2 of agreement
2. Plan-in-Hand: July 2024
3. Submit CE for NDOT review: September 2024
4. Submit NWP PCN for NDOT Review: September 2024
5. Complete NEPA: November 2024
6. Project letting: April 2026
7. Contract End Date: April 2026

# Staffing Plan (CPFF)

# Environmental Services

**Project Name:** Seward East  
**Consultant:** HDR Engineering, Inc.  
**Consultant PM:** Lisa Richardson, lisa.richardson@hdrinc.com, 402.926.7026  
**LPA RC:** Paul Kieper, paul.kieper@nebraska.gov  
**NDOT PC:** Christina Bavougian, christina.bavougian@nebraska.gov  
**Date:** April 2, 2024

**Project Number:** BRO-7080(56)  
**Control Number:** 13524



#	Code	Classification	#	Code	Classification
1	PR	Principal	6	PI	Public Involvement Coordinator
2	PM	Project Manager	7	GIS	GIS Analyst
3	SENV	Sr. Environmental Scientist	8	ADM	Administrative
4	ENV	Environmental Scientist	9	UD1	User Defined 1
5	SPI	Sr. Public Involvement	10	UD2	User Defined 2

<b>Overhead Rate</b> <sup>[1]</sup>
157.28%
<b>Fee for Profit Rate</b> <sup>[2]</sup>
11.60%
<b>FCCM (if applicable)</b>
0.29%

## BLENDING RATES TABLE

Template: T-WB-Environmental Services (LPA) (rev 10-23-2019) CPFF

Employee Name	Job Title & Certifications <sup>[3]</sup>	Current Actual Salary Rate/Hr <sup>[4]</sup>	% Assigned
<b>Project Manager</b>			
Lisa Richardson	Senior Environmental Project Manager	\$90.53	100%
		<b>Blended Rate:</b>	<b>\$90.53</b>
<b>Sr. Environmental Scientist</b>			
Brian Goss	Senior Environmental Scientist	\$83.46	25%
Jessica Hekter	Environment Project Manager	\$67.21	25%
Kelly Farrell	Senior Environmental Scientist	\$70.84	25%
Quinn Damgaard	Senior Environmental Scientist	\$72.58	25%
		<b>Blended Rate:</b>	<b>\$73.52</b>
<b>Environmental Scientist</b>			
Carmen Modrcin	Environmental Scientist	\$47.37	25%
Emily Schmit	Environmental Scientist	\$45.54	25%
Shannon McKinley	Environmental Scientist	\$31.42	25%
Natasha Miranda	Environmental Scientist	\$29.00	25%
		<b>Blended Rate:</b>	<b>\$38.33</b>
<b>Sr. Public Involvement</b>			
Kristen Veldhouse		\$56.82	100%
		<b>Blended Rate:</b>	<b>\$56.82</b>
<b>Public Involvement Coordinator</b>			
Bre Tenhulzen	Public Involvement Coordinator	\$29.70	45%
Elizabeth George	Graphic Designer	\$37.45	10%
Alyssa Sanders	Public Involvement Coordinator	\$31.34	45%
		<b>Blended Rate:</b>	<b>\$31.21</b>
<b>GIS Analyst</b>			
Ryan Woehl	Senior GIS Analyst	\$53.42	33%
William Shrader	GIS Analyst	\$48.36	34%
Adesola Ibitoya	GIS Analyst	\$32.85	33%
		<b>Blended Rate:</b>	<b>\$44.91</b>
<b>Administrative</b>			
Theresa McKinley	Senior Project Accountant	\$54.95	100%
		<b>Blended Rate:</b>	<b>\$54.95</b>

# Consultant's Estimate of Hours

# Environmental Services

**Project Name:** Seward East

**Project Number:** BRO-7080(56)

**Consultant:** HDR Engineering, Inc.

**Control Number:** 13524

**Consultant PM:** Lisa Richardson, lisa.richardson@hdrinc.com, 402.926.7026

**NDOT PC:** Christina Bavougian, christina.bavougian@nebraska.gov

**Date:** April 2, 2024

TASKS	PERSONNEL CLASSIFICATIONS										
	PR	PM	SENV	ENV	SPI	PI	GIS	ADM	UD1	UD2	Total
<b>I. Project Management</b>		<b>45</b>		<b>6</b>				<b>6</b>			<b>57</b>
1. Project Management		30						6			36
2. PCM Meetings		12									12
3. Travel Time		3		6							9
<b>D.-G. CE Document and Resource Reviews</b>		<b>14</b>	<b>33</b>	<b>129</b>			<b>12</b>				<b>188</b>
D.1 Categorical Exclusion Document		6	16	56			6				84
1b Plan in Hand Site Visit		6									6
1e NEPA Re-Evaluations			6	20			4				30
<b>RESOURCE REVIEWS</b>											
D.2 Farmland			1	1							2
D.3 Section 106			1	3							4
D.4 Section 4(f) De Minimis or Exemption		2	6	32							40
D.5 Section 6(f) Analysis Documentation			1	1							2
Floodplain Review	Included in D.1										
Water Quality Review	Included in D.1										
E. Threatened and Endangered Species (T&E) Review			2	16			2				20
E.5 Biological Assessment	Included in E										
9. Individual Project Level Evaluation											
10. Hazardous Materials Review (HMR)											
11. Noise Study and Report											
<b>H. Wetland and Stream Delineation</b>											
<b>I. Section 404 Permitting</b>		<b>3</b>	<b>12</b>	<b>32</b>			<b>6</b>				<b>53</b>
1. Pre-Application Meeting		1	2	4							7
2. 404 Nationwide Permit Application Package		2	8	24			6				40
3. Agency Coordination			2	4							6
4. QC	included in I.2										
5. 404 Individual Permit Application											
<b>J. Public Involvement Materials</b>		<b>1</b>			<b>1</b>	<b>12</b>					<b>14</b>
1. Public Involvement Plan		1			1	12					14
<b>Total Days</b>		<b>7.88</b>	<b>5.63</b>	<b>20.9</b>	<b>0.13</b>	<b>1.5</b>	<b>2.25</b>	<b>0.75</b>			<b>39</b>
<b>Total Hours</b>		<b>63</b>	<b>45</b>	<b>167</b>	<b>1</b>	<b>12</b>	<b>18</b>	<b>6</b>			<b>312.0</b>

<b>Direct Expenses</b>	<b>Environmental Services</b>
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**Project Name:** Seward East  
**Consultant:** HDR Engineering, Inc.  
**Date:** April 2, 2024

**Project Number:** BRO-7080(56)  
**Control Number:** 13524

Subconsultants:			Amount
Subtotal			
Printing and Reproduction:	Qty	Unit Cost	Amount
Printing and Reproduction	1	\$100.00	\$100.00
Subtotal			\$100.00
Mileage/Travel:	Qty	Unit Cost	Amount
Mileage/Travel:	320	\$0.670	\$214.40
Subtotal			\$214.40
Lodging/Meals:	Qty	Unit Cost	Amount
Subtotal			
Other Miscellaneous Costs:	Qty	Unit Cost	Amount
Subtotal			
<b>TOTAL DIRECT EXPENSES</b>			<b>\$314.40</b>



# Project Cost & Breakdown

# Environmental Services

**Project Name:** Seward East  
**Consultant:** HDR Engineering, Inc.  
**Consultant PM:** Lisa Richardson, lisa.richardson@hdrinc.com, 402.926.7026  
**NDOT PC:** Christina Bavougian, christina.bavougian@nebraska.gov  
**Date:** April 2, 2024

**Project Number:** BRO-7080(56)  
**Control Number:** 13524

DIRECT LABOR COSTS			
Classification	Hours	Rate	Amount
Principal			
Project Manager	63	\$90.53	\$5,703.39
Sr. Environmental Scientist	45	\$73.52	\$3,308.40
Environmental Scientist	167	\$38.33	\$6,401.11
Sr. Public Involvement	1	\$56.82	\$56.82
Public Involvement Coordinator	12	\$31.21	\$374.52
GIS Analyst	18	\$44.91	\$808.38
Administrative	6	\$54.95	\$329.70
User Defined 1			
User Defined 2			
	312	<b>Subtotal</b>	<b>\$16,982.32</b>

DIRECT EXPENSES	Amount
Subconsultants:	
Printing And Reproduction:	\$100.00
Mileage/Travel:	\$214.40
Lodging/Meals:	
Other Miscellaneous Costs:	
	<b>Subtotal</b>
	<b>\$314.40</b>

TOTAL PROJECT COSTS	Amount
Direct Labor Costs	\$16,982.32
Labor Cost Escalation Factor for Multi-year Projects (if allowed): y 2.0 years @ 5.0% / year = 2.50%	\$424.56
Overhead @ 157.28%	\$27,377.54
Facility Capital Cost of Money (FCCM) @ 0.286% (labor costs x FCCM%)	\$49.73
Direct Expenses	\$314.40
Fee for Profit Rate @ 11.60%	\$5,194.99
<b>TOTAL COST</b>	<b>\$50,343.54</b>

LABOR COST BY MAJOR TASKS	Direct Labor	Overhead+FCCM	Profit	Amount
I. Project Management	\$4,749.37	\$7,483.37	\$1,417.42	\$13,650.16
D.-G. CE Document and Resource Reviews	\$9,406.50	\$14,821.41	\$2,807.32	\$27,035.23
H. Wetland and Stream Delineation				
I. Section 404 Permitting	\$2,716.10	\$4,279.64	\$810.61	\$7,806.35
J. Public Involvement Materials	\$534.92	\$842.85	\$159.64	\$1,537.41
VI. User Defined Task 6				
VII. User Defined Task 7				
VIII. User Defined Task 8				
IX. User Defined Task 9				
X. User Defined Task 10				
XI. User Defined Task 11				
XII. User Defined Task 12				
	\$17,406.88	\$27,427.27	\$5,194.99	\$50,029.14

**DISCLAIMER APPLICABLE TO  
THE SIGNING OF THE ENVIRONMENTAL SERVICES AGREEMENT**

The following is a resolution drafted by the Nebraska Department of Transportation (NDOT) that may be used by a Local Public Agency (LPA) when executing an Engineering Services Agreement for a Federal-aid transportation project. It is offered ONLY as an example resolution that could be used by the LPA with appropriate modifications, for participation in the LPA Federal-aid program, and is subject to change. The LPA is responsible for the language in its actual resolution. Any changes to any substantive commitments of this sample resolution shall be approved in advance in writing by NDOT, or such changes will be considered null and void. The LPA is ultimately responsible for all language used in its actual resolution and in making sure that the resolution is accurate and complete and meets all requirements of Federal, State and local laws, rules, regulations, policies and guidelines, and the NDOT LPA Guidelines Manual for Federal-aid Projects.

**RESOLUTION**  
**SIGNING OF ENVIRONMENTAL SERVICES SUPPLEMENT AGREEMENT**  
**BK2267-001**

City of Seward

Resolution No. \_\_\_\_\_

**Whereas:** City of Seward is developing a transportation project for which it intends to obtain Federal funds; and

**Whereas:** City of Seward as a sub-recipient of Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal, State, and local laws, rules, regulations, policies, and guidelines applicable to the funding of the Federal-aid project; and

**Whereas:** City of Seward and HDR Engineering, Inc. wish to enter into an Environmental Services Supplemental Agreement to provide additional Environmental Services for the Federal-aid project.

**Be It Resolved:** by the City Council of the City of Seward that:

Misty Ahmic, Chair, of the Seward County Board of Commissions, is hereby authorized to sign the attached Construction Engineering Services agreement between the Seward County and HDR Engineering, Inc.

NDOT Project Number: BRO-7080(56)

NDOT Control Number: 13524

NDOT Project Description: Seward East

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ Nebraska.  
(Month)

The City Council of the City of Seward


Board/Council Member \_\_\_\_\_  
Moved the adoption of said resolution  
Member \_\_\_\_\_ Seconded the Motion  
Roll Call: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Abstained \_\_\_\_\_ Absent  
Resolution adopted, signed and billed as adopted

Attest:

\_\_\_\_\_  
Signature City Clerk

Agreement No.	BK2267-001
Effective (NTP) Date	
Supplement Amount	\$50,343.54
Total Agreement Amount	CPFF \$68,509.08

## PROFESSIONAL SERVICES AGREEMENT SUPPLEMENT NO. 1

CITY OF SEWARD  
HDR ENGINEERING, INC.  
PROJECT NO. BRO-7080(56)  
CONTROL NO. 13524  
SEWARD EAST  
ENVIRONMENTAL SERVICES

**THIS SUPPLEMENTAL AGREEMENT** is between the City of Seward ("LPA") and HDR Engineering, Inc. ("Consultant"), collectively referred to as the "Parties".

**WHEREAS**, Consultant and LPA entered into an agreement ("Original Agreement") executed by LPA on November 15, 2022 for Consultant to provide Environmental Services for LPA's project, and

**WHEREAS**, it is necessary that services as outlined in Exhibit "A" be added under this Supplemental Agreement, and

**WHEREAS**, it is necessary to increase Consultant's compensation by this Supplemental Agreement for the additional work necessary to complete the services under this Agreement, and

**WHEREAS**, LPA desires that this project be developed and constructed under the designation of Project No. BRO-7080(56) and formally authorizes the signing of this Agreement, as evidenced by the Resolution of LPA dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, attached as Exhibit "C" and incorporated herein by this reference.

**NOW THEREFORE**, in consideration of these facts and mutual promises, the Parties agree as follows:

### **SECTION 1. SCOPE OF SERVICES**

Consultant will perform the additional work as set out in Exhibit "A", Scope of Services, and Exhibit "B", Consultant's Fee Proposal, attached and incorporated herein by this reference.

### **SECTION 2. NOTICE TO PROCEED AND COMPLETION**

- 2.1 LPA will issue Consultant a written Notice-to-Proceed upon full execution of this Supplemental Agreement. Any work or services performed by Consultant on the project prior to the date specified in the written Notice-to-Proceed is not eligible for reimbursement.
- 2.2 Consultant will complete all work stipulated in the Original Agreement, and this Supplemental Agreement by May 14, 2026.

### **SECTION 3. FEES AND PAYMENTS**

Section 7 in Exhibit "C" of the Original Agreement is hereby amended in accordance with Exhibit "B" and as shown below.

3. Consideration of a Professional Services Agreement with Olsson, Inc. for Water/Wastewater SCADA Phase I Upgrades in the Amount of \$247,000 - City Engineer Oneby



## LETTER AGREEMENT FOR PROFESSIONAL SERVICES

April 29, 2024

City of Seward  
Attn: Michael Oneby  
P.O. Box 38  
Seward, Nebraska 68434

Re: **LETTER AGREEMENT FOR PROFESSIONAL SERVICES**  
Seward Water & Wastewater Treatment Plant SCADA Upgrade Phase 1  
Seward, NE

Dear Mr. Oneby:

It is our understanding that the City of Seward ("Client") requests Olsson, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of this Letter Agreement shall take precedence.

Olsson shall provide the following services ("Scope of Services") to Client for the Project and deliver the deliverables ("Deliverables") which will include commercial hardware and/or software ("Commercial Products") and custom intellectual property ("Custom IP"): as more specifically described in "Scope of Services" attached hereto). Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Client acknowledges that Olsson's ability to perform the services and deliver the Deliverables will require Client to perform certain tasks, which shall be mutually agreed upon and set forth in the Scope of Services. Client hereby agrees to perform its obligations in accordance with such requirements in a commercially reasonable manner. Furthermore, the Parties acknowledge that Client's failure to perform its material obligations may adversely affect Olsson's ability to meet its obligations hereunder and the Parties hereby agree to negotiate in good faith to arrive at an equitable adjustment to the terms of this Agreement to compensate Olsson for such additional effort and costs directly caused by Client's delay or failure to perform.

Olsson retains sole and exclusive ownership of all rights in the Custom IP (as more specifically described in "Scope of Services" attached hereto) and hereby grants to Client a perpetual, irrevocable, fully paid-up, royalty free, transferable, sublicensable (through multiple levels of sublicensees), worldwide, non-exclusive right and license under Olsson's intellectual property rights, to use, reproduce, distribute, display and perform (whether publicly or otherwise), prepare derivative works of and otherwise modify, make, import and otherwise use and exploit (and have others exercise such rights on behalf of Client) all or any portion of the Custom IP incorporated into the Deliverables and/or Services for use in connection with the Project (including without limitation its distribution of products or provision of services to third parties). The license granted herein shall commence upon Olsson's receipt of all payments under this Letter Agreement and shall continue in perpetuity and without regard to the Term of this Agreement. Any modification of all or any portion of the Custom IP (even for use in connection with the Project) and/or any use of all or any portion of the Custom IP unrelated to the Project will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorney fees arising out of or resulting therefrom.

To the extent legally permitted, Olsson hereby assigns to Client all licenses, guarantees, and/or warranties extended to Olsson by the manufacturer, seller and/or licensor of the Commercial Products. Client acknowledges and agrees that Olsson makes no guarantees or warranties with regard to the Commercial Products.

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential. Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in connection with the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process. Notwithstanding the foregoing, Client is authorized to use the Information and disclose the Information to third parties in connection with the Project (including the authorized use and/or modification of the Custom IP). Notwithstanding the foregoing, Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope. **OLSSON MAKES NO FURTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO THE DELIVERABLES AND/OR SERVICES PERFORMED BY OLSSON AND OLSSON DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

### **SCHEDULE FOR OLSSON'S SERVICES**

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: May 8, 2024  
Anticipated Completion Date: September 30, 2025

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

### **COMPENSATION**

Client shall pay to Olsson for the performance of the Scope of Services, the actual time of personnel performing such services in accordance with the Labor Billing Rate Schedule(s), and all actual reimbursable expenses in accordance with the Reimbursable Expense Schedule attached to this agreement. Olsson shall submit invoices on a monthly basis, and payment is due within 30 calendar days of invoice date.

Olsson's Scope of Services will be provided on a time and expense basis not to exceed a total of Two Hundred Forty-Seven Thousand Dollars (\$247,000).

### **TERMS AND CONDITIONS OF SERVICE**

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be Michael Oneby.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of maximum 30 days from the date set forth above, unless changed by us in writing.

**OLSSON, INC.**

By  \_\_\_\_\_  
Ryan Allen, PE

By  \_\_\_\_\_  
Nathan Chapman, PE

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

**CITY OF SEWARD**

By \_\_\_\_\_  
Signature

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

Attachments

- Scope of Services
- Standard Labor Rate Schedule
- Reimbursable Expense Schedule
- General Provisions

# City of Seward WTP/WWTP SCADA Upgrade Phase 1 Olsson Scope of Services

Olsson Project # 024-01925

## TASK 1. ADMINISTRATIVE SERVICES

1. *Project Management*
  - a. *Provide overall project coordination and management between the Olsson design team and the City of Seward.*
  - b. *Up to 10 project progress meetings & SCADA development workshops as necessary.*
    - i. *Log and distribute meeting minutes.*
  - c. *Contract review and coordination.*
2. *Coordination with City of Seward IT to discuss firewall and VLAN configuration requirements.*
3. *Coordination with Allo to facilitate fiber installation at the WTP & WWTP.*

## TASK 2. HARDWARE/SOFTWARE

1. *Water Treatment Plant (WTP)*
  - a. *Hardware*
    - i. *Dell PowerEdge Rack SCADA Server with 64GB RAM & 2TB SSD Storage*
    - ii. *Dell Inspiron SCADA Workstation with 16 GB RAM & 1TB SSD Storage*
    - iii. *IXON VPN for secure remote access*
    - iv. *CAT6 Patch Cables*
    - v. *Two (2) 27" 1080p monitors*
    - vi. *Grandstream VOIP Gateway for voice callout*
  - b. *Software*
    - i. *Ignition 8.1 SCADA license*
    - ii. *Microsoft Office Suite*
    - iii. *VMWare Workstation Pro for virtualization of existing system*
    - iv. *Connected Components Workbench software for Micro850 PLC programming.*
2. *Wastewater Treatment Plant (WWTP)*
  - a. *Hardware*
    - i. *Dell PowerEdge Rack SCADA Server with 64GB RAM & 2TB Storage*
    - ii. *Dell Inspiron SCADA Workstation with 16 GB RAM & 1TB SSD Storage*
    - iii. *IXON VPN for secure remote access*
    - iv. *CAT6 Patch Cables*
    - v. *Two (2) 27" 1080p monitors*
    - vi. *Grandstream VOIP Gateway for voice callout*
  - b. *Software*
    - i. *Ignition 8.1 license*
    - ii. *Microsoft Office Suite*
    - iii. *VMWare Workstation Pro for virtualization of existing system*
3. *Wells*
  - a. *Wells with existing serial radios and Freewave Ethernet radios.*
    - i. *Upgrade radio to Zumlink Z9-PE Ethernet radios.*
      1. *Five (5) existing Wells with serial radios.*
      2. *Five (5) existing Wells with Freewave Ethernet radios.*
    - ii. *Upgrade PLC to Micro850 to accommodate Ethernet network architecture for the five (5) existing Wells with serial radios.*
4. *Upgrade from Ignition 8.1 to Ignition 8.3 on release (Q4 2024 or Q1 2025).*
  - a. *Includes 1 year of Ignition BasicCare support.*

### **TASK 3. SCADA SYSTEM DEVELOPMENT**

1. *WTP*
  - a. *Develop new SCADA system using Ignition SCADA software to replace and match or improve the functionality of the existing Iconics SCADA system unless otherwise indicated below.*
    - i. *Login/security-based access to different sites.*
    - ii. *Trending and logging of historical data to a redundant database.*
    - iii. *Recreation of existing reports in Ignition.*
    - iv. *Alarming and alarm callouts through integrated dialer system. Existing dialer may be retained as a backup; additional programming logic shall be added to prevent nuisance alarms.*
    - v. *High performance graphics.*
  - b. *Add new filter train to SCADA system.*
  - c. *O&M manual for new SCADA screens.*
2. *WWTP*
  - a. *Hardware upgrade, SCADA software license, and virtualize existing system only for this phase.*
3. *Virtualize existing WTP & WWTP Iconics SCADA systems for temporary SCADA control until WWTP SCADA system is developed.*
4. *Configure VPNs at the WTP & WWTP for remote access capabilities.*
5. *Regular system backups & categorization.*

### **TASK 4. RADIO/PLC INSTALLATION, WIRING, & PROGRAMMING**

1. *Convert five (5) existing Well PLC programs from CompactLogix to Micro850 equivalent.*
2. *Install, wire, and test five (5) Micro850 PLCs to replace CompactLogix PLCs at five (5) existing Wells with serial radios to support Ethernet network architecture.*
3. *Install, wire, and configure ten (10) replaced Well radios.*
4. *As-built control panel schematic updates for all upgraded Wells (10 total).*

## 2024 Olsson Billing Rate Schedule

### Billing Rate Schedule

<u>Classification</u>	<u>Billing Rate</u>
Market Leader	\$ 384.00
Geography/Discipline Leader	\$ 375.00
Sector Leader	\$ 333.00
Technical Expert/Sr Project Manager	\$ 290.00
Client Relationship Manager	\$ 290.00
Senior Team Leader	\$ 273.00
Group Leader	\$ 239.00
Client Manager/Project Manager	\$ 239.00
Associate Project Manager	\$ 222.00
Lead Engineer	\$ 239.00
Senior Engineer	\$ 212.00
Project Engineer	\$ 188.00
Engineer	\$ 162.00
Associate Engineer	\$ 142.00
Assistant Engineer	\$ 126.00
Lead Scientist	\$ 215.00
Senior Scientist	\$ 188.00
Project Scientist	\$ 155.00
Scientist	\$ 131.00
Associate Scientist	\$ 116.00
Assistant Scientist	\$ 101.00
Lead Planner	\$ 218.00
Senior Planner	\$ 193.00
Project Planner	\$ 159.00
Planner	\$ 138.00
Associate Planner	\$ 119.00
Assistant Planner	\$ 102.00
Lead Landscape Architect	\$ 218.00
Senior Landscape Architect	\$ 191.00
Project Landscape Architect	\$ 160.00
Landscape Architect	\$ 140.00
Associate Landscape Designer	\$ 121.00
Assistant Landscape Designer	\$ 106.00
Commissioning Manager/Technical Manager	\$ 242.00
Commissioning Agent	\$ 213.00
Commissioning Senior Technician	\$ 181.00
Commissioning Associate Technician	\$ 155.00
Commissioning Assistant Technician	\$ 128.00
Design Manager/Technical Manager	\$ 176.00
Design Associate	\$ 141.00
Senior Technician	\$ 114.00
Associate Technician	\$ 97.00
Assistant Technician	\$ 84.00

## 2024 Olsson Billing Rate Schedule

### Billing Rate Schedule

<u>Classification</u>	<u>Billing Rate</u>
GIS Specialist	\$ 173.00
Senior Systems Specialist	\$ 190.00
Stormwater Compliance Leader/Specialist	\$ 197.00
Stormwater Compliance Specist/Sr Coord	\$ 151.00
Stormwater Compliance Coordinator	\$ 119.00
Stormwater Compliance Assistant	\$ 93.00
Student Intern - Level 3	\$ 98.00
Student Intern - Level 2	\$ 84.00
Student Intern - Level 1	\$ 70.00
Public Engagement Specialist	\$ 134.00
Public Engagement Senior Coordinator	\$ 134.00
Public Engagement Coordinator	\$ 105.00
Public Engagement Assistant	\$ 88.00
Administrative Senior Specialist/Leader	\$ 140.00
Project Senior Coordinator	\$ 132.00
Administrative Senior Coordinator	\$ 107.00
Project Coordinator	\$ 100.00
Administrative Coordinator	\$ 85.00
Administrative Assistant	\$ 72.00

Note: Olsson's labor rates will increase by 5% on January 1st every year of a multi-year contract

Billing Rate Schedules for Surveying, Construction Administration, Drilling, and Special Inspections/NDT/Materials Testing will be provided as Appendices, as needed.



## REIMBURSABLE EXPENSE SCHEDULE

The expenses incurred by Olsson or Olsson's independent professional associates or consultants directly or indirectly in connection with the Project shall be included in periodic billing as follows:

<b><u>Classification</u></b>	<b><u>Cost</u></b>
Automobiles (Personal Vehicle)	\$0.67/mile*
Suburban's and Pick-Ups	\$0.75/mile*
Automobiles (Olsson Vehicle)	\$95.00/day
Other Travel or Lodging Cost	Actual Cost
Meals	Actual Cost
Printing and Duplication including Mylars and Linens	
In-House	Actual Cost
Outside	Actual Cost+10%
Postage & Shipping Charges for Project Related Materials including Express Mail and Special Delivery	Actual Cost
Film and Photo Developing	Actual Cost+10%
Telephone and Fax Transmissions	Actual Cost+10%
Miscellaneous Materials & Supplies Applicable to this Project	Actual Cost+10%
Copies of Deeds, Easements or other Project Related Documents	Actual Cost+10%
Fees for Applications or Permits	Actual Cost+10%
Sub-Consultants	Actual Cost+10%
Taxes Levied on Services and Reimbursable Expenses	Actual Cost

\*Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).

## GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated 4/29/2024 between the City of Seward ("Client") and Olsson, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

### **SECTION 1—OLSSON'S SCOPE OF SERVICES**

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

### **SECTION 2—ADDITIONAL SERVICES**

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate

schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

### **SECTION 3—CLIENT'S RESPONSIBILITIES**

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.4.7 All fees and other amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible and liable for all sales, service, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, county or local governmental authority on any amounts payable by Client under this Agreement, other than any taxes imposed on Olsson's income. In the event any governmental authority assesses Olsson for taxes, duties, or charges of any kind in connection with Scope of Services provided by Olsson to Client, Olsson shall be entitled to submit an invoice to Client, its successors or assigns, for the amount of said assessment and related interest and penalties. Client shall pay such invoice in accordance with Olsson's standard payment terms.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed

Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the fullest extent permitted by law, to indemnify and hold Olsson harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

#### **SECTION 4—MEANING OF TERMS**

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client

understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for

any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

## **SECTION 5—TERMINATION**

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by

Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

## **SECTION 6—DISPUTE RESOLUTION**

### **6.1. Mediation**

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

### **6.2 Arbitration or Litigation**

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 Except to the extent prohibited by law, the prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute. In the event of a Dispute involving a Claim (as hereinafter defined) against Olsson, Olsson shall be considered the "prevailing party" if Client is awarded materially less than the full amount of damages claimed by the Client in connection with the Dispute. In all other Disputes, "prevailing party" shall mean the party (if any) who obtains all, or substantially all, of the relief requested by that party in connection with the Dispute.

### **6.3 Certification of Merit**

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice. In any such instance, Olsson shall be entitled to an award of attorney's fees, costs, and expenses.

## **SECTION 7—MISCELLANEOUS**

### **7.1 Reuse of Documents**

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

### **7.2 Electronic Files**

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client

shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

### **7.3 Opinion of Probable Cost**

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Opinion of Probable Cost was not performed in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

### **7.4 Prevailing Wages**

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

### **7.5 Samples**

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

### **7.6 Standard of Care**

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

### **7.7 Force Majeure**

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

### **7.8 Equal Employment Opportunity**

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

### **7.9 Confidentiality**

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving Information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 Prior to the start of construction on the Project, the existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Notwithstanding anything to the contrary herein (or to the contrary of any existing or future nondisclosure, confidentiality or similar agreement between the parties), Olsson is authorized, to use, display, reproduce, publish, transmit, and distribute Information (including, but not limited to, videos and photographs of the Project) on and in any and all formats and media (including, but not limited to, Olsson's internet website) throughout the world and in all languages in connection with or in any manner relating to the marketing, advertising, selling, qualifying, proposing, commercializing, and promotion of Olsson and/or its services and business and in connection with any other lawful purpose of Olsson. In the event of any conflict or inconsistency between the provisions of this section and any other prior or future nondisclosure, confidentiality or similar agreement between the parties, the terms of this section shall take precedence.

7.9.6 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.7 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in

addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.8 The obligations of confidentiality set forth herein shall survive termination of this Agreement but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

## **7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination**

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of

the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity, holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

#### **7.11 Controlling Law and Venue**

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

#### **7.12 Subconsultants**

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subcontractors as set forth in this Agreement.

#### **7.13 Assignment**

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.13.2 the assigns of Client and Olsson) 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.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or

discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

#### **7.14 Indemnity**

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

#### **7.15 Limitation on Damages**

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s) or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract

and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

#### **7.16 Entire Agreement/Severability**

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson. If any part of this Agreement is found to conflict with applicable law, such part alone shall be null and void and considered stricken, but the remainder of this Agreement shall be given full force and effect.

4. Update on the Bradford Street Storm Sewer Project - City Engineer Oneby
5. Update on the Wellness Center Project - Executive Director Brase
6. Update on the Hwy 15 Construction Project - City Administrator Butcher

**CITY ADMINISTRATOR'S REPORT**

## CITY ADMINISTRATORS REPORT – 5/7/24

- Monitoring a number of street projects that have moved into dormant with season on East Seward (final items), design on East Hillcrest, drainage near Park Street & Bradford Street (construction), Highway 15 Watermain (construction) and Highway 15 Reconstruction (construction).
- Water Tower project underway, working on final paint design. Met with artist to update design.
- Reviewed additional DTR items and worked with applicants on needed documents.
- Working with Wellness Center Executive Director Brase on numerous items and follow ups.
- Finalizing items related to closeout of 2019 Flood FEMA items.
- Worked with Kelly Hoffschneider to work on a number of real estate items related to the Rail Campus.
- Met with the Building and Zoning Team on numerous items.
- Reviewed to TIF Application for MeyCo Holdings, Inc and 360 Properties, working with Andrew Willis to get meeting notifications drafted/sent and review agreement documents.
- Admin staff to continue comparability analysis.
- Finalized Budget Calendar for FY 2024-2025.
- Prepared Seward Rate Study items.
- Met with Chief Kimsey on numerous Fire Department Items.
- Continued process to convert to new employee credit cards.
- Met with Concordia and High School reps to discuss baseball/softball turf project.
- Updated LB 840 items and completed closing for the Bottle Rocket Brewing CDBG refinance.
- Met with Water Department and City Engineer to review RO Plant 3<sup>rd</sup> skid project updates.
- Met with designers on Hughes Brothers building project to understand levee requirements and impacts.
- Attended City Safety Committee meeting.
- Discussion on lead water service line along highway 15 and how to handle these if further discovered.
- Met with Electric Department and Olsson to discuss Grid Resiliency Grant prep.
- Worked on personnel matters.
- Met with Badger Water Meter reps along with Water Dept staff and Billing Office Staff to resolve meter issues and discuss training opportunities.
- Attended Civic Center Pre-Construction meeting BIC, Civic Center Manager, and Commission members.
- Attended the Agrifac Grand Opening.
- Attended the NPPD wholesale customer meeting in Norfolk. Discussed contract renegotiation items.
- Took four (4) days off for rest and relaxation. (Use it or lose it.)
- Toured Petsource Plant with Water/Wastewater Director Koll. Reviewed their onsite wastewater facility.
- Met with RDG Planning to discuss updating the City of Seward's 2017 downtown plan.
- Reviewed 7<sup>th</sup> Street Watermain Loop issues with Wastewater/Water Director and City Engineer for planning and public notice purposes.
- Worked with Bizco on email migration to the O365 cloud based system.
- Met with HR Director and Finance Director on the impact of the new Dept. of Labor final rule related to hour vs salaried employees, reviewed potential impacts and solutions.
- Finalized goals and targets for all employees with HR Director.

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

**Police Department**

- Concordia Graduation 5/4.
- Chief and Captain are working on the promotion process.
- Heard graduates from Concordia on 5/4.

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

- DR-4420 Project: Inspect Plum Creek on 4/30 and return funds to state.
- Begin to review/revise the Fire Dept. By-Laws.
- Current open positions: Seasonal Groundman.

**Water/Wastewater Department**

- Begin filling Swimming Pool.
- RO Meeting 5/3.
- Meeting with Greg at Petsource 5/1.
- Water Tower Meeting 5/1 (Gary Janicek will attend Brandon Koll's absence).

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

- Safety meeting 4/30 at Fire Station.
- Turning the Irrigation at the 4 plex.
- Working on landscaping at Golf Course.
- Spraying parks and ball fields when not raining or windy.

**Civic Center**

- Tentative date to begin construction is set for May 13<sup>th</sup>.
- Still waiting for set up to be complete at Muni building for digitization project.
- Met with Project Manager for a tour last week, will meet with him and site supervisor some time this week.

**Electric Department**

- Switching orders for NPPD.
- Bore in conduit for secondaries at 6<sup>th</sup> & Seward.
- Work on streetlights.
- Set pole at 6<sup>th</sup> & South.

**Street Department**

- Grind stumps on 1<sup>st</sup> and Moffitt.
- Equipment maintenance.
- Push up burn pile.

**Library**

- 4/30 Becky to NLA Meeting in Lincoln.
- 5/1 Library Board Meeting, summer hours begin.
- 5/2 Becky and Niki to PLTS Spring Meeting in York.

**Building Inspection/Planning Department**

- Zoning question responses for TIF app from Andrew Willis.
- Work on the area breakdown and how to institute the sidewalk ordinance.
- BAS (Census Bureau) map edits to be reviewed Wednesday at the zoning meeting for Boundary Maps.
- Fire Marshal review returned to Chelsey as not approved until code reviews for construction are completed and approved for Café on the Square on 6<sup>th</sup> St.

## **Engineering**

- Phase 2, Jackson to Lincoln for Highway 15 Water Main.
- NDOT Hwy 15 Reconstruction Updates: Hwy 15 & Hwy 34 intersection reconstruction, BNSF crossing, remove temporary road, reopen Ash to Hwy 34 (target May 9)
- Monthly progress meeting welding (5/1), welding, watermain modifications, logo re-design and communication tenant agreements for the Water Tower.
- GIS Updates: Summer intern (starts 5/13), (coordination mtg 5/2) and logins.
- ALTA survey review, verify easements, review drainage calds for Meyer Development and First Addition re-plat for Rail Campus.

## **Finance Dept.**

- Enter auditor's adjusting entries for last fiscal year (Cydnee).
- Claims (Julie).
- Print bills (Kirsten).
- Payroll (Jacqueline).

## **Seward Wellness Center**

- Site Update: Metal exterior install continues. East parking lot pour this week (delayed from last Friday 4/26). All structural steel frame on classrooms (Bldg D) completed last week. Water proofing for pre-cast walls completed last week. Concrete pour inside or outside every week until end of May. Pool dig starts 4/29.
- Meeting with H2I on gym floor and equipment 4/29.
- 5/1 Online training class (All AM).

**FUTURE REQUESTS FOR COUNCIL AGENDA ITEMS OR ADMINISTRATIVE ACTION**

**ANNOUNCEMENT OF UPCOMING EVENTS**

**STRATEGY SESSION**

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

**MOTION TO ADJOURN**

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

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

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Derek Bargmann, City Clerk

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Date