

AGENDA  
CITY COUNCIL, YORK, NEBRASKA  
Thursday, December 2, 2021  
7:00 PM



THE OPEN MEETINGS ACT IS POSTED ON  
THE EAST WALL OF THE COUNCIL  
CHAMBERS

1. The Open Meetings Act is posted on the East Wall of the Council Chambers
2. Notice of this meeting was published in the York News Times on November 27, 2021
3. Pledge of Allegiance
4. Roll Call
5. Minutes of November 18, 2021 meeting
6. Claims of Elected Officials
  - 6.1. Claim of Tony North for North Printing & Office Supply in the amount of \$898.82
7. Claims for the period November 19, 2021 through December 2, 2021
8. City Administrator Report
9. Update on Community Center - Brent Jackson
10. Consider approval of Consulting Services Agreement with Benesch for Final Design Amendment for ADA Curb Ramps - not to exceed \$25,730
11. Consider approval of Consulting Services Agreement with Benesch for Final Design Amendment for Asphalt Maintenance - not to exceed \$50,610
12. Consider approval of Consulting Services Agreement with Benesch for Final Design Amendment for Concrete Paving - not to exceed \$186,968
13. Consider approval of Franchise Agreement between City of York and ALLO, York LLC for cable services

14. Consider approval of the purchase of a C125D6D Diesel Generator (using State of Nebraska Bids) from Cummins Sales and Service in the amount of \$38,020.00
15. Consider approval of a 2021 Ford 3/4 Ton Extended Cab 4x4 truck from Anderson Ford (per State of Nebraska Bid) in the amount of \$ 33,902
16. Approve Resolution 2021-31 naming signatory names to the City's bank accounts
17. Consider approval of Maintenance Agreement No. 25 between the City and the Nebraska Department of Roads relating to highways to set out responsibilities of the State, counties and municipalities for 2022
18. Consider approval of a Landfill Lease Agreement between the York Area Solid Waste Agency and Werner Construction Co. for the lease of a three acre site for the sum of \$3,000 per year
19. Consider approval of bid of Hustler Turf for two Kawasaki Mowers in the amount of \$31,833.98 per Sourcewell Quote Form Contract
20. Accept resignation of Raylene Portz from the Board of Adjustment
21. Approve Mayor's Appointment of Jeff McGregor to the Board of Adjustment for a term expiring September 1, 2023
22. Oath of Office to Amanda Ring
23. Adjournment

**REGULAR MEETING  
CITY COUNCIL, YORK, NEBRASKA  
NOVEMBER 18, 2021  
7:00 O’CLOCK P.M.**

A meeting of the Mayor and City Council of the City of York, Nebraska, was convened in open and public session at 7:00 o'clock p.m. in the Council Chambers.

The Mayor announced that the Open Meetings Act is posted on the east wall of the Council Chambers.

**ROLL CALL**

Present were: Mayor Redfern. Councilmembers: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Absent: None. Also present were the City Clerk, City Administrator and City Attorney.

Notice of this meeting was given in advance thereof by publication in the York News Times on November 13, 2021, the City's designated method for giving notice, a copy of the proof of publication being attached to these Minutes. Notice of this meeting was given to Mayor Redfern and all members of the City Council and a copy of their acknowledgment and receipt of notice and the agenda is attached to these Minutes. Availability of the agenda was communicated in the advance notice and in the notice to Mayor Redfern and City Council of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

**MINUTES**

Councilmember Wilkinson moved and Councilmember VanEsch seconded that the Minutes of the November 4, 2021 meeting be approved.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Motion Carried.

**REPORTS**

Councilmember VanEsch moved and Councilmember Lones seconded that the Departmental Activities Report, be approved.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Motion Carried.

**CASH BALANCES FOR SEPTEMBER 2021**

Councilmember Wilkinson moved and Councilmember North seconded that the Cash Balances report for September, 2021 preliminary through November 4, 2021 claims and prior to audit and October 2021 Revenues and Expenditures be approved.

Roll call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Motion Carried.

**CLAIMS OF ELECTED OFFICIAL**

Councilmember Lones moved and Councilmember VanEsch seconded that the claim of Councilmember North for North Printing and Office Supply in the amount of \$1,380.04 be approved and paid.

Roll Call Vote Ayes: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, Wilkinson and Hubbard. Nays: None. Councilmember North declared a Conflict of Interest in as much as he is an owner of North Printing and Office Supply and abstained from voting. Motion Carried

## CLAIMS

Councilmember Lones moved and Councilmember North seconded that the claims for the period November 5, 2021 through November 18, 2021 be approved and paid.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Motion Carried.

## CITY ADMINISTRATOR REPORT

The City Administrator reported that she had emailed head shots to the Council for their review. She asked the Council if they would like to use the e-mail they have or the e-mails on the new web site. She advised that the street improvement program is moving along – that the samples are still downstairs and the Council may look at the same – she also advised that the consultants will be bringing bids to design the project.

## APPOINTMENT OF A CITY CLERK

The Mayor announced his appointment of Amanda Ring was City Clerk. Amanda will be sworn in on December 2, 2021.

Councilmember Wilkinson moved and Councilmember Hubbard seconded to approve said appointment.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Motion Carried.

## PRESENTATION FROM DEPARTMENT OF ECONOMIC DEVELOPMENT

Kelly Gewecke, Field Representative, for the Department of Economic Development presented the Council with the Economic Development Certified Community Recertification. She advised that only 40 communities have received this. Thanks was given to Lisa Hurley for her work in receiving this.

## APPROVE PLAT

The Mayor announced that this was the time and place set for a public hearing on a preliminary and final plat of Campbell Subdivision. Charles Campbell advised that he is purchasing approximately 45 feet from his neighbor Dennis Dooley. He noted that the Planning Commission had recommended approval of said plat.

Following discussion, Councilmember VanEsch moved and Councilmember Hubbard seconded that the plat be approved.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Motion Carried.

## APPROVE LOW BID OF DAN ROBINSON FOR CEILING TILE IN THE CITY OFFICES

Councilmember Wilkinson moved and Councilmember Hubbard seconded that the low bid of Dan Robinson in the amount of \$21,057.00 be accepted for the replacement of ceiling tiles in the city building

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Motion Carried.

## APPROVE BID OF CATERPILLAR TRACTOR FOR TRACTOR SCRAPER FOR LANDFILL

Councilmember Hubbard moved and Councilmember North seconded that the City accept the bid of Caterpillar Tractor for a model 27 627K wheel tractor scraper in the amount of \$923,600.00 for the landfill. This amount will be a part of the landfill bonds.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Motion Carried.

## AMENDMENT TO SERVICE AGREEMENT

Scott Keene of Piper, Sandler addressed the Council regarding the issuance of landfill bonds to finance a new cell and tractor scraper at the landfill. He advised he had performed a debt service analysis. He advised that the scraper life is approximately 30 years and the cell will last approximately 30 years. He outlined the proposed bond payment schedule. He advised that he has met with the York Area Solid Waste Agency and York County Commissioners. In the event that the landfill is not self sufficient, both the City and Council will need to provide the funds necessary for the repayment of the bonds. It is necessary to approve an amendment to the Service Agreement between the City of York and York Area Solid Waste Agency. The following Ordinance was introduced:

### ORDINANCE NO.2303

AN ORDINANCE APPROVING AN AMENDMENT TO SERVICE AGREEMENT BETWEEN THE CITY OF YORK, NEBRASKA AND THE YORK AREA SOLID WASTE AGENCY RELATING TO DISPOSAL OF SOLID WASTE AND ADDITIONAL BONDS TO BE ISSUED BY SAID AGENCY, AGREEING TO PROVIDE FOR A SPECIAL TAX IN THE EVENT OF A DEFICIENCY OF REVENUES; AUTHORIZING THE EXECUTION OF SUCH AMENDMENT TO SERVICE AGREEMENT BY OFFICERS OF THE CITY OF YORK; AND AUTHORIZING THE MAYOR TO MAKE CERTAIN ALLOCATIONS AND CERTIFICATIONS RELATING THERETO

Councilmember Hubbard moved and Councilmember Pieper seconded that the Statutory Rule requiring reading on three different days of Ordinance No. 2303 be suspended.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. The motion was adopted by a three-fourths vote of the Council and the Statutory Rule suspended for consideration of said Ordinance on its second and third reading.

Councilmember Pieper moved and Councilmember Hubbard seconded that Ordinance No. 2303 be passed and adopted.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Ordinance No.2303 was declared adopted.

## AMEND CHAPTER 20 – LIBRARIES

The Following ordinance was introduced: The Ordinance Committee recommended approval of said ordinance.

### ORDINANCE NO. 2304

AN ORDINANCE TO AMEND CHAPTER 20 LIBRARIES TO PROVIDE THAT RECOMMENDATIONS BY THE LIBRARY ADVISORY BOARD ARE MADE TO THE LIBRARY DIRECTOR AND TO DELETE REFERENCE TO THE CITY CLERK-TREASURER; TO REPEAL ALL ORDINANCES IN CONFLICT HERewith AND PROVIDE FOR THE EFFECTIVE DATE OF THIS ORDINANCE.

Councilmember Hubbard moved and Councilmember Wilkinson seconded that the Statutory Rule requiring reading on three different days of Ordinance No.2304 be suspended.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. The motion was adopted by a three-fourths vote of the Council and the Statutory Rule suspended for consideration of said Ordinance on its second and third reading.

Councilmember Hubbard moved and Councilmember Wilkinson seconded that Ordinance No.2304 be passed and adopted.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Ordinance No. 2304 was declared adopted.

## AMEND CHAPTER 9 BUILDING TO ADOPT INTERNATIONAL BUILDING CODE – 2018 EDITION

Asset Manager Aude outlined the changes proposed.

The following ordinance was introduced: The Ordinance Committee and Planning Commission recommended approval of said ordinance.

#### ORDINANCE NO. 2305

AN ORDINANCE TO AMEND CHAPTER 9 BUILDING TO ADOPT THE INTERNATIONAL BUILDING CODE, 2018 EDITION AND TO AMEND PROVISIONS OF THIS ORDINANCE; TO REPEAL ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDE FOR THE EFFECTIVE DATE OF THIS ORDINANCE

Councilmember Hubbard moved and Councilmember VanEsch seconded that the Statutory Rule requiring reading on three different days of Ordinance No. 2305 be suspended.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. The motion was adopted by a three-fourths vote of the Council and the Statutory Rule suspended for consideration of said Ordinance on its second and third reading.

Councilmember Hubbard moved and Councilmember North seconded that Ordinance No. 2305 be passed and adopted.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Ordinance No. 2305 was declared adopted

#### AMEND CHAPTER 29 , HEATING, VENTILATING AND COOLING AND ADOPT INTERNATIONAL MECHANICAL CODE 2018 EDITION

Asset Manager Aude outlined the proposed amendments and advised that this would adopt the International Mechanical Code – 2018 Edition.

The following ordinance was introduced: The Ordinance Committee and Planning Commission recommended approval of said ordinance.

#### ORDINANCE NO.2306

AN ORDINANCE TO AMEND CHAPTER 29 HEATING, VENTILATING AND COOLING; TO ENACT AN ADDITIONAL SECTION TO CREATE LICENSE REQUIREMENTS; TO AMEND THE CHAPTER TO ADOPT THE INTERNATIONAL MECHANICAL CODE 2018 EDITION; TO REPEAL ALL ORDINANCES IN CONFLICT HERWITH; AND PROVIDE FOR THE EFFECTIVE DATE OF THIS ORDINANCE.

Councilmember Wilkinson moved and Councilmember Pieper seconded that the Statutory Rule requiring reading on three different days of Ordinance No. 2306 be suspended.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. The motion was adopted by a three-fourths vote of the Council and the Statutory Rule suspended for consideration of said Ordinance on its second and third reading.

Councilmember Hubbard moved and Councilmember Wilkins seconded that Ordinance No.2306 be passed and adopted.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Ordinance No. 2306 was declared adopted

#### AMEND CHAPTER 28 PLUMBING AND ADOPT INTERNATIONAL PLUMBING CODE, 2018 EDISION

Asset Manager Aude outlined the proposed changes and stated that the City will no longer give tests but will accept certification for Lincoln and Omaha. He advised that International Plumbing Code, 2018 Edition will be adopted.

The following ordinance was introduced. The Ordinance Committee and Planning Commission have recommended approval of said ordinance.

ORDINANCE NO. 2307

AMEND CHAPTER 28 PLUMBING TO ADOPT THE INTERNATIONAL PLUMBING CODE, 2018 EDITION; TO ENACT SECTIONS TO REQUIRE CERTIFICATION AND PROVIDE FOR THE ISSUANCE OF A LICENSE; TO AMEND FEES CHARGED AND TO AMEND PROVISIONS AS PROVIDED HEREIN; TO REPEAL ALL ORDINANCES IN CONFLICT HERWITH AND PROVIDE FOR THE EFFECTIVE DATE OF THIS ORDINANCE

Councilmember VanEsch moved and Councilmember Lones seconded that the Statutory Rule requiring reading on three different days of Ordinance No. 2307 be suspended.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. The motion was adopted by a three-fourths vote of the Council and the Statutory Rule suspended for consideration of said Ordinance on its second and third reading.

Councilmember Lones moved and Councilmember VanEsch seconded that Ordinance No. 2307 be passed and adopted.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. Ordinance No. 2307 was declared adopted

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AMEND CHAPTER 34 STREETS AND SIDEWALKS TO REQUIRE A PERMIT FOR  
NON CONFORMING MAIL BOX SUPPORTS

Asset Manager Aude outlined the proposed amendments and noted that the Ordinance Committee and Planning Commission had recommended approval.

The Following Ordinance was introduced:

ORDINANCE NO. 2308

AN ORDINANCE TO AMEND CHAPTER 34 STREETS AND SIDEWALKS TO REQUIRE A PERMIT FOR NON-CONFORMING MAIL BOX SUPPORTS; TO REPEAL ALL ORDINANCES IN CONFLICT HERWITH AND PROVIDE FOR THE EFFECTIVE DATE OF THIS ORDINANCE

Councilmember Pieper moved and Councilmember Hubbard seconded that the Statutory Rule requiring reading on three different days of Ordinance No. 2308 be suspended.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. The motion was adopted by a three-fourths vote of the Council and the Statutory Rule suspended for consideration of said Ordinance on its second and third reading.

Councilmember Pieper moved and Councilmember Wilkinson seconded that Ordinance No.2308 be passed and adopted.

Roll Call Vote: Ayes: Pieper, Lones, VanEsch, Sheppard, Wagner, North, Wilkinson and Hubbard. Nays: None. A Ordinance No. 2308 was declared adopted

ADJOURNMENT

There being no further business to come before the meeting, The Mayor adjourned the meeting, the time being 7:31 o'clock p.m.

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C. Jean Thiele, City Clerk

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Barry Redfern, Mayor

SORTED BY VENDOR

VENDOR	NAME	NO# INVOICES	TOTAL AMOUNT	1099	G/L ACCT NO#	G/L NAME	G/L AMOUNT
01-00001	CITY OF YORK - WATER DEPT	1	9.73	N			
01-00010	GALE	5	407.85	N			
01-00070	KIRKHAM MICHAEL	1	5.00	N			
01-00110	MATHESON TRI-GAS	3	93.97	N			
01-00120	JACKSON SERVICES INC	8	496.49	N			
01-00150	MISSIONSQUARE RETIREMENT	2	1,157.38	N			
01-00210	EAKES OFFICE PLUS	1	10.00	N			
01-00230	CORNHUSKER STATE IND.	1	9.25	N			
01-00290	NORTH PRINTING & OFFICE S	11	1,445.68	N			
01-00300	BLACK HILLS ENERGY	12	1,626.43	N			
01-00340	BOUND TREE MEDICAL LLC	1	342.00	N			
01-00360	CITY OF YORK	3	29,896.91	N			
01-00400	BEAVER BEARING COMPANY	1	25.81	N			
01-00540	GLOBAL TECH, INC.	1	7,402.18	N			
01-00560	J&R HEATING & A/C, INC.	1	89.00	N			
01-00640	NEBRASKA PUBLIC POWER DIS	3	7,641.25	N			
01-00701	OLSSON ASSOCIATES	1	2,545.72	N			
01-00710	OVERLAND SAND & GRAVEL	7	17,703.88	N			
01-00780	PRESTO X COMPANY	9	432.17	N			
01-00800	BURST, LLC	15	571.63	N			
01-01090	BAKER & TAYLOR, INC	6	2,091.00	N			
01-01290	GRAND CENTRAL FOODS, INC.	5	109.66	N			
01-01350	PROTEX CENTRAL INC.	3	568.00	N			
01-01390	AFLAC	6	827.26	N			
01-01420	NE CHILD SUPPORT PAYMENT	1	104.77	N			
01-0145	ANTHONY BESTWICK	1	592.76	N			
01-01460	PERENNIAL POWER	1	12,324.00	N			

SORTED BY VENDOR

VENDOR	NAME	NO# INVOICES	TOTAL AMOUNT	1099	G/L ACCT NO#	G/L NAME	G/L AMOUNT
01-01470	SERVI-TECH LABORATORIES	2	140.30	N			
01-01490	NE DEPT OF REVENUE	2	7,123.86	N			
01-01510	HACH CO.	2	1,087.23	N			
01-01640	INTERNAL REVENUE SERVICE	6	38,151.21	N			
01-01650	UNION BANK	4	23,940.83	N			
01-01670	FRATERNAL ORDER OF POLICE	2	550.00	N			
01-01780	WATER ENVIRONMENT FED	1	83.00	N			
01-01840	CORNERSTONE BANK	1	142.38	N			
01-01980	SAHLING KENWORTH INC	3	2,242.37	N			
01-02060	NE DEPT OF ENVIRONMENT &	1	125.00	N			
01-02230	MCCORMICK HEATING & AC	1	18,000.00	N			
01-02250	MILLER SEED & SUPPLY CO	2	359.24	N			
01-02590	ADOPT A PET	1	2,500.00	N			
01-02620	LEAGUE OF NEBRASKA MUNICI	2	657.20	N			
01-02650	O'REILLY AUTO PARTS	5	329.61	N			
01-0268	KENNETH EKELER	1	100.00	N			
01-02730	SCHOOL DISTRICT OF YORK	1	24.00	N			
01-02900	DENT PULR, LLC.	2	2,783.10	Y			
01-03240	YORK COUNTY DEVELOPMENT C	2	7,525.00	N			
01-03260	HOMETOWN LEASING	3	307.02	N			
01-03380	POWER SERVICE INC	1	1,795.00	N			
01-03590	PENNER'S TIRE & AUTO	1	134.93	N			
01-03930	YORK CHAMBER OF COMMERCE	1	2,083.34	N			
01-05310	SAPP BROTHERS PETROLEUM,	4	4,583.28	N			
01-06370	HEIMAN FIRE EQUIPMENT, IN	2	3,321.21	N			
01-06400	MATT LEIF	1	100.00	N			
01-06970	NISSAN ELETRIC	1	855.00	Y			

SORTED BY VENDOR

VENDOR	NAME	NO# INVOICES	TOTAL AMOUNT	1099	G/L ACCT NO#	G/L NAME	G/L AMOUNT
01-09090	WINDSTREAM	1	112.84	N			
01-10110	BADGER METER INC	1	1,500.00	N			
01-10710	YORK COUNTY SPORTS AUTHOR	1	1,000.00	N			
01-10840	TOTAL ADMINISTRATIVE SERV	3	3,467.31	N			
01-10860	HITZ TOWING	2	122.94	N			
01-11220	PAUL DAVIS RESTORATION &	1	55.00	N			
01-11450	HEIDI GREGG	1	84.95	N			
01-11670	STEVE HOLMES	1	30.00	N			
01-14470	FARMERS COOPERATIVE	2	73.00	N			
01-14850	CHEREE FOLTS	3	264.00	N			
01-14930	MIDWEST BANK	1	4,567.93	N			
01-15280	ERICK BREKKE	1	192.00	N			
01-15710	CRITEL ENTERPRISES LLC	1	162.90	Y			
01-15770	CHRIS WIZE	1	250.00	N			
01-15880	CHARLIE'S U-SAVE RX	1	149.59	N			
01-15930	STERICYCLE INC	1	402.09	N			
01-16010	CHEMSEARCH	1	635.50	N			
01-16650	NE DEPT OF REVENUE	1	370.00	N			
01-16710	ONE CALL CONCEPTS INC	1	99.59	N			
01-17430	BIBLIONIX	1	4,230.00	Y			
01-17530	BFT LP dba PET WASTE ELIM	1	16.99	Y			
01-17620	PATHIAN LLC	3	84.00	N			
01-18120	TERRI CARLSON	2	95.71	N			
01-18410	REGIONAL CARE INC	1	33,283.42	N			
01-19590	COLONIAL LIFE	4	735.80	N			
01-19600	AMERITAS	3	400.10	N			
01-20170	AMAZON	7	167.70	N			

SORTED BY VENDOR

VENDOR	NAME	NO# INVOICES	TOTAL AMOUNT	1099	G/L ACCT NO#	G/L NAME	G/L AMOUNT
01-20750	MARLOWE WALL	1	100.00	N			
01-21320	CULLIGAN	1	15.00	N			
01-21330	THOMAS MOMMENS	1	164.43	N			
01-22050	HEAVY METAL SUPPLY CO	3	145.46	N			
01-22100	SLACK AUTO SUPPLY LLC	18	1,253.44	N			
01-22670	NATIONWIDE INS	2	200.00	N			
01-22700	SPECTRUM BUSINESS	2	1,492.18	N			
01-22790	SITE ONE LANDSCAPE SUPPLY	1	154.54	N			
01-23350	YORK PUBLIC SCHOOLS	1	297.79	N			
01-23820	MACQUEEN EMERGENCY GROUP	2	8,525.60	N			
01-23990	BILL WILLIAMSEN	1	100.00	N			
01-24120	FIRESPRING	1	140.00	N			
01-24800	HAYLIE ZIMA	1	9.80	N			
01-25080	DEARBORN NATIONAL-VOL FIR	1	220.40	N			
01-25100	NEBRASKA RURAL RADIO ASSO	2	534.00	Y			
01-25120	GREG STAEHR	1	100.00	N			
01-25650	CARDMEMBER SERVICE	2	5,661.48	N			
01-26290	THE BPAD GROUP INC	2	970.00	N			
01-26770	MATT'S WELDING	1	500.00	Y			
01-27010	ICON IMPROVEMENTS LLC	1	25,390.00	N			
01-27210	MIDWEST AUTO PARTS INC.	4	153.90	N			
01-27490	SUE CRAWFORD	2	147.40	N			
01-27570	LINCOLN CREEK ELECTRIC	1	4,700.00	Y			
01-28080	FIRST NATIONAL COMPANY	2	2,000.00	N			
01-28090	LIGHTHOUSE UNIFORMS	1	7,406.60	N			
01-28100	MIDWEST FLOOR COVERING, I	1	23,085.50	N			

SORTED BY VENDOR

VENDOR	NAME	NO# INVOICES	TOTAL AMOUNT	1099	G/L ACCT NO#	G/L NAME	G/L AMOUNT
=====							
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***	REPORT TOTALS	***	268		343,594.77		

SELECTION CRITERIA

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VENDOR SET: 01 CITY OF YORK  
VENDOR: ALL  
BANK: ALL  
VENDOR CLASS(ES): ALL CLASSES

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TRANSACTION SELECTION

REPORTING: PAID ITEMS

	=====PAYMENT DATES=====	=====ITEM DATES=====	=====POSTING DATES=====
PAID ITEMS DATES	: 10/22/2021 THRU 11/04/2021	0/00/0000 THRU 99/99/9999	0/00/0000 THRU 99/99/9999

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PRINT OPTIONS

REPORT SEQUENCE: VENDOR #  
G/L EXPENSE DISTRIBUTION: NO  
CHECK RANGE: 000000 THRU 999999

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**CONSULTING SERVICES AGREEMENT**

CLIENT	City of York	Project Name	Final Design Amendment for ADA Curb
Address	100 East 4 <sup>th</sup> Street	Ramps	
	PO Box 276		
	York, NE 68467	Related to York Street Bond Project	
Telephone	402.363.2600	Project Location	
		Variou Locations	
Client Contact	Dr. Sue Crawford	Consultant PM	Terry Brown
Client Job No.		Consultant Job No.	112221.04

This AGREEMENT is made by and between City of York, hereinafter called "CLIENT," and Alfred Benesch & Company, hereinafter called "CONSULTANT", for professional consulting services as specified herein. CONSULTANT agrees to provide CLIENT with requested consulting services more specifically described as follows d(or shown in Attachment A):

Attachment A

Scope of Services

Fee Estimates

Attachment B: 2021 Employment Classification and Rate Schedule

The GENERAL CONDITIONS and the following Attachments are hereby made a part of the AGREEMENT:

Attachment A: Scope of Services and Fee Estimate

Attachment B: Schedule of Unit Rates

Attachment C: \_\_\_\_\_

or

Exhibit A: Work Authorizations specifying Method of Payment, Scope, and Fee

By signing this AGREEMENT, CLIENT acknowledges that it has read and fully understands this AGREEMENT and all attachments thereto. CLIENT further agrees to pay CONSULTANT for services described herein upon receipt of invoice by CLIENT for the CONSULTANT's estimated fee as described below:

BY LUMP SUM: \$\_\_\_\_\_.

BY TIME AND MATERIALS: \$not to exceed 25,730.

BY OTHER PAYMENT METHOD (See Attachment A): \$\_\_\_\_\_.

AS SHOWN ON SERIALLY NUMBERED WORK AUTHORIZATIONS USING EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT:

**CLIENT**

**ALFRED BENESCH & COMPANY**

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

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

PRINT NAME: Anthony Dirks, P.E.

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

TITLE: Senior Vice President

DATE: \_\_\_\_\_, 2021

DATE: November, 2021

BENESCH OFFICE: Lincoln

ADDRESS: 825 M Street, Suite 100

Lincoln, NE 68508

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



## STANDARD TERMS AND CONDITIONS

### SECTION 1 – Services by Consultant

#### 1.1 General

Consultant shall provide services under this Agreement only upon request of the Client, and only to the extent defined and required by the Client. These services may include the use of outside services, outside testing laboratories, and special equipment.

Attachments to this Agreement are as identified on the signature page to this Agreement or using serially numbered Work Authorizations, and with these GENERAL CONDITIONS, are all as attached hereto, and made a part of this Agreement.

#### 1.2 Scope of Services and Fees

The services to be performed by Consultant and the associated fee are attached hereto and made a part of this Agreement or by using serially numbered Work Authorizations, all as identified on the signature page to this Agreement, and shall be performed by the Consultant in accordance with the Client's requirements. The Scope of Services and Fee Estimate (Attachment A) is valid for sixty (60) days, after which Consultant reserves the right to revise the Scope or Fee Estimate.

It is mutually understood that Consultant's fee is not a firm contractual amount, except the total fee by the Consultant shall not be exceeded unless authorized in writing by the Client. The intent of the Scope of Services is to identify the services to be provided by Consultant. However, it is specifically understood that by written notice to Consultant, Client can decrease or, with concurrence of Consultant, increase the Scope of Services.

### SECTION 2 – Payments to Consultant

#### 2.1 Method of Payment

Payment for Consultant's personnel services and direct expenses shall be based on the Method of Payment which is identified on the signature page to this Agreement or serially numbered Work Authorizations, attached hereto, and made a part of this Agreement.

#### 2.2 Payment for Personnel Services

##### 2.2.1 Payment

Payment for the services rendered by Consultant's personnel shall be based on the hours of chargeable time and in accordance with Consultant's Schedule of Unit Rates, which is identified on the signature page to this Agreement and attached hereto, and made a part of this Agreement.

##### 2.2.2 Chargeable Time

Chargeable time for Consultant's personnel is that portion of their time devoted to providing services requested by Client. Chargeable time for field personnel located away from Consultant's office for more than one week is a minimum of eight hours per day and five days per calendar week, except for federally declared legal holidays or during an employee's sick leave or vacation time. Travel time from

Consultant's office to an assigned work site, and return to Consultant's office, is chargeable time; or if more economical for Client, Consultant shall lodge its personnel overnight near the work site in lieu of traveling back to Consultant's office at the end of each work day.

##### 2.2.3 Overtime Rates

The basis for payment to Consultant for each hour worked in excess of forty (40) hours in any calendar week shall be the applicable hourly rate as specified in the Schedule of Unit Rates.

#### 2.3 Payment for Direct Expenses

##### 2.3.1 Payment

For Direct Expenses incurred by Consultant, payment to Consultant by the Client shall be in accordance with Consultant's Schedule of Unit Rates.

##### 2.3.2 Direct Expenses

For the purposes of this Agreement, Direct Expenses to be contracted and managed by Consultant and payable by Client to Consultant shall include: Outside Services including the services and reimbursable expenses for firms other than Consultant which are necessary for the work the Consultant is directed to perform; Laboratory Tests and related reports necessary for the work the Consultant is directed to perform, either by the Consultant or by an outside service for the Consultant; Special Equipment expenses including the costs of the Consultant locating, acquiring, leasing, or renting any equipment or facilities not currently owned, leased, or rented by Consultant at the time of the request for services which are necessary to enable Consultant to provide the services requested; vehicles furnished by Consultant for Consultant's authorized travels and for Consultant's field personnel; Per Diem expense or actual costs of maintaining Consultant's field personnel on or near the Project site, for each day of field assignment away from Consultant's office; and Other Direct Expenses associated with all services provided hereunder and identified in the Schedule of Unit Rates.

#### 2.4 Payment Conditions

2.4.1 Consultant shall submit monthly invoices for all personnel services and direct expenses under this Agreement and a final invoice upon completion of services.

2.4.2 Invoices are due and payable upon receipt by Client. Interest at a rate of 1.5% per month, or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after date of invoice. Payments will first be credited to interest and then to principal.

2.4.3 In the event of a disputed or contested invoice, Client must provide written notice to Consultant within ten (10) days of the date of any invoice, otherwise the invoice will be considered to be correct. In the event Client timely submits in writing a dispute on a particular invoice, only that portion so contested will be withheld from payment and the Client will pay the undisputed portion. No interest will accrue on any reasonably contested portion of the invoice until mutually resolved.

**2.4.4** If Client fails to make payment in full to Consultant within sixty (60) days after the date of the undisputed invoice, Consultant may, after giving seven (7) days' written notice to Client, suspend services under this Agreement until paid in full, including interest. Consultant shall have no liability to Client for delays or damages caused by such suspension of services. Client agrees to pay all costs of collection, including reasonable attorney's fees, incurred by Consultant as a result of Client's failure to make payments in accordance with this Agreement. No final plans, documents or reports will be released for any purpose until Consultant has been paid in full.

**2.4.5** The billing rates specified in the Schedule of Unit Rates for subsequent years shall be adjusted annually in accordance with Consultant's costs of doing business, subject to Client's review and concurrence.

## **SECTION 3 - Term of Agreement**

### **3.1 Term**

Consultant's obligations to perform under this Agreement shall extend from the date of execution until terminated by either party.

### **3.2 Abandonment of Work**

Client shall have the absolute right to abandon any work requested hereunder or to change the general scope of the work at any time, and such action on its part shall in no event be deemed a breach of contract.

### **3.3 Termination of Agreement**

#### **3.3.1 Termination with Cause**

The obligation to provide further services under this Agreement may be terminated with cause by either party by written notice stating the basis for the termination and providing 7 days to cure. The termination will be effective seven (7) days after delivery of written notice thereof if the basis for the termination has not been cured. In the event of termination by Consultant caused by failure of the Client to perform in accordance with the terms of this Agreement, Client shall pay for all services performed prior to the effective date of the termination, including all project termination expenses, collection fees and legal expenses. Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment. In the event of termination by the Client caused by failure by Consultant to perform in accordance with the terms of this Agreement, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination and provide information and documents developed under the terms of this Agreement to the Client. Upon receipt of all other information and documents, Client shall pay Consultant for services performed prior to the effective date of the termination.

#### **3.3.2 Termination without Cause**

Either party may, at its sole discretion, terminate this Agreement without cause at any time. In the event of such

termination, the terminating party will promptly notify and confirm the termination in writing to the other party. The termination will be effective seven (7) days after delivery of written notice thereof. Upon termination, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment.

### **3.4 Payment for Work Upon Abandonment or Agreement Termination**

If Client abandons requested work or terminates this Agreement, Consultant shall be paid on the basis of work completed to the date of abandonment or effective date of termination. Consultant shall perform no activities other than reasonable wrap-up activities after receipt of notice of abandonment or termination. Payment for the work shall be as established under Section II.

## **SECTION 4 - General Considerations**

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

**4.1.1** The assignment of personnel and all phases of the undertaking of the services which Consultant shall provide hereunder shall be subject to the oversight and general guidance of Client.

**4.1.2** While upon the premises of Client or property under its control, all employees, agents, and subconsultants of Consultant shall be subject to Client's rules and regulations respecting its property and the conduct of its employees thereon.

**4.1.3** However, it is understood and agreed that in the performance of the work and obligations hereunder, Consultant shall be and remain an independent Consultant and that the employees, agents or subconsultants of Consultant shall not be considered employees of or subject to the direction and control of Client. Consultant shall be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

### **4.2 Insurance**

**4.2.1** Consultant shall furnish Client a certificate of insurance upon request showing amounts and types of insurance carried by Consultant, which certificate shall contain a commitment by the Insurance Company that during the time any work is being performed by Consultant under this Agreement it will give Client notice of cancellation or non-renewal of the insurance coverage shown on such certificates in accordance with policy provisions.

**4.2.2** Any construction contracts relative to Consultant's Services shall require that the Client and Consultant be included as additional insureds on the contractor's and contractor's subcontractors' commercial general liability and commercial automobile liability insurance policies and that the coverage afforded Client and Consultant is primary to any insurance maintained by Client or Consultant and that Client and Consultant's insurance is non-contributory with any coverage afforded by contractor and subcontractors. Client will also require contractor and all subcontractors to purchase and maintain workers' compensation and employer's liability insurance. Consultant will name the Client as additional insured on

Consultant's commercial general liability insurance.

### **4.3 Successors and Assigns**

**4.3.1** Client and Consultant each binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

**4.3.2** Neither Consultant nor Client shall assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other party, except as stated in paragraph 4.3.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent consultants, associates, and subconsultants as it may deem appropriate to assist in the performance of services hereunder.

**4.3.3** Nothing herein shall be construed to give any rights or benefits hereunder to any one other than Client and Consultant except as otherwise provided herein.

### **4.4 Compliance with Law**

**4.4.1** Consultant shall exercise the professional standard of care to comply with, and cause its subconsultants to comply with, applicable Federal, state, and local laws, orders, rules, and regulations in effect at the time services are rendered, and relating to the performance of the services Consultant is to perform under this Agreement. If the Scope of Services requires Consultant to prepare an application for a permit, Consultant does not represent or warrant that said permit or approval will be issued by any governmental body.

**4.4.2** Neither the Consultant nor the Consultant's agents or employees shall discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, or national origin.

### **4.5 Ownership and Reuse of Documents**

**4.5.1** All drawings, specifications, test reports, and other materials and work products which have been prepared or furnished by Client prior to this Agreement shall remain Client's property. Consultant shall be permitted to rely on Client furnished documents and Client shall make available to Consultant copies of these materials as necessary for the Consultant to perform the services requested hereunder.

**4.5.2** All drawings, specifications, test reports, and other materials and work products, including computer aided drawings, designs, and other data filed on electronic media which will be prepared or furnished by Consultant (and Consultant's independent professional associates and subconsultants) under this Agreement, are instruments of service in respect to the Project and Consultant shall retain

an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and the occupancy of the Project by Client and others; however, such documents are not intended or represented to be suitable for reuse by Client or others acting on behalf of Client on extensions of the Project or on any other project. Further, Consultant makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by Consultant in performing services herein, and to the condition or availability of the computer data after an acceptance period of thirty (30) days from delivery to Client. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Consultant or to Consultant's independent professional associates or subconsultants, and Client shall indemnify and hold harmless Consultant and Consultant's independent professional associates and subconsultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by Client and Consultant.

### **4.6 Consultant's Personnel at Project Site**

**4.6.1** The presence or duties of the Consultant personnel at a Project site, whether as onsite representatives or otherwise, do not make the Consultant or its personnel in any way responsible for those duties that belong to the Client and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the project documents and any health or safety precautions required by such construction work. The Consultant and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor or other entity or any other persons at the site except Consultant's own personnel.

**4.6.2** To the extent Consultant's Scope of Work includes construction observation, the Consultant shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Consultant neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s)' failure to perform their work in accordance with the project documents.

### **4.7 Opinions of Cost, Financial Considerations, and Schedules**

In providing opinions of cost, financial analyses, economic

feasibility projections, and schedules for the Project, the Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions. Consultant's opinions of probable Total Project Costs and Construction Costs provided for herein as appropriate are made on the basis of Consultant's experience and qualifications and represent Consultant's judgments as an experienced and qualified professional consultant familiar with the construction industry. Consultant makes no warranty that the Client's actual Total Project or Construction Costs, financial aspects, economic feasibility, or schedules will not vary from the Consultant's opinions, analyses, projections, or estimates. If Client wishes greater assurance as to any element of the Total Project or Construction cost, feasibility, or schedule, Client will employ an independent cost estimator, contractor, or other appropriate advisor.

#### **4.8 Discovery of Unanticipated Pollutant and Hazardous Substance Risks**

**4.8.1** If Consultant, while performing the services, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule, and the estimated cost of Consultant's services will be reconsidered and that this Agreement shall immediately become subject to renegotiation or termination.

**4.8.2** In the event that the Agreement is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that Consultant shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this Agreement, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

**4.8.3** Client also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for Consultant to take immediate measures to protect health and safety. Consultant agrees to notify Client as soon as practically possible should unanticipated pollutants and/or hazardous substances be suspected or encountered. Client authorizes Consultant to take measures that in Consultant's sole judgment are justified to preserve and protect the health and safety of Consultant's personnel and the public. Client agrees to compensate Consultant for the additional cost of taking such additional precautionary measures to protect employees' and the public's health and safety. This section is not intended to impose upon Consultant any duties or obligations other than those imposed by law.

### **SECTION 5 - Professional Responsibility**

#### **5.1 Performance of Services**

Consultant shall perform its services consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances (hereinafter the "Standard of Care"). Consultant expressly disclaims all express or implied warranties and guarantees with respect to the performance of professional services, and it is agreed that the quality of

such services shall be judged solely as to whether the services were performed consistent with the Standard of Care. Consultant owes Client only that level of performance defined in this Section 5.1, and nothing herein shall be construed as creating a fiduciary relationship.

If at any time prior to construction Client believes Consultant's services are deficient due to not meeting the Standard of Care, Client must immediately inform Consultant in writing and shall afford Consultant the opportunity to correct such deficiency. If, upon review by Consultant it is determined the deficiency is attributable to Consultant, the deficiency shall be corrected at no additional cost to Client.

#### **5.2 Limitation of Liability**

Client and Consultant agree to allocate certain of the risks so that, to the fullest extent permitted by law, Consultant's total liability to Client is limited to the amount paid under the contract or \$50,000 whichever is greater, this being the Client's sole and exclusive remedy for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Agreement from any cause or causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

#### **5.3 No Special or Consequential Damages**

Client and Consultant agree that to the fullest extent permitted by law neither party shall be liable to the other for any special, indirect, or consequential damages whatsoever, whether caused by either party's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes.

#### **5.4 Indemnification**

To the fullest extent permitted by law, Client and Consultant mutually agree to indemnify and hold each other harmless from and against any and all claims, damages, losses and expenses, defense costs including reasonable attorneys' fees, and court or arbitration costs and other liabilities arising from their own negligent acts, errors or omissions in performance of their services under this Agreement, but only to the extent caused that each party is responsible for such damages, liabilities and costs on a comparative basis of fault.

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

Client and Consultant expressly agree that Agreement does not confer upon any third party any rights as beneficiary to this Agreement. Consultant accepts no responsibility for damages, if any, suffered by any third party as the result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it.

Client agrees that Consultant's services and work products are for the exclusive present use of Client. Client agrees that Consultant's compliance with any request by Client to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive, or otherwise alter provisions of this Agreement nor does it create or confer any third party beneficiary rights on any

third party.

## **SECTION 6 - Miscellaneous Provisions**

### **6.1 Notices**

Any notice to either party herein shall be in writing and shall be served either personally or by registered or certified mail addressed to the signing party shown on the signature page.

### **6.2 Joint Preparation**

For purposes of contract interpretation and for the purpose of resolving any ambiguity in this Agreement, the parties agree that this Agreement was prepared jointly by them and/or their respective attorneys.

### **6.3 Headings**

Headings used in this Agreement are for the convenience of reference only and shall not affect the construction of this Agreement

### **6.4 Severability**

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **6.5 Dispute Resolution**

If negotiation in good faith fails to resolve a dispute within thirty (30) days of written notice of the dispute by either party, then the parties agree that each dispute, claim or controversy arising from or related to this Agreement or the relationships which result from this AGREEMENT shall be subject to mediation as a condition precedent to initiating legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No legal or equitable action may be instituted for a period of ninety (90) days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties and shall be held in a location mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. Any dispute not resolved through mediation shall be subject to litigation in a court of competent jurisdiction in the state in which the project is located.

### **6.6 Equal Opportunity**

Consultant will, in the performance of this Agreement, comply with federal, state, and local laws, and all

regulations and orders issued under any applicable law related to equal employment opportunity, non-discrimination, or employment generally.

Consultant certifies that it will not knowingly employ or contract with a non-legal resident of the United States to perform work under this Agreement, and verifies or attempts to verify employee eligibility of its employees through participation in the U.S. Department of Homeland Security and Social Security Administration's E-Verify system.

### **6.7 Governing Law**

This Agreement is to be governed by the laws of the jurisdiction in which the project is located. For locations outside of the United States, this Agreement shall be governed by the laws of the State of Illinois.

### **6.8 Entire Agreement**

This Agreement, along with those documents specified, attached, or hereby cited together, and serially numbered Work Authorizations if used, constitute the entire Agreement between the parties hereto and no changes, modifications, extensions, terminations, or waivers of this agreement, or other documents, or any of the provisions herein, or therein contained, shall be valid unless made in writing and signed by duly authorized representatives of both parties.

## **SUPPLEMENTAL CONDITIONS FOR SURVEY, ENVIRONMENTAL OR GEOTECHNICAL SERVICES**

**Supplemental Condition is incorporated herein when the applicable box is checked.**

**S.1 Location of Underground Utilities**

It shall be the Client's responsibility to locate and physically mark all underground utilities and structures which lie within the work area prior to the start of subsurface investigations. If the Client elects not to assume this responsibility, Client shall notify Consultant and shall compensate Consultant for all costs associated with locating and physically marking said underground utilities and structures over and above the estimated project fee. Client shall indemnify and hold Consultant harmless from any damages and delays resulting from unmarked or improperly marked underground utilities and structures. For reasons of safety, Consultant will not begin work until this has been accomplished.

**S.2 Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Consultant.

**S.3 Disposition of Samples and Equipment**

**S.3.1 Disposition of Samples**

No samples and/or materials will be kept by Consultant

longer than thirty (30) days after submission of the final report unless agreed otherwise.

**S.3.2 Hazardous or Potentially Hazardous Samples and Materials**

In the event that samples and/or materials contain or are suspected to contain substances or constituents hazardous or detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, Consultant will, after completion of testing, return such samples and materials to Client, or have the samples and materials disposed of in accordance with Client's directions and all applicable laws. Client agrees to pay all costs associated with the storage, transportation, and disposal of samples and materials. Client recognizes and agrees that Consultant at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

**S.3.3 Contaminated Equipment**

All laboratory and field equipment contaminated in Consultant's performance of services will be cleaned at Client's expense. Contaminated consumables will be disposed of and replaced at Client's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of Client. At Client's expense, such equipment shall be delivered to Client, or disposed of in the same manner specified in S.3.2 above. Client agrees to pay Consultant the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to Client pursuant to this Agreement.

# ATTACHMENT A

## Scope of Services

City of York Street Bond Project

### **TASK 1. Final Design of ADA Curb Ramps for Selected Streets**

*a. Project Management*

Benesch Project Manager will serve as point of contact, maintain project schedule and budget, and be responsible for coordinating work.

*b. Topographic Survey*

Benesch will perform the necessary topographic ground survey with a combination of Benesch staff and Initial Point Surveying to confirm horizontal and vertical control, confirmation of section and property corners along the selected project locations. Survey will extend to tie locations to include pavement and utilities at existing intersections. A topographic survey will be performed using the latest GPS and Drone technology. Natural topographic features and man-made features will be recorded by coordinates to the nearest one-tenth (0.1) of a foot. All such topographic features, which are pertinent to the design or are necessary to properly show the effect of the proposed work upon the adjoining property and/or improvements, will be recorded. Benesch shall provide a list of horizontal control points with coordinates, descriptions, station and offset. Horizontal control will be referenced to the Modified State Plane using known land survey monuments provided by the City of York. Vertical control will be completed by differential level circuit referenced to NAVD 88. Benesch will survey section corners in order to assemble the geometry to create the right-of-way drawings and confirm any locations already established by the City of York. Utilities will be drawn from surveying above ground features, including markings by utility companies resulting from the locate request. Information supplied by utility companies will be used to complete the placement of existing utilities on the plans. Locations from utility plans will be transferred into the topographic survey. Where available, above-ground features will be used to improve accuracy. Benesch will add a disclaimer to the drawings with respect to the undetermined location of underground utilities. Benesch will add additional information to the established base map from the City of York using any new topographic survey data.

*c. Utility Location/Verification*

Benesch will review the utility locations shown on the topographic survey and verify these locations during field inspections. Identification and verification by the utility companies of major utility conflicts such as fiber optic lines, gas pipelines, high-pressure waterlines, transmission lines, etc., will be accomplished at the earliest possible time.

*d. Traffic Control Design*

Benesch will provide traffic control design to define closures and temporary traffic control to safely provide the contractor ample areas to work and provide access to local property owners.

*e. Specifications*

Benesch will provide construction specifications for the project to define the construction materials, sequence of construction, and special provisions to define the bid items.

*f. Final Design of ADA Curb Ramps for Selected Streets*

Benesch shall prepare project base files and plan sheets following the standard layout appearance of City of York documents. Final design documents will provide a complete detail of the planned construction and gives the city a reliable cost estimate of overall construction costs for this project. Existing curb ramps in the project area will be field verified to check for ADA compliance with any non-compliant ramps will be identified for this project. Final design plan sheets to be included in the final submittal include the following:

- Typical Section(s)
- Removal / Site Preparation Plans
- ADA Curb Ramp Locations
- Details

Following street section are to be included in the ADA Curb Ramps project:

- 19<sup>th</sup> Street (Lincoln to East)
- Grant Ave. (3<sup>rd</sup> to 14<sup>th</sup>)
- Greenwood Ave (4<sup>th</sup> to 8<sup>th</sup>)
- Lincoln Ave. (25<sup>th</sup> to Hwy 34)
- Lincoln Ave. (Elm to 25<sup>th</sup>)
- 14<sup>th</sup> Street (Lincoln to Blackburn)
- 50<sup>th</sup> Street (West end of concrete to Lincoln Ave)
- 6<sup>th</sup> Street (Nebraska Ave. to East)
- Lincoln Frontage Road (50<sup>th</sup> to Access Rd)
- Nebraska Ave (19<sup>th</sup> to A)
- North Blackburn Ave (13<sup>th</sup> to Duke)
- North Blackburn Ave. (3<sup>rd</sup> to 9<sup>th</sup>)
- Platte Ave (Elm to 4<sup>th</sup>, 9<sup>th</sup> to 11<sup>th</sup>)

*g. Cost Estimates*

Benesch shall prepare an updated total project cost estimate. This shall include Engineering, ROW acquisition, Private Utility Relocations, Public Utility Relocations, Construction, and Construction Engineering on the appropriate forms.

*h. Bidding Phase*

Benesch will assist the city staff with the bid phase of the project and present a recommendation of the low responsible bid at a council meeting for the York Street Bond Projects. Benesch will provide information for the city to advertise for the public bid of the project.

Task 1 services would start upon NTP and is assumed to be December 2021. Completion of Task 1 is approximately end of April 2022.

**Fee Estimate**  
**Final Design Services for ADA Curb Ramp Project**  
**Street Bond Projects - York, NE**

Description	Estimated Quantity	Unit Price	Amount
<b>Final Design</b>			
<b>a. Project Management</b>			
Senior Project Manager	8.0 hr.	\$ 199.00 /hr.	\$ 1,592.00
Progress Meetings	2.0 hr.	\$ 199.00 hr	\$ 398.00
<b>b. Topographic Survey</b>			
Senior Project Manager	2.0 hr.	\$ 199.00 hr	\$ 398.00
Senior Surveyor	8 hr	\$ 124.00 hr	\$ 992.00
Drone Flight			\$ 1,000.00
Surveyor	8 hr	\$ 101.00 hr	\$ 808.00
<b>c. Utility Locations/Verification</b>			
Field Inspection (Designer 2)	8.0 hr.	\$ 101.00 hr	\$ 808.00
Project Engineer II	8 hr	\$ 124.00 hr	\$ 992.00
<b>d. Traffic Control Design</b>			
Senior Project Manager	4.0 hr.	\$ 199.00 /hr.	\$ 796.00
Project Engineer II	8.0 hr.	\$ 124.00 /hr.	\$ 992.00
Designer II	8.0 hr.	\$ 101.00 hr	\$ 808.00
<b>e. Specifications</b>			
Senior Project Manager	4.0 hr.	\$ 199.00 /hr.	\$ 796.00
Project Engineer II	8.0 hr.	\$ 124.00 /hr.	\$ 992.00
Designer II	4.0 hr.	\$ 101.00 hr	\$ 404.00
<b>f. Final Design</b>			
Senior Project Manager	8.0 hr.	\$ 199.00 /hr.	\$ 1,592.00
Construction Rep III	16.0 hr.	\$ 124.00 /hr.	\$ 1,984.00
Designer II	24.0 hr.	\$ 101.00 /hr.	\$ 2,424.00
Project Engineer II	40.0 hr.	\$ 124.00 hr	\$ 4,960.00
<b>g. Cost Estimates</b>			
Senior Project Manager	2.0 hr.	\$ 199.00 /hr.	\$ 398.00
Project Engineer II	4.0 hr.	\$ 124.00 /hr.	\$ 496.00
Project Engineer I	4.0 hr.	\$ 101.00 hr	\$ 404.00
<b>h. Bidding</b>			
Senior Project Manager	4.0 hr.	\$ 199.00 /hr.	\$ 796.00
Designer II	4.0 hr.	\$ 101.00 /hr.	\$ 404.00
Project Engineer II	4.0 hr.	\$ 124.00 hr	\$ 496.00
<b>Preliminary Design Services Not to Exceed :</b>	<b>190</b>		<b>\$ 25,730</b>



**2021 EMPLOYMENT CLASSIFICATION AND RATE SCHEDULE**

<u>CLASSIFICATION</u>	<u>BILLABLE RATE</u>
Project Manager I	\$150.00
Project Manager II	\$178.00
Senior Project Manager	\$199.00
Project Principal	\$246.00
Project Engineer I	\$101.00
Project Engineer II	\$124.00
Senior Project Engineer	\$166.00
Construction Representative I	\$91.00
Construction Representative II	\$101.00
Construction Representative III	\$124.00
Resident Project Manager I	\$140.00
Resident Project Manager II	\$166.00
Senior Resident Project Manager	\$178.00
Inspector I	\$71.00
Inspector II	\$83.00
Senior Inspector	\$91.00
Designer I	\$91.00
Designer II	\$101.00
Technologist I	\$71.00
Technologist II	\$91.00
Senior Technologist	\$124.00
Technical Specialist I	\$101.00
Technical Specialist II	\$124.00
Senior Technical Specialist	\$140.00
Intern	\$60.00
Field/Lab Technician I	\$71.00
Field/Lab Technician II	\$83.00
Field/Lab Technician III	\$91.00
Senior Field/Lab Technician	\$101.00
Construction Technical Rep I	\$83.00
Construction Technical Rep II	\$91.00
Construction Technical Rep III	\$101.00
Senior Construction Technical Rep	\$111.00
Construction Technical Rep Manager	\$124.00
Instrument Operator	\$71.00
Party Chief	\$83.00
Surveyor (RLS)	\$101.00
Senior Surveyor (RLS)	\$124.00

Scientist I	\$71.00
Scientist II	\$83.00
Project Scientist I (Environmental)	\$91.00
Project Scientist II (Environmental)	\$101.00
Project Scientist III (Environmental)	\$124.00
Senior Project Scientist	\$140.00
Project Scientist I (Geotechnical)	\$83.00
Project Scientist II (Geotechnical)	\$91.00
Marketing Assistant	\$71.00
Marketing Coordinator	\$83.00
Marketing Manager	\$124.00
Office Assistant	\$60.00
Project Assistant I	\$60.00
Project Assistant II	\$71.00
Division Administrative Assistant I	\$60.00
Division Administrative Assistant II	\$71.00



**CONSULTING SERVICES AGREEMENT**

CLIENT	City of York	Project Name	Final Design Amendment for Asphalt
Address	100 East 4 <sup>th</sup> Street	Maintenance	
	PO Box 276	(Chip Seal)	
	York, NE 68467	Related to York Street Bond Project	
Telephone	402.363.2600	Project Location	Variou Locations
			York, NE
Client Contact	Dr. Sue Crawford	Consultant PM	Terry Brown
Client Job No.		Consultant Job No.	112221.03

This AGREEMENT is made by and between City of York, hereinafter called "CLIENT," and Alfred Benesch & Company, hereinafter called "CONSULTANT", for professional consulting services as specified herein. CONSULTANT agrees to provide CLIENT with requested consulting services more specifically described as follows d(or shown in Attachment A):

Attachment A

Scope of Services

Fee Estimates

Attachment B: 2021 Employment Classification and Rate Schedule

The GENERAL CONDITIONS and the following Attachments are hereby made a part of the AGREEMENT:

Attachment A: Scope of Services and Fee Estimate

Attachment B: Schedule of Unit Rates

Attachment C: \_\_\_\_\_

or

Exhibit A: Work Authorizations specifying Method of Payment, Scope, and Fee

By signing this AGREEMENT, CLIENT acknowledges that it has read and fully understands this AGREEMENT and all attachments thereto. CLIENT further agrees to pay CONSULTANT for services described herein upon receipt of invoice by CLIENT for the CONSULTANT's estimated fee as described below:

BY LUMP SUM: \$\_\_\_\_\_.

BY TIME AND MATERIALS: \$not to exceed 50,610.

BY OTHER PAYMENT METHOD (See Attachment A): \$\_\_\_\_\_.

AS SHOWN ON SERIALLY NUMBERED WORK AUTHORIZATIONS USING EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT:

**CLIENT**

**ALFRED BENESCH & COMPANY**

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

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

PRINT NAME: Anthony Dirks, P.E.

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

TITLE: Senior Vice President

DATE: \_\_\_\_\_, 2021

DATE: November, 2021

BENESCH OFFICE: Lincoln

ADDRESS: 825 M Street, Suite 100

Lincoln, NE 68508

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



## STANDARD TERMS AND CONDITIONS

### SECTION 1 – Services by Consultant

#### 1.1 General

Consultant shall provide services under this Agreement only upon request of the Client, and only to the extent defined and required by the Client. These services may include the use of outside services, outside testing laboratories, and special equipment.

Attachments to this Agreement are as identified on the signature page to this Agreement or using serially numbered Work Authorizations, and with these GENERAL CONDITIONS, are all as attached hereto, and made a part of this Agreement.

#### 1.2 Scope of Services and Fees

The services to be performed by Consultant and the associated fee are attached hereto and made a part of this Agreement or by using serially numbered Work Authorizations, all as identified on the signature page to this Agreement, and shall be performed by the Consultant in accordance with the Client's requirements. The Scope of Services and Fee Estimate (Attachment A) is valid for sixty (60) days, after which Consultant reserves the right to revise the Scope or Fee Estimate.

It is mutually understood that Consultant's fee is not a firm contractual amount, except the total fee by the Consultant shall not be exceeded unless authorized in writing by the Client. The intent of the Scope of Services is to identify the services to be provided by Consultant. However, it is specifically understood that by written notice to Consultant, Client can decrease or, with concurrence of Consultant, increase the Scope of Services.

### SECTION 2 – Payments to Consultant

#### 2.1 Method of Payment

Payment for Consultant's personnel services and direct expenses shall be based on the Method of Payment which is identified on the signature page to this Agreement or serially numbered Work Authorizations, attached hereto, and made a part of this Agreement.

#### 2.2 Payment for Personnel Services

##### 2.2.1 Payment

Payment for the services rendered by Consultant's personnel shall be based on the hours of chargeable time and in accordance with Consultant's Schedule of Unit Rates, which is identified on the signature page to this Agreement and attached hereto, and made a part of this Agreement.

##### 2.2.2 Chargeable Time

Chargeable time for Consultant's personnel is that portion of their time devoted to providing services requested by Client. Chargeable time for field personnel located away from Consultant's office for more than one week is a minimum of eight hours per day and five days per calendar week, except for federally declared legal holidays or during an employee's sick leave or vacation time. Travel time from

Consultant's office to an assigned work site, and return to Consultant's office, is chargeable time; or if more economical for Client, Consultant shall lodge its personnel overnight near the work site in lieu of traveling back to Consultant's office at the end of each work day.

##### 2.2.3 Overtime Rates

The basis for payment to Consultant for each hour worked in excess of forty (40) hours in any calendar week shall be the applicable hourly rate as specified in the Schedule of Unit Rates.

#### 2.3 Payment for Direct Expenses

##### 2.3.1 Payment

For Direct Expenses incurred by Consultant, payment to Consultant by the Client shall be in accordance with Consultant's Schedule of Unit Rates.

##### 2.3.2 Direct Expenses

For the purposes of this Agreement, Direct Expenses to be contracted and managed by Consultant and payable by Client to Consultant shall include: Outside Services including the services and reimbursable expenses for firms other than Consultant which are necessary for the work the Consultant is directed to perform; Laboratory Tests and related reports necessary for the work the Consultant is directed to perform, either by the Consultant or by an outside service for the Consultant; Special Equipment expenses including the costs of the Consultant locating, acquiring, leasing, or renting any equipment or facilities not currently owned, leased, or rented by Consultant at the time of the request for services which are necessary to enable Consultant to provide the services requested; vehicles furnished by Consultant for Consultant's authorized travels and for Consultant's field personnel; Per Diem expense or actual costs of maintaining Consultant's field personnel on or near the Project site, for each day of field assignment away from Consultant's office; and Other Direct Expenses associated with all services provided hereunder and identified in the Schedule of Unit Rates.

#### 2.4 Payment Conditions

2.4.1 Consultant shall submit monthly invoices for all personnel services and direct expenses under this Agreement and a final invoice upon completion of services.

2.4.2 Invoices are due and payable upon receipt by Client. Interest at a rate of 1.5% per month, or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after date of invoice. Payments will first be credited to interest and then to principal.

2.4.3 In the event of a disputed or contested invoice, Client must provide written notice to Consultant within ten (10) days of the date of any invoice, otherwise the invoice will be considered to be correct. In the event Client timely submits in writing a dispute on a particular invoice, only that portion so contested will be withheld from payment and the Client will pay the undisputed portion. No interest will accrue on any reasonably contested portion of the invoice until mutually resolved.

**2.4.4** If Client fails to make payment in full to Consultant within sixty (60) days after the date of the undisputed invoice, Consultant may, after giving seven (7) days' written notice to Client, suspend services under this Agreement until paid in full, including interest. Consultant shall have no liability to Client for delays or damages caused by such suspension of services. Client agrees to pay all costs of collection, including reasonable attorney's fees, incurred by Consultant as a result of Client's failure to make payments in accordance with this Agreement. No final plans, documents or reports will be released for any purpose until Consultant has been paid in full.

**2.4.5** The billing rates specified in the Schedule of Unit Rates for subsequent years shall be adjusted annually in accordance with Consultant's costs of doing business, subject to Client's review and concurrence.

## **SECTION 3 - Term of Agreement**

### **3.1 Term**

Consultant's obligations to perform under this Agreement shall extend from the date of execution until terminated by either party.

### **3.2 Abandonment of Work**

Client shall have the absolute right to abandon any work requested hereunder or to change the general scope of the work at any time, and such action on its part shall in no event be deemed a breach of contract.

### **3.3 Termination of Agreement**

#### **3.3.1 Termination with Cause**

The obligation to provide further services under this Agreement may be terminated with cause by either party by written notice stating the basis for the termination and providing 7 days to cure. The termination will be effective seven (7) days after delivery of written notice thereof if the basis for the termination has not been cured. In the event of termination by Consultant caused by failure of the Client to perform in accordance with the terms of this Agreement, Client shall pay for all services performed prior to the effective date of the termination, including all project termination expenses, collection fees and legal expenses. Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment. In the event of termination by the Client caused by failure by Consultant to perform in accordance with the terms of this Agreement, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination and provide information and documents developed under the terms of this Agreement to the Client. Upon receipt of all other information and documents, Client shall pay Consultant for services performed prior to the effective date of the termination.

#### **3.3.2 Termination without Cause**

Either party may, at its sole discretion, terminate this Agreement without cause at any time. In the event of such

termination, the terminating party will promptly notify and confirm the termination in writing to the other party. The termination will be effective seven (7) days after delivery of written notice thereof. Upon termination, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment.

### **3.4 Payment for Work Upon Abandonment or Agreement Termination**

If Client abandons requested work or terminates this Agreement, Consultant shall be paid on the basis of work completed to the date of abandonment or effective date of termination. Consultant shall perform no activities other than reasonable wrap-up activities after receipt of notice of abandonment or termination. Payment for the work shall be as established under Section II.

## **SECTION 4 - General Considerations**

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

**4.1.1** The assignment of personnel and all phases of the undertaking of the services which Consultant shall provide hereunder shall be subject to the oversight and general guidance of Client.

**4.1.2** While upon the premises of Client or property under its control, all employees, agents, and subconsultants of Consultant shall be subject to Client's rules and regulations respecting its property and the conduct of its employees thereon.

**4.1.3** However, it is understood and agreed that in the performance of the work and obligations hereunder, Consultant shall be and remain an independent Consultant and that the employees, agents or subconsultants of Consultant shall not be considered employees of or subject to the direction and control of Client. Consultant shall be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

### **4.2 Insurance**

**4.2.1** Consultant shall furnish Client a certificate of insurance upon request showing amounts and types of insurance carried by Consultant, which certificate shall contain a commitment by the Insurance Company that during the time any work is being performed by Consultant under this Agreement it will give Client notice of cancellation or non-renewal of the insurance coverage shown on such certificates in accordance with policy provisions.

**4.2.2** Any construction contracts relative to Consultant's Services shall require that the Client and Consultant be included as additional insureds on the contractor's and contractor's subcontractors' commercial general liability and commercial automobile liability insurance policies and that the coverage afforded Client and Consultant is primary to any insurance maintained by Client or Consultant and that Client and Consultant's insurance is non-contributory with any coverage afforded by contractor and subcontractors. Client will also require contractor and all subcontractors to purchase and maintain workers' compensation and employer's liability insurance. Consultant will name the Client as additional insured on

Consultant's commercial general liability insurance.

### **4.3 Successors and Assigns**

**4.3.1** Client and Consultant each binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

**4.3.2** Neither Consultant nor Client shall assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other party, except as stated in paragraph 4.3.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent consultants, associates, and subconsultants as it may deem appropriate to assist in the performance of services hereunder.

**4.3.3** Nothing herein shall be construed to give any rights or benefits hereunder to any one other than Client and Consultant except as otherwise provided herein.

### **4.4 Compliance with Law**

**4.4.1** Consultant shall exercise the professional standard of care to comply with, and cause its subconsultants to comply with, applicable Federal, state, and local laws, orders, rules, and regulations in effect at the time services are rendered, and relating to the performance of the services Consultant is to perform under this Agreement. If the Scope of Services requires Consultant to prepare an application for a permit, Consultant does not represent or warrant that said permit or approval will be issued by any governmental body.

**4.4.2** Neither the Consultant nor the Consultant's agents or employees shall discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, or national origin.

### **4.5 Ownership and Reuse of Documents**

**4.5.1** All drawings, specifications, test reports, and other materials and work products which have been prepared or furnished by Client prior to this Agreement shall remain Client's property. Consultant shall be permitted to rely on Client furnished documents and Client shall make available to Consultant copies of these materials as necessary for the Consultant to perform the services requested hereunder.

**4.5.2** All drawings, specifications, test reports, and other materials and work products, including computer aided drawings, designs, and other data filed on electronic media which will be prepared or furnished by Consultant (and Consultant's independent professional associates and subconsultants) under this Agreement, are instruments of service in respect to the Project and Consultant shall retain

an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and the occupancy of the Project by Client and others; however, such documents are not intended or represented to be suitable for reuse by Client or others acting on behalf of Client on extensions of the Project or on any other project. Further, Consultant makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by Consultant in performing services herein, and to the condition or availability of the computer data after an acceptance period of thirty (30) days from delivery to Client. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Consultant or to Consultant's independent professional associates or subconsultants, and Client shall indemnify and hold harmless Consultant and Consultant's independent professional associates and subconsultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by Client and Consultant.

### **4.6 Consultant's Personnel at Project Site**

**4.6.1** The presence or duties of the Consultant personnel at a Project site, whether as onsite representatives or otherwise, do not make the Consultant or its personnel in any way responsible for those duties that belong to the Client and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the project documents and any health or safety precautions required by such construction work. The Consultant and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor or other entity or any other persons at the site except Consultant's own personnel.

**4.6.2** To the extent Consultant's Scope of Work includes construction observation, the Consultant shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Consultant neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s)' failure to perform their work in accordance with the project documents.

### **4.7 Opinions of Cost, Financial Considerations, and Schedules**

In providing opinions of cost, financial analyses, economic

feasibility projections, and schedules for the Project, the Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions. Consultant's opinions of probable Total Project Costs and Construction Costs provided for herein as appropriate are made on the basis of Consultant's experience and qualifications and represent Consultant's judgments as an experienced and qualified professional consultant familiar with the construction industry. Consultant makes no warranty that the Client's actual Total Project or Construction Costs, financial aspects, economic feasibility, or schedules will not vary from the Consultant's opinions, analyses, projections, or estimates. If Client wishes greater assurance as to any element of the Total Project or Construction cost, feasibility, or schedule, Client will employ an independent cost estimator, contractor, or other appropriate advisor.

#### **4.8 Discovery of Unanticipated Pollutant and Hazardous Substance Risks**

**4.8.1** If Consultant, while performing the services, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule, and the estimated cost of Consultant's services will be reconsidered and that this Agreement shall immediately become subject to renegotiation or termination.

**4.8.2** In the event that the Agreement is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that Consultant shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this Agreement, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

**4.8.3** Client also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for Consultant to take immediate measures to protect health and safety. Consultant agrees to notify Client as soon as practically possible should unanticipated pollutants and/or hazardous substances be suspected or encountered. Client authorizes Consultant to take measures that in Consultant's sole judgment are justified to preserve and protect the health and safety of Consultant's personnel and the public. Client agrees to compensate Consultant for the additional cost of taking such additional precautionary measures to protect employees' and the public's health and safety. This section is not intended to impose upon Consultant any duties or obligations other than those imposed by law.

### **SECTION 5 - Professional Responsibility**

#### **5.1 Performance of Services**

Consultant shall perform its services consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances (hereinafter the "Standard of Care"). Consultant expressly disclaims all express or implied warranties and guarantees with respect to the performance of professional services, and it is agreed that the quality of

such services shall be judged solely as to whether the services were performed consistent with the Standard of Care. Consultant owes Client only that level of performance defined in this Section 5.1, and nothing herein shall be construed as creating a fiduciary relationship.

If at any time prior to construction Client believes Consultant's services are deficient due to not meeting the Standard of Care, Client must immediately inform Consultant in writing and shall afford Consultant the opportunity to correct such deficiency. If, upon review by Consultant it is determined the deficiency is attributable to Consultant, the deficiency shall be corrected at no additional cost to Client.

#### **5.2 Limitation of Liability**

Client and Consultant agree to allocate certain of the risks so that, to the fullest extent permitted by law, Consultant's total liability to Client is limited to the amount paid under the contract or \$50,000 whichever is greater, this being the Client's sole and exclusive remedy for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Agreement from any cause or causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

#### **5.3 No Special or Consequential Damages**

Client and Consultant agree that to the fullest extent permitted by law neither party shall be liable to the other for any special, indirect, or consequential damages whatsoever, whether caused by either party's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes.

#### **5.4 Indemnification**

To the fullest extent permitted by law, Client and Consultant mutually agree to indemnify and hold each other harmless from and against any and all claims, damages, losses and expenses, defense costs including reasonable attorneys' fees, and court or arbitration costs and other liabilities arising from their own negligent acts, errors or omissions in performance of their services under this Agreement, but only to the extent caused that each party is responsible for such damages, liabilities and costs on a comparative basis of fault.

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

Client and Consultant expressly agree that Agreement does not confer upon any third party any rights as beneficiary to this Agreement. Consultant accepts no responsibility for damages, if any, suffered by any third party as the result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it.

Client agrees that Consultant's services and work products are for the exclusive present use of Client. Client agrees that Consultant's compliance with any request by Client to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive, or otherwise alter provisions of this Agreement nor does it create or confer any third party beneficiary rights on any

third party.

## **SECTION 6 - Miscellaneous Provisions**

### **6.1 Notices**

Any notice to either party herein shall be in writing and shall be served either personally or by registered or certified mail addressed to the signing party shown on the signature page.

### **6.2 Joint Preparation**

For purposes of contract interpretation and for the purpose of resolving any ambiguity in this Agreement, the parties agree that this Agreement was prepared jointly by them and/or their respective attorneys.

### **6.3 Headings**

Headings used in this Agreement are for the convenience of reference only and shall not affect the construction of this Agreement

### **6.4 Severability**

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **6.5 Dispute Resolution**

If negotiation in good faith fails to resolve a dispute within thirty (30) days of written notice of the dispute by either party, then the parties agree that each dispute, claim or controversy arising from or related to this Agreement or the relationships which result from this AGREEMENT shall be subject to mediation as a condition precedent to initiating legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No legal or equitable action may be instituted for a period of ninety (90) days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties and shall be held in a location mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. Any dispute not resolved through mediation shall be subject to litigation in a court of competent jurisdiction in the state in which the project is located.

### **6.6 Equal Opportunity**

Consultant will, in the performance of this Agreement, comply with federal, state, and local laws, and all

regulations and orders issued under any applicable law related to equal employment opportunity, non-discrimination, or employment generally.

Consultant certifies that it will not knowingly employ or contract with a non-legal resident of the United States to perform work under this Agreement, and verifies or attempts to verify employee eligibility of its employees through participation in the U.S. Department of Homeland Security and Social Security Administration's E-Verify system.

### **6.7 Governing Law**

This Agreement is to be governed by the laws of the jurisdiction in which the project is located. For locations outside of the United States, this Agreement shall be governed by the laws of the State of Illinois.

### **6.8 Entire Agreement**

This Agreement, along with those documents specified, attached, or hereby cited together, and serially numbered Work Authorizations if used, constitute the entire Agreement between the parties hereto and no changes, modifications, extensions, terminations, or waivers of this agreement, or other documents, or any of the provisions herein, or therein contained, shall be valid unless made in writing and signed by duly authorized representatives of both parties.

## **SUPPLEMENTAL CONDITIONS FOR SURVEY, ENVIRONMENTAL OR GEOTECHNICAL SERVICES**

***Supplemental Condition is incorporated herein when the applicable box is checked.***

**S.1 Location of Underground Utilities**

It shall be the Client's responsibility to locate and physically mark all underground utilities and structures which lie within the work area prior to the start of subsurface investigations. If the Client elects not to assume this responsibility, Client shall notify Consultant and shall compensate Consultant for all costs associated with locating and physically marking said underground utilities and structures over and above the estimated project fee. Client shall indemnify and hold Consultant harmless from any damages and delays resulting from unmarked or improperly marked underground utilities and structures. For reasons of safety, Consultant will not begin work until this has been accomplished.

**S.2 Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Consultant.

**S.3 Disposition of Samples and Equipment**

**S.3.1 Disposition of Samples**

No samples and/or materials will be kept by Consultant

longer than thirty (30) days after submission of the final report unless agreed otherwise.

**S.3.2 Hazardous or Potentially Hazardous Samples and Materials**

In the event that samples and/or materials contain or are suspected to contain substances or constituents hazardous or detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, Consultant will, after completion of testing, return such samples and materials to Client, or have the samples and materials disposed of in accordance with Client's directions and all applicable laws. Client agrees to pay all costs associated with the storage, transportation, and disposal of samples and materials. Client recognizes and agrees that Consultant at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

**S.3.3 Contaminated Equipment**

All laboratory and field equipment contaminated in Consultant's performance of services will be cleaned at Client's expense. Contaminated consumables will be disposed of and replaced at Client's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of Client. At Client's expense, such equipment shall be delivered to Client, or disposed of in the same manner specified in S.3.2 above. Client agrees to pay Consultant the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to Client pursuant to this Agreement.

# ATTACHMENT A

## Scope of Services

City of York Street Bond Project

### **TASK 1. Final Design of Asphalt Maintenance (Chip Seal) for Selected Streets**

*a. Project Management*

Benesch Project Manager will serve as point of contact, maintain project schedule and budget, and be responsible for coordinating work.

*b. Topographic Survey*

Benesch will perform the necessary topographic ground survey with a combination of Benesch staff and Initial Point Surveying to confirm horizontal and vertical control, confirmation of section and property corners along the selected project locations. Survey will extend to tie locations to include pavement and utilities at existing intersections. A topographic survey will be performed using the latest GPS and Drone technology. Natural topographic features and man-made features will be recorded by coordinates to the nearest one-tenth (0.1) of a foot. All such topographic features, which are pertinent to the design or are necessary to properly show the effect of the proposed work upon the adjoining property and/or improvements, will be recorded. Benesch shall provide a list of horizontal control points with coordinates, descriptions, station and offset. Horizontal control will be referenced to the Modified State Plane using known land survey monuments provided by the City of York. Vertical control will be completed by differential level circuit referenced to NAVD 88. Benesch will survey section corners in order to assemble the geometry to create the right-of-way drawings and confirm any locations already established by the City of York. Utilities will be drawn from surveying above ground features, including markings by utility companies resulting from the locate request. Information supplied by utility companies will be used to complete the placement of existing utilities on the plans. Locations from utility plans will be transferred into the topographic survey. Where available, above-ground features will be used to improve accuracy. Benesch will add a disclaimer to the drawings with respect to the undetermined location of underground utilities. Benesch will add additional information to the established base map from the City of York using any new topographic survey data.

*c. Utility Location/Verification*

Benesch will review the utility locations shown on the topographic survey and verify these locations during field inspections. Identification and verification by the utility companies of major utility conflicts such as fiber optic lines, gas pipelines, high-pressure waterlines, transmission lines, etc., will be accomplished at the earliest possible time. Benesch will stake field locations of assumed storm or water and private utility conflicts to be potholed by a utility company.

*d. Traffic Control Design*

Benesch will provide traffic control design to define closures and temporary traffic control to safely provide the contractor ample areas to work and provide access to local property owners.

*e. Specifications*

Benesch will provide construction specifications for the project to define the construction materials, sequence of construction, and special provisions to define the bid items.

*f. Final Design of Asphalt Maintenance (Chip Seal) for Selected Streets*

Benesch shall prepare project base files and plan sheets following the standard layout appearance of City of York documents. Final design documents will provide a complete detail of the planned construction and gives the city a reliable cost estimate of overall construction costs for this project. Final design plan sheets to be included in the final submittal include the following:

- Typical Section(s)
- Removal / Site Preparation Plans
- Asphalt Maintenance (Chip Seal) Plans
- Intersection and Lane Markings Plan
- Details

Following street section are to be included in the asphalt maintenance:

- 19<sup>th</sup> Street (Lincoln to East)
- Grant Ave. (3<sup>rd</sup> to 14<sup>th</sup>)
- Greenwood Ave (4<sup>th</sup> to 8<sup>th</sup>)
- Lincoln Ave. (25<sup>th</sup> to Hwy 34)
- Lincoln Ave. (Elm to 25<sup>th</sup>)

*g. Cost Estimates*

Benesch shall prepare an updated total project cost estimate. This shall include Engineering, ROW acquisition, Private Utility Relocations, Public Utility Relocations, Construction, and Construction Engineering on the appropriate forms.

*h. Bidding Phase*

Benesch will assist the city staff with the bid phase of the project and present a recommendation of the low responsible bid at a council meeting for the York Street Bond Projects. Benesch will provide information for the city to advertise for the public bid of the project.

Task 1 services would start upon NTP and is assumed to be December 2021. Completion of Task 1 is approximately end of April 2022.

**Fee Estimate**  
**Final Design Services for Asphalt Maintenance (Chip Seal)**  
**Street Bond Projects - York, NE**

Description	Estimated Quantity	Unit Price	Amount
<b>Final Design</b>			
<b>a. Project Management</b>			
Senior Project Manager	20.0 hr.	\$ 199.00 /hr.	\$ 3,980.00
Progress Meetings	4.0 hr.	\$ 199.00 hr	\$ 796.00
<b>b. Topographic Survey</b>			
Senior Project Manager	4.0 hr.	\$ 199.00 hr	\$ 796.00
Senior Surveyor	16 hr	\$ 124.00 hr	\$ 1,984.00
Drone Flight			\$ 3,000.00
Surveyor	16 hr	\$ 101.00 hr	\$ 1,616.00
<b>c. Utility Locations/Verification</b>			
Field Inspection (Designer 2)	4.0 hr.	\$ 101.00 hr	\$ 404.00
Project Engineer II	4 hr	\$ 124.00 hr	\$ 496.00
<b>d. Traffic Control Design</b>			
Senior Project Manager	8.0 hr.	\$ 199.00 /hr.	\$ 1,592.00
Project Engineer II	16.0 hr.	\$ 124.00 /hr.	\$ 1,984.00
Designer II	16.0 hr.	\$ 101.00 hr	\$ 1,616.00
<b>e. Specifications</b>			
Senior Project Manager	8.0 hr.	\$ 199.00 /hr.	\$ 1,592.00
Project Engineer II	16.0 hr.	\$ 124.00 /hr.	\$ 1,984.00
Designer II	8.0 hr.	\$ 101.00 hr	\$ 808.00
<b>f. Final Design</b>			
Senior Project Manager	10.0 hr.	\$ 199.00 /hr.	\$ 1,990.00
Construction Rep III	16.0 hr.	\$ 124.00 /hr.	\$ 1,984.00
Designer II	80.0 hr.	\$ 101.00 /hr.	\$ 8,080.00
Project Engineer II	80.0 hr.	\$ 124.00 hr	\$ 9,920.00
<b>g. Cost Estimates</b>			
Senior Project Manager	4.0 hr.	\$ 199.00 /hr.	\$ 796.00
Project Engineer II	8.0 hr.	\$ 124.00 /hr.	\$ 992.00
Project Engineer I	8.0 hr.	\$ 101.00 hr	\$ 808.00
<b>h. Bidding</b>			
Senior Project Manager	8.0 hr.	\$ 199.00 /hr.	\$ 1,592.00
Designer II	8.0 hr.	\$ 101.00 /hr.	\$ 808.00
Project Engineer II	8.0 hr.	\$ 124.00 hr	\$ 992.00
<b>Preliminary Design Services Not to Exceed :</b>	<b>370</b>		<b>\$ 50,610</b>



**2021 EMPLOYMENT CLASSIFICATION AND RATE SCHEDULE**

<u>CLASSIFICATION</u>	<u>BILLABLE RATE</u>
Project Manager I	\$150.00
Project Manager II	\$178.00
Senior Project Manager	\$199.00
Project Principal	\$246.00
Project Engineer I	\$101.00
Project Engineer II	\$124.00
Senior Project Engineer	\$166.00
Construction Representative I	\$91.00
Construction Representative II	\$101.00
Construction Representative III	\$124.00
Resident Project Manager I	\$140.00
Resident Project Manager II	\$166.00
Senior Resident Project Manager	\$178.00
Inspector I	\$71.00
Inspector II	\$83.00
Senior Inspector	\$91.00
Designer I	\$91.00
Designer II	\$101.00
Technologist I	\$71.00
Technologist II	\$91.00
Senior Technologist	\$124.00
Technical Specialist I	\$101.00
Technical Specialist II	\$124.00
Senior Technical Specialist	\$140.00
Intern	\$60.00
Field/Lab Technician I	\$71.00
Field/Lab Technician II	\$83.00
Field/Lab Technician III	\$91.00
Senior Field/Lab Technician	\$101.00
Construction Technical Rep I	\$83.00
Construction Technical Rep II	\$91.00
Construction Technical Rep III	\$101.00
Senior Construction Technical Rep	\$111.00
Construction Technical Rep Manager	\$124.00
Instrument Operator	\$71.00
Party Chief	\$83.00
Surveyor (RLS)	\$101.00
Senior Surveyor (RLS)	\$124.00

Scientist I	\$71.00
Scientist II	\$83.00
Project Scientist I (Environmental)	\$91.00
Project Scientist II (Environmental)	\$101.00
Project Scientist III (Environmental)	\$124.00
Senior Project Scientist	\$140.00
Project Scientist I (Geotechnical)	\$83.00
Project Scientist II (Geotechnical)	\$91.00
Marketing Assistant	\$71.00
Marketing Coordinator	\$83.00
Marketing Manager	\$124.00
Office Assistant	\$60.00
Project Assistant I	\$60.00
Project Assistant II	\$71.00
Division Administrative Assistant I	\$60.00
Division Administrative Assistant II	\$71.00



**CONSULTING SERVICES AGREEMENT**

CLIENT	City of York	Project Name	Final Design Amendment for Concrete
Address	100 East 4 <sup>th</sup> Street	Paving	
	PO Box 276	Related to York Street Bond Project	
	York, NE 68467		
Telephone	402.363.2600	Project Location	Variou Locations
		York, NE	
Client Contact	Dr. Sue Crawford	Consultant PM	Terry Brown
Client Job No.		Consultant Job No.	112221.02

This AGREEMENT is made by and between City of York, hereinafter called "CLIENT," and Alfred Benesch & Company, hereinafter called "CONSULTANT", for professional consulting services as specified herein. CONSULTANT agrees to provide CLIENT with requested consulting services more specifically described as follows d(or shown in Attachment A):

Attachment A

Scope of Services

Fee Estimates

Attachment B: 2021 Employment Classification and Rate Schedule

The GENERAL CONDITIONS and the following Attachments are hereby made a part of the AGREEMENT:

Attachment A: Scope of Services and Fee Estimate

Attachment B: Schedule of Unit Rates

Attachment C: \_\_\_\_\_

or

Exhibit A: Work Authorizations specifying Method of Payment, Scope, and Fee

By signing this AGREEMENT, CLIENT acknowledges that it has read and fully understands this AGREEMENT and all attachments thereto. CLIENT further agrees to pay CONSULTANT for services described herein upon receipt of invoice by CLIENT for the CONSULTANT's estimated fee as described below:

BY LUMP SUM: \$\_\_\_\_\_.

BY TIME AND MATERIALS: \$not to exceed 186,968.

BY OTHER PAYMENT METHOD (See Attachment A): \$\_\_\_\_\_.

AS SHOWN ON SERIALLY NUMBERED WORK AUTHORIZATIONS USING EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT:

**CLIENT**

**ALFRED BENESCH & COMPANY**

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

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

PRINT NAME: Anthony Dirks, P.E.

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

TITLE: Senior Vice President

DATE: \_\_\_\_\_, 2021

DATE: November, 2021

BENESCH OFFICE: Lincoln

ADDRESS: 825 M Street, Suite 100

Lincoln, NE 68508

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



## STANDARD TERMS AND CONDITIONS

### SECTION 1 – Services by Consultant

#### 1.1 General

Consultant shall provide services under this Agreement only upon request of the Client, and only to the extent defined and required by the Client. These services may include the use of outside services, outside testing laboratories, and special equipment.

Attachments to this Agreement are as identified on the signature page to this Agreement or using serially numbered Work Authorizations, and with these GENERAL CONDITIONS, are all as attached hereto, and made a part of this Agreement.

#### 1.2 Scope of Services and Fees

The services to be performed by Consultant and the associated fee are attached hereto and made a part of this Agreement or by using serially numbered Work Authorizations, all as identified on the signature page to this Agreement, and shall be performed by the Consultant in accordance with the Client's requirements. The Scope of Services and Fee Estimate (Attachment A) is valid for sixty (60) days, after which Consultant reserves the right to revise the Scope or Fee Estimate.

It is mutually understood that Consultant's fee is not a firm contractual amount, except the total fee by the Consultant shall not be exceeded unless authorized in writing by the Client. The intent of the Scope of Services is to identify the services to be provided by Consultant. However, it is specifically understood that by written notice to Consultant, Client can decrease or, with concurrence of Consultant, increase the Scope of Services.

### SECTION 2 – Payments to Consultant

#### 2.1 Method of Payment

Payment for Consultant's personnel services and direct expenses shall be based on the Method of Payment which is identified on the signature page to this Agreement or serially numbered Work Authorizations, attached hereto, and made a part of this Agreement.

#### 2.2 Payment for Personnel Services

##### 2.2.1 Payment

Payment for the services rendered by Consultant's personnel shall be based on the hours of chargeable time and in accordance with Consultant's Schedule of Unit Rates, which is identified on the signature page to this Agreement and attached hereto, and made a part of this Agreement.

##### 2.2.2 Chargeable Time

Chargeable time for Consultant's personnel is that portion of their time devoted to providing services requested by Client. Chargeable time for field personnel located away from Consultant's office for more than one week is a minimum of eight hours per day and five days per calendar week, except for federally declared legal holidays or during an employee's sick leave or vacation time. Travel time from

Consultant's office to an assigned work site, and return to Consultant's office, is chargeable time; or if more economical for Client, Consultant shall lodge its personnel overnight near the work site in lieu of traveling back to Consultant's office at the end of each work day.

##### 2.2.3 Overtime Rates

The basis for payment to Consultant for each hour worked in excess of forty (40) hours in any calendar week shall be the applicable hourly rate as specified in the Schedule of Unit Rates.

#### 2.3 Payment for Direct Expenses

##### 2.3.1 Payment

For Direct Expenses incurred by Consultant, payment to Consultant by the Client shall be in accordance with Consultant's Schedule of Unit Rates.

##### 2.3.2 Direct Expenses

For the purposes of this Agreement, Direct Expenses to be contracted and managed by Consultant and payable by Client to Consultant shall include: Outside Services including the services and reimbursable expenses for firms other than Consultant which are necessary for the work the Consultant is directed to perform; Laboratory Tests and related reports necessary for the work the Consultant is directed to perform, either by the Consultant or by an outside service for the Consultant; Special Equipment expenses including the costs of the Consultant locating, acquiring, leasing, or renting any equipment or facilities not currently owned, leased, or rented by Consultant at the time of the request for services which are necessary to enable Consultant to provide the services requested; vehicles furnished by Consultant for Consultant's authorized travels and for Consultant's field personnel; Per Diem expense or actual costs of maintaining Consultant's field personnel on or near the Project site, for each day of field assignment away from Consultant's office; and Other Direct Expenses associated with all services provided hereunder and identified in the Schedule of Unit Rates.

#### 2.4 Payment Conditions

2.4.1 Consultant shall submit monthly invoices for all personnel services and direct expenses under this Agreement and a final invoice upon completion of services.

2.4.2 Invoices are due and payable upon receipt by Client. Interest at a rate of 1.5% per month, or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after date of invoice. Payments will first be credited to interest and then to principal.

2.4.3 In the event of a disputed or contested invoice, Client must provide written notice to Consultant within ten (10) days of the date of any invoice, otherwise the invoice will be considered to be correct. In the event Client timely submits in writing a dispute on a particular invoice, only that portion so contested will be withheld from payment and the Client will pay the undisputed portion. No interest will accrue on any reasonably contested portion of the invoice until mutually resolved.

**2.4.4** If Client fails to make payment in full to Consultant within sixty (60) days after the date of the undisputed invoice, Consultant may, after giving seven (7) days' written notice to Client, suspend services under this Agreement until paid in full, including interest. Consultant shall have no liability to Client for delays or damages caused by such suspension of services. Client agrees to pay all costs of collection, including reasonable attorney's fees, incurred by Consultant as a result of Client's failure to make payments in accordance with this Agreement. No final plans, documents or reports will be released for any purpose until Consultant has been paid in full.

**2.4.5** The billing rates specified in the Schedule of Unit Rates for subsequent years shall be adjusted annually in accordance with Consultant's costs of doing business, subject to Client's review and concurrence.

## **SECTION 3 - Term of Agreement**

### **3.1 Term**

Consultant's obligations to perform under this Agreement shall extend from the date of execution until terminated by either party.

### **3.2 Abandonment of Work**

Client shall have the absolute right to abandon any work requested hereunder or to change the general scope of the work at any time, and such action on its part shall in no event be deemed a breach of contract.

### **3.3 Termination of Agreement**

#### **3.3.1 Termination with Cause**

The obligation to provide further services under this Agreement may be terminated with cause by either party by written notice stating the basis for the termination and providing 7 days to cure. The termination will be effective seven (7) days after delivery of written notice thereof if the basis for the termination has not been cured. In the event of termination by Consultant caused by failure of the Client to perform in accordance with the terms of this Agreement, Client shall pay for all services performed prior to the effective date of the termination, including all project termination expenses, collection fees and legal expenses. Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment. In the event of termination by the Client caused by failure by Consultant to perform in accordance with the terms of this Agreement, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination and provide information and documents developed under the terms of this Agreement to the Client. Upon receipt of all other information and documents, Client shall pay Consultant for services performed prior to the effective date of the termination.

#### **3.3.2 Termination without Cause**

Either party may, at its sole discretion, terminate this Agreement without cause at any time. In the event of such

termination, the terminating party will promptly notify and confirm the termination in writing to the other party. The termination will be effective seven (7) days after delivery of written notice thereof. Upon termination, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment.

### **3.4 Payment for Work Upon Abandonment or Agreement Termination**

If Client abandons requested work or terminates this Agreement, Consultant shall be paid on the basis of work completed to the date of abandonment or effective date of termination. Consultant shall perform no activities other than reasonable wrap-up activities after receipt of notice of abandonment or termination. Payment for the work shall be as established under Section II.

## **SECTION 4 - General Considerations**

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

**4.1.1** The assignment of personnel and all phases of the undertaking of the services which Consultant shall provide hereunder shall be subject to the oversight and general guidance of Client.

**4.1.2** While upon the premises of Client or property under its control, all employees, agents, and subconsultants of Consultant shall be subject to Client's rules and regulations respecting its property and the conduct of its employees thereon.

**4.1.3** However, it is understood and agreed that in the performance of the work and obligations hereunder, Consultant shall be and remain an independent Consultant and that the employees, agents or subconsultants of Consultant shall not be considered employees of or subject to the direction and control of Client. Consultant shall be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

### **4.2 Insurance**

**4.2.1** Consultant shall furnish Client a certificate of insurance upon request showing amounts and types of insurance carried by Consultant, which certificate shall contain a commitment by the Insurance Company that during the time any work is being performed by Consultant under this Agreement it will give Client notice of cancellation or non-renewal of the insurance coverage shown on such certificates in accordance with policy provisions.

**4.2.2** Any construction contracts relative to Consultant's Services shall require that the Client and Consultant be included as additional insureds on the contractor's and contractor's subcontractors' commercial general liability and commercial automobile liability insurance policies and that the coverage afforded Client and Consultant is primary to any insurance maintained by Client or Consultant and that Client and Consultant's insurance is non-contributory with any coverage afforded by contractor and subcontractors. Client will also require contractor and all subcontractors to purchase and maintain workers' compensation and employer's liability insurance. Consultant will name the Client as additional insured on

Consultant's commercial general liability insurance.

### **4.3 Successors and Assigns**

**4.3.1** Client and Consultant each binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

**4.3.2** Neither Consultant nor Client shall assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other party, except as stated in paragraph 4.3.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent consultants, associates, and subconsultants as it may deem appropriate to assist in the performance of services hereunder.

**4.3.3** Nothing herein shall be construed to give any rights or benefits hereunder to any one other than Client and Consultant except as otherwise provided herein.

### **4.4 Compliance with Law**

**4.4.1** Consultant shall exercise the professional standard of care to comply with, and cause its subconsultants to comply with, applicable Federal, state, and local laws, orders, rules, and regulations in effect at the time services are rendered, and relating to the performance of the services Consultant is to perform under this Agreement. If the Scope of Services requires Consultant to prepare an application for a permit, Consultant does not represent or warrant that said permit or approval will be issued by any governmental body.

**4.4.2** Neither the Consultant nor the Consultant's agents or employees shall discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, or national origin.

### **4.5 Ownership and Reuse of Documents**

**4.5.1** All drawings, specifications, test reports, and other materials and work products which have been prepared or furnished by Client prior to this Agreement shall remain Client's property. Consultant shall be permitted to rely on Client furnished documents and Client shall make available to Consultant copies of these materials as necessary for the Consultant to perform the services requested hereunder.

**4.5.2** All drawings, specifications, test reports, and other materials and work products, including computer aided drawings, designs, and other data filed on electronic media which will be prepared or furnished by Consultant (and Consultant's independent professional associates and subconsultants) under this Agreement, are instruments of service in respect to the Project and Consultant shall retain

an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and the occupancy of the Project by Client and others; however, such documents are not intended or represented to be suitable for reuse by Client or others acting on behalf of Client on extensions of the Project or on any other project. Further, Consultant makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by Consultant in performing services herein, and to the condition or availability of the computer data after an acceptance period of thirty (30) days from delivery to Client. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Consultant or to Consultant's independent professional associates or subconsultants, and Client shall indemnify and hold harmless Consultant and Consultant's independent professional associates and subconsultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by Client and Consultant.

### **4.6 Consultant's Personnel at Project Site**

**4.6.1** The presence or duties of the Consultant personnel at a Project site, whether as onsite representatives or otherwise, do not make the Consultant or its personnel in any way responsible for those duties that belong to the Client and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the project documents and any health or safety precautions required by such construction work. The Consultant and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor or other entity or any other persons at the site except Consultant's own personnel.

**4.6.2** To the extent Consultant's Scope of Work includes construction observation, the Consultant shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Consultant neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s)' failure to perform their work in accordance with the project documents.

### **4.7 Opinions of Cost, Financial Considerations, and Schedules**

In providing opinions of cost, financial analyses, economic

feasibility projections, and schedules for the Project, the Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions. Consultant's opinions of probable Total Project Costs and Construction Costs provided for herein as appropriate are made on the basis of Consultant's experience and qualifications and represent Consultant's judgments as an experienced and qualified professional consultant familiar with the construction industry. Consultant makes no warranty that the Client's actual Total Project or Construction Costs, financial aspects, economic feasibility, or schedules will not vary from the Consultant's opinions, analyses, projections, or estimates. If Client wishes greater assurance as to any element of the Total Project or Construction cost, feasibility, or schedule, Client will employ an independent cost estimator, contractor, or other appropriate advisor.

#### **4.8 Discovery of Unanticipated Pollutant and Hazardous Substance Risks**

**4.8.1** If Consultant, while performing the services, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule, and the estimated cost of Consultant's services will be reconsidered and that this Agreement shall immediately become subject to renegotiation or termination.

**4.8.2** In the event that the Agreement is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that Consultant shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this Agreement, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

**4.8.3** Client also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for Consultant to take immediate measures to protect health and safety. Consultant agrees to notify Client as soon as practically possible should unanticipated pollutants and/or hazardous substances be suspected or encountered. Client authorizes Consultant to take measures that in Consultant's sole judgment are justified to preserve and protect the health and safety of Consultant's personnel and the public. Client agrees to compensate Consultant for the additional cost of taking such additional precautionary measures to protect employees' and the public's health and safety. This section is not intended to impose upon Consultant any duties or obligations other than those imposed by law.

### **SECTION 5 - Professional Responsibility**

#### **5.1 Performance of Services**

Consultant shall perform its services consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances (hereinafter the "Standard of Care"). Consultant expressly disclaims all express or implied warranties and guarantees with respect to the performance of professional services, and it is agreed that the quality of

such services shall be judged solely as to whether the services were performed consistent with the Standard of Care. Consultant owes Client only that level of performance defined in this Section 5.1, and nothing herein shall be construed as creating a fiduciary relationship.

If at any time prior to construction Client believes Consultant's services are deficient due to not meeting the Standard of Care, Client must immediately inform Consultant in writing and shall afford Consultant the opportunity to correct such deficiency. If, upon review by Consultant it is determined the deficiency is attributable to Consultant, the deficiency shall be corrected at no additional cost to Client.

#### **5.2 Limitation of Liability**

Client and Consultant agree to allocate certain of the risks so that, to the fullest extent permitted by law, Consultant's total liability to Client is limited to the amount paid under the contract or \$50,000 whichever is greater, this being the Client's sole and exclusive remedy for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Agreement from any cause or causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

#### **5.3 No Special or Consequential Damages**

Client and Consultant agree that to the fullest extent permitted by law neither party shall be liable to the other for any special, indirect, or consequential damages whatsoever, whether caused by either party's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes.

#### **5.4 Indemnification**

To the fullest extent permitted by law, Client and Consultant mutually agree to indemnify and hold each other harmless from and against any and all claims, damages, losses and expenses, defense costs including reasonable attorneys' fees, and court or arbitration costs and other liabilities arising from their own negligent acts, errors or omissions in performance of their services under this Agreement, but only to the extent caused that each party is responsible for such damages, liabilities and costs on a comparative basis of fault.

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

Client and Consultant expressly agree that Agreement does not confer upon any third party any rights as beneficiary to this Agreement. Consultant accepts no responsibility for damages, if any, suffered by any third party as the result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it.

Client agrees that Consultant's services and work products are for the exclusive present use of Client. Client agrees that Consultant's compliance with any request by Client to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive, or otherwise alter provisions of this Agreement nor does it create or confer any third party beneficiary rights on any

third party.

## **SECTION 6 - Miscellaneous Provisions**

### **6.1 Notices**

Any notice to either party herein shall be in writing and shall be served either personally or by registered or certified mail addressed to the signing party shown on the signature page.

### **6.2 Joint Preparation**

For purposes of contract interpretation and for the purpose of resolving any ambiguity in this Agreement, the parties agree that this Agreement was prepared jointly by them and/or their respective attorneys.

### **6.3 Headings**

Headings used in this Agreement are for the convenience of reference only and shall not affect the construction of this Agreement

### **6.4 Severability**

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **6.5 Dispute Resolution**

If negotiation in good faith fails to resolve a dispute within thirty (30) days of written notice of the dispute by either party, then the parties agree that each dispute, claim or controversy arising from or related to this Agreement or the relationships which result from this AGREEMENT shall be subject to mediation as a condition precedent to initiating legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No legal or equitable action may be instituted for a period of ninety (90) days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties and shall be held in a location mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder. Any dispute not resolved through mediation shall be subject to litigation in a court of competent jurisdiction in the state in which the project is located.

### **6.6 Equal Opportunity**

Consultant will, in the performance of this Agreement, comply with federal, state, and local laws, and all

regulations and orders issued under any applicable law related to equal employment opportunity, non-discrimination, or employment generally.

Consultant certifies that it will not knowingly employ or contract with a non-legal resident of the United States to perform work under this Agreement, and verifies or attempts to verify employee eligibility of its employees through participation in the U.S. Department of Homeland Security and Social Security Administration's E-Verify system.

### **6.7 Governing Law**

This Agreement is to be governed by the laws of the jurisdiction in which the project is located. For locations outside of the United States, this Agreement shall be governed by the laws of the State of Illinois.

### **6.8 Entire Agreement**

This Agreement, along with those documents specified, attached, or hereby cited together, and serially numbered Work Authorizations if used, constitute the entire Agreement between the parties hereto and no changes, modifications, extensions, terminations, or waivers of this agreement, or other documents, or any of the provisions herein, or therein contained, shall be valid unless made in writing and signed by duly authorized representatives of both parties.

## **SUPPLEMENTAL CONDITIONS FOR SURVEY, ENVIRONMENTAL OR GEOTECHNICAL SERVICES**

**Supplemental Condition is incorporated herein when the applicable box is checked.**

**S.1 Location of Underground Utilities**

It shall be the Client's responsibility to locate and physically mark all underground utilities and structures which lie within the work area prior to the start of subsurface investigations. If the Client elects not to assume this responsibility, Client shall notify Consultant and shall compensate Consultant for all costs associated with locating and physically marking said underground utilities and structures over and above the estimated project fee. Client shall indemnify and hold Consultant harmless from any damages and delays resulting from unmarked or improperly marked underground utilities and structures. For reasons of safety, Consultant will not begin work until this has been accomplished.

**S.2 Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Consultant.

**S.3 Disposition of Samples and Equipment**

**S.3.1 Disposition of Samples**

No samples and/or materials will be kept by Consultant

longer than thirty (30) days after submission of the final report unless agreed otherwise.

**S.3.2 Hazardous or Potentially Hazardous Samples and Materials**

In the event that samples and/or materials contain or are suspected to contain substances or constituents hazardous or detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, Consultant will, after completion of testing, return such samples and materials to Client, or have the samples and materials disposed of in accordance with Client's directions and all applicable laws. Client agrees to pay all costs associated with the storage, transportation, and disposal of samples and materials. Client recognizes and agrees that Consultant at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

**S.3.3 Contaminated Equipment**

All laboratory and field equipment contaminated in Consultant's performance of services will be cleaned at Client's expense. Contaminated consumables will be disposed of and replaced at Client's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of Client. At Client's expense, such equipment shall be delivered to Client, or disposed of in the same manner specified in S.3.2 above. Client agrees to pay Consultant the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to Client pursuant to this Agreement.

# ATTACHMENT A

## Scope of Services

City of York Street Bond Project

### **TASK 1. Final Design of Concrete Paving for Selected Streets**

*a. Project Management*

Benesch Project Manager will serve as point of contact, maintain project schedule and budget, and be responsible for coordinating work.

*b. Topographic Survey*

Benesch will perform the necessary topographic ground survey with a combination of Benesch staff and Initial Point Surveying to confirm horizontal and vertical control, confirmation of section and property corners along the selected project locations. Survey will extend to tie locations to include pavement and utilities at existing intersections. A topographic survey will be performed using the latest GPS and Drone technology. Natural topographic features and man-made features will be recorded by coordinates to the nearest one-tenth (0.1) of a foot. All such topographic features, which are pertinent to the design or are necessary to properly show the effect of the proposed work upon the adjoining property and/or improvements, will be recorded. Benesch shall provide a list of horizontal control points with coordinates, descriptions, station and offset. Horizontal control will be referenced to the Modified State Plane using known land survey monuments provided by the City of York. Vertical control will be completed by differential level circuit referenced to NAVD 88. Benesch will survey section corners in order to assemble the geometry to create the right-of-way drawings and confirm any locations already established by the City of York. Utilities will be drawn from surveying above ground features, including markings by utility companies resulting from the locate request. Information supplied by utility companies will be used to complete the placement of existing utilities on the plans. Locations from utility plans will be transferred into the topographic survey. Where available, above-ground features will be used to improve accuracy. Benesch will add a disclaimer to the drawings with respect to the undetermined location of underground utilities. Benesch will add additional information to the established base map from the City of York using any new topographic survey data.

*c. Utility Location/Verification*

Benesch will review the utility locations shown on the topographic survey and verify these locations during field inspections. Identification and verification by the utility companies of major utility conflicts such as fiber optic lines, gas pipelines, high-pressure waterlines, transmission lines, etc., will be accomplished at the earliest possible time. Benesch will stake field locations of assumed storm or water and private utility conflicts to be potholed by a utility company. Our survey crew will be on-site while the work to establish a top of pipe elevation at each pothole location. Benesch and the City's Project Manager will discuss major conflicts and attempt to avoid them. If avoidance is not possible, Benesch will then request the Utility Company to verify the conflict and provide a preliminary estimate of reimbursable costs associated with the utility relocation.

*d. Traffic Control Design*

Benesch will provide traffic control design to define closures and temporary traffic control to safely provide the contractor ample areas to work and provide access to local property owners.

e. *Specifications*

Benesch will provide construction specifications for the project to define the construction materials, sequence of construction, and special provisions to define the bid items.

f. *Drainage Analysis*

Benesch, coordinating with City of York staff, shall determine proposed outfall locations, curb and area inlet locations, delineate regional drainage areas and calculate 2, 5 and 10-year peak flow rates using the rational method for existing and proposed drainage systems. Proposed inlet locations shall be determined based on the proposed roadway profile and storm sewer hydraulic calculations shall be completed using the worksheets provided by the City or of similar format.

g. *Final Design of Concrete Paving for Selected Streets*

Benesch shall prepare project base files and plan sheets following the standard layout appearance of City of York documents. Final design documents will provide a complete detail of the planned construction and gives the city a reliable cost estimate of overall construction costs for this project. Final design plan sheets to be included in the final submittal include the following:

- Typical Section(s)
- Removal Plans
- Roadway Plan and Profile
- Intersection Improvements
- Storm Sewer Improvements
- Utility Relocation Plan
- Details

The following street sections are to be included in the concrete paving street bond project:

- 14<sup>th</sup> Street (Lincoln to Blackburn)
- 50<sup>th</sup> Street (West end of concrete to Lincoln Ave)
- 6<sup>th</sup> Street (Nebraska Ave. to East)
- Lincoln Frontage Road (50<sup>th</sup> to Access Rd)
- Nebraska Ave (19<sup>th</sup> to A)
- North Blackburn Ave (13<sup>th</sup> to Duke)
- North Blackburn Ave. (3<sup>rd</sup> to 9<sup>th</sup>)
- Platte Ave (Elm to 4<sup>th</sup>, 9<sup>th</sup> to 11<sup>th</sup>)

h. *Cost Estimates*

Benesch shall prepare an updated total project cost estimate. This shall include Preliminary Engineering, ROW acquisition, Private Utility Relocations, Public Utility Relocations, Construction, and Construction Engineering on the appropriate forms.

i. *Bidding Phase*

Benesch will assist the city staff with the bid phase of the project and present a recommendation of the low responsible bid at a council meeting for the York Street Bond Projects. Benesch will provide information for the city to advertise for the public bid of the project.

Task 1 services would start upon NTP and is assumed to be December 2021. Completion of Task 1 is approximately end of April 2022.

**Fee Estimate**  
**Final Design Services for Concrete Paving**  
**Street Bond Projects - York, NE**

Description	Estimated Quantity	Unit Price	Amount
<b>Final Design</b>			
<b>a. Project Management</b>			
Senior Project Manager	60.0 hr.	\$ 199.00 /hr.	\$ 11,940.00
Progress Meetings	8.0 hr.	\$ 199.00 hr	\$ 1,592.00
<b>b. Topographic Survey</b>			
Senior Project Manager	4.0 hr.	\$ 199.00 hr	\$ 796.00
Senior Surveyor	40 hr	\$ 124.00 hr	\$ 4,960.00
Drone Flight			\$ 5,000.00
Surveyor	40 hr	\$ 101.00 hr	\$ 4,040.00
<b>c. Utility Locations/Verification</b>			
Field Inspection (Designer 2)	24.0 hr.	\$ 101.00 hr	\$ 2,424.00
Project Engineer II	24 hr	\$ 124.00 hr	\$ 2,976.00
<b>d. Traffic Control Design</b>			
Senior Project Manager	24.0 hr.	\$ 199.00 /hr.	\$ 4,776.00
Project Engineer II	40.0 hr.	\$ 124.00 /hr.	\$ 4,960.00
Designer II	40.0 hr.	\$ 101.00 hr	\$ 4,040.00
Field & equipment expenses			\$ 956.00
<b>e. Specifications</b>			
Senior Project Manager	24.0 hr.	\$ 199.00 /hr.	\$ 4,776.00
Project Engineer II	40.0 hr.	\$ 124.00 /hr.	\$ 4,960.00
Designer II	40.0 hr.	\$ 101.00 hr	\$ 4,040.00
<b>f. Drainage Analysis</b>			
Senior Project Manager	8.0 hr.	\$ 199.00 /hr.	\$ 1,592.00
Project Engineer II	40.0 hr.	\$ 124.00 /hr.	\$ 4,960.00
Project Engineer 1	16.0 hr.	\$ 101.00 hr	\$ 1,616.00
<b>g. Final Design</b>			
Senior Project Manager	80.0 hr.	\$ 199.00 /hr.	\$ 15,920.00
Construction Rep III	120.0 hr.	\$ 124.00 /hr.	\$ 14,880.00
Designer II	320.0 hr.	\$ 101.00 /hr.	\$ 32,320.00
Project Engineer II	320.0 hr.	\$ 124.00 hr	\$ 39,680.00
<b>h. Cost Estimates</b>			
Senior Project Manager	4.0 hr.	\$ 199.00 /hr.	\$ 796.00
Project Engineer II	16.0 hr.	\$ 124.00 /hr.	\$ 1,984.00
Project Engineer I	8.0 hr.	\$ 101.00 hr	\$ 808.00
<b>i. Bidding</b>			
Senior Project Manager	24.0 hr.	\$ 199.00 /hr.	\$ 4,776.00
Designer 2	24.0 hr.	\$ 101.00 /hr.	\$ 2,424.00
Project Engineer II	24.0 hr.	\$ 124.00 hr	\$ 2,976.00
<b>Preliminary Design Services Not to Exceed :</b>	<b>1,412</b>		<b>\$ 186,968</b>



**2021 EMPLOYMENT CLASSIFICATION AND RATE SCHEDULE**

<u>CLASSIFICATION</u>	<u>BILLABLE RATE</u>
Project Manager I	\$150.00
Project Manager II	\$178.00
Senior Project Manager	\$199.00
Project Principal	\$246.00
Project Engineer I	\$101.00
Project Engineer II	\$124.00
Senior Project Engineer	\$166.00
Construction Representative I	\$91.00
Construction Representative II	\$101.00
Construction Representative III	\$124.00
Resident Project Manager I	\$140.00
Resident Project Manager II	\$166.00
Senior Resident Project Manager	\$178.00
Inspector I	\$71.00
Inspector II	\$83.00
Senior Inspector	\$91.00
Designer I	\$91.00
Designer II	\$101.00
Technologist I	\$71.00
Technologist II	\$91.00
Senior Technologist	\$124.00
Technical Specialist I	\$101.00
Technical Specialist II	\$124.00
Senior Technical Specialist	\$140.00
Intern	\$60.00
Field/Lab Technician I	\$71.00
Field/Lab Technician II	\$83.00
Field/Lab Technician III	\$91.00
Senior Field/Lab Technician	\$101.00
Construction Technical Rep I	\$83.00
Construction Technical Rep II	\$91.00
Construction Technical Rep III	\$101.00
Senior Construction Technical Rep	\$111.00
Construction Technical Rep Manager	\$124.00
Instrument Operator	\$71.00
Party Chief	\$83.00
Surveyor (RLS)	\$101.00
Senior Surveyor (RLS)	\$124.00

Scientist I	\$71.00
Scientist II	\$83.00
Project Scientist I (Environmental)	\$91.00
Project Scientist II (Environmental)	\$101.00
Project Scientist III (Environmental)	\$124.00
Senior Project Scientist	\$140.00
Project Scientist I (Geotechnical)	\$83.00
Project Scientist II (Geotechnical)	\$91.00
Marketing Assistant	\$71.00
Marketing Coordinator	\$83.00
Marketing Manager	\$124.00
Office Assistant	\$60.00
Project Assistant I	\$60.00
Project Assistant II	\$71.00
Division Administrative Assistant I	\$60.00
Division Administrative Assistant II	\$71.00

## **FRANCHISE AGREEMENT**

This Franchise Agreement is between the City of York, Nebraska hereinafter referred to as the "Grantor" and ALLO York, LLC, a Nebraska limited liability company, hereinafter referred to as the "Grantee."

**WHEREAS**, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

**WHEREAS**, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and

**WHEREAS**, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

*NOW, THEREFORE, the Grantor and Grantee agree as follows:*

### **SECTION 1** **Definition of Terms**

1.1 **Terms**. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Act, unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "Cable System," "Cable Service," and "Basic Cable Service" shall be defined as set forth in the Cable Act.
- B. "Board" shall mean the governing body of the Grantor.
- C. "Cable Act" shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- D. "EAS" shall have the meaning set forth in Section 8.11 of this Franchise
- E. "FCC" shall mean the Federal Communications Commission and any

successor governmental entity thereto.

- F. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Service Area.
- G. "Gross Revenue" means any revenue, as determined in accordance with generally accepted accounting principles and applicable law, received by Grantee from Cable System to provide Cable Services in the Service Area, provided, however, that such phrase shall not include (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency to a government agency, including any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law.
- H. "PEG" shall have the meaning set forth in Section 13.1 of this Franchise.
- I. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- J. "Service Area" shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means, subject to the exception in subsection 6.1 hereto.
- K. "State" shall mean the State of Nebraska.
- L. "Street" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.
- M. "Subscriber" shall mean any Person lawfully receiving Cable Service from the Grantee.
- N. "Violation Notice" shall have the meaning set forth in Section 14.1.

**SECTION 2**  
**Grant of Franchise**

**2.1 Grant.** The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, State or local law.

**2.2 Term.** The Franchise and the rights, privileges and authority hereby granted shall be for an initial term ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 15.10. This Franchise will be automatically extended for an additional term of five (5) years from the expiration date as set forth in Section 15.10, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.

**2.3 Police Powers and Conflicts with Franchise.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance necessary to the safety, health, and welfare of the public to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the explicit mutual promises in this Franchise. Any changes to this Franchise must be made in writing signed by the Grantee and the Grantor. In the event of any conflict between this Franchise and any Grantor ordinance or regulation that is not generally applicable, this Franchise shall control.

**2.4 Cable System Franchise Required.** No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

### **SECTION 3** **Franchise Renewal**

**3.1 Procedures for Renewal.** The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

### **SECTION 4** **Indemnification and Insurance**

**4.1 Indemnification.** The Grantee shall, by acceptance of the Franchise granted herein,

defend the Grantor, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments relating to any injury to any Person or property as a result of the negligence of Grantee arising directly out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System, including any PEG channels.

**4.2 Insurance.**

- A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Limit (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on	\$1,000,000 per occurrence C.S.L. all owned, non-owned hired autos
Umbrella Liability	\$5,000,000 per occurrence C.S.L.

- B. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage.

**SECTION 5**

## Service Obligations

**5.1 No Discrimination.** Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age, disability or sex.

**5.2 Privacy.** The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

## SECTION 6 Service Availability

**6.1 Service Area.** The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable (excluding any home subscribing to any satellite service) as measured from Grantee's closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for service. If such residence is located within one hundred twenty-five (125) feet of Grantee's feeder cable, the Cable Service will be provided at Grantee's published rate for standard installations. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee or to any area which is financially or technically infeasible. Grantee at its discretion may make Cable Service available to businesses within the Service Area. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

**6.2 Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.1 above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence.

## SECTION 7 Construction and Technical Standards

**7.1 Compliance with Codes.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

**7.2 Construction Standards and Requirements.** All of the Grantee's plant and equipment, including but not limited to the antenna site, head end and distribution system, towers, house

connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

**7.3 Safety.** The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

**7.4 Network Technical Requirements.** The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time, regardless of the transmission technology utilized.

**7.5 Performance Monitoring.** Grantee shall test the Cable System consistent with the FCC regulations.

## **SECTION 8** **Conditions on Street Occupancy**

**8.1 General Conditions.** Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor.

**8.2 Underground Construction.** The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities under ground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.

**8.3 Construction Codes and Permits.** Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Service Area. Notwithstanding the above, the Grantee may set off any administrative permit fees or other fees required by the Grantor related to the Grantee's use of Grantor rights-of-way against the franchise fee payments

required under Section 10.1 of this Franchise.

**8.4 System Construction.** All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

**8.5 Restoration of Public Ways.** Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

**8.6 Removal in Emergency.** Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.

**8.7 Tree Trimming.** Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities.

**8.8 Relocation for the Grantor.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.

**8.9 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is give reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

**8.10 Reimbursement of Costs.** If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for

such funds on behalf of the Grantee.

**8.11 Emergency Use.** If the Grantee provides an Emergency Alert System ("EAS"), then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Grantor shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

## **SECTION 9** **Service and Rates**

**9.1 Phone Service.** The Grantee shall maintain a toll-free telephone number and a phone service operated such that complaints and requests for repairs or adjustments may be received at any time.

**9.2 Notification of Service Procedures.** The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor thirty (30) days prior notice of any rate increases, channel lineup or other substantive service changes.

**9.3 Rate Regulation.** Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC.

**9.4 Continuity of Service.** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee's rights under Section 15.1 of this Franchise.

## **SECTION 10** **Franchise Fee**

**10.1 Amount of Fee.** Grantee shall pay to the Grantor an annual franchise fee in an amount equal to five percent (5%) of the annual Gross Revenue. Such payment shall be in addition to taxes of general applicability owed to the Grantor by the Grantee that are not included as franchise fees under federal law. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law.

**10.2 Payment of Fee.** Payment of the fee due the Grantor shall be made on a quarterly basis, within sixty (60) days of the close of each quarter. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 15.10. In the

event of a dispute, the Grantor, if it so requests, shall be furnished a statement of the disputed payment, reflecting the Gross Revenues and the applicable charges.

**10.3 Accord and Satisfaction.** No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

## **SECTION 11** **Transfer of Franchise**

**11.1 Franchise Transfer.** The Franchise granted hereunder shall not be assigned without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for (A) a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness; (B) a transfer by operation of law; or (C) a transfer to an entity controlling, controlled by, or under common control with the Grantee. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee.

## **SECTION 12** **Records, Reports and Maps**

**12.1 Reports Required.** The Grantee's schedule of charges for regular Subscriber service, its policy regarding the processing of Subscriber complaints, delinquent Subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its Subscribers shall be filed with the Grantor upon request.

### **12.2 Records Required.**

The Grantee shall at all times maintain:

- A. A record of all written complaints received regarding interruptions or degradation of Cable Service, which record shall be maintained for one (1) year.
- B. A full and complete set of plans, records and strand maps showing the location of the Cable System.

**12.3 Inspection of Records.** Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required

to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for service complaints, which shall be kept for one (1) year as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee make the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

### **SECTION 13** **Public Education and Government (PEG) Access**

**13.1 PEG Access.** Grantee shall provide two channels on the Cable System for use by the Grantor non-commercial, video programming for public, education and government ("PEG") access programming. One of the channels shall be an Educational channel for the use by the York public schools, and the other channel shall be either a Government or Public Access channel. The Grantor shall have responsibility for programming content for both PEG channels. The PEG channels may be placed on any tier of service available to Subscribers.

### **SECTION 14** **Enforcement or Revocation**

**14.1 Notice of Violation.** If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

**14.2 Grantee's Right to Cure or Respond.** The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

**14.3 Public Hearing.** If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Board shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Grantor in accordance with subsection 15.5 hereof. The Grantee shall have the right to present evidence and to question witnesses. The Grantor shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is

found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

**14.4 Enforcement.** Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

**14.5 Revocation.**

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.
- B. At the hearing, the Board shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Board shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Board
- C. Notwithstanding the above provisions, the Grantee does not waive any of its rights under federal law or regulation.
- D. Upon revocation of the Franchise, Grantee may remove the Cable System from the Streets of the Grantor, or abandon the Cable System in place.

**SECTION 15**  
**Miscellaneous Provisions**

**15.1 Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, pandemics, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

**15.2 Minor Violations.** The parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

**15.3 Action of Parties.** In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**15.4 Equal Protection.** If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the obligations applicable to Grantee are no more burdensome than those imposed on any competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity.

**15.5 Notices.** Unless otherwise provided by federal, State or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Grantee

shall provide thirty (30) days' written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor:

Grantee: ALLO York, LLC  
Attn: President  
330 S. 21<sup>st</sup> Street  
Lincoln, NE 68510

Copy to:

ALLO York, LLC  
Attn: Legal Department  
121 S. 13<sup>th</sup> Street, Suite 100  
Lincoln, NE 68508

**15.6 Public Notice.** Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Grantor.

**15.6.1** Grantor shall provide written notice to Grantee within ten (10) days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 15.6 above.

**15.7 Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

**15.8 Entire Agreement.** This Franchise and any Exhibits hereto constitute the entire agreement between Grantee and the Grantor and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

**15.9 Administration of Franchise.** This Franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee.

**15.10 Effective Date.** The Franchise granted herein will take effect and be in full force on \_\_\_\_\_. This Franchise shall expire on \_\_\_\_\_, \_\_\_\_\_, unless extended in accordance with Section 2.2 of the Franchise or by the mutual of the parties. If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

**15.11 Governing Law.** This Franchise shall be governed by the laws of the State of Nebraska without regard to conflicts of law rules.

Considered and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

City of York, Nebraska

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

Name/Title: \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2021, subject to applicable federal, State and local law.

ALLO York, LLC

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

Name/Title :Bradley A. Moline, President

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



November 22, 2021

Prepared by

Garrett Coon  
 +1 4029832265  
 lg679@cummins.com

We are pleased to provide you this quotation based on your inquiry.

Item	Description	Qty
1	C125D6D, Diesel Genset, 60Hz, 125kW U.S. EPA, Stationary Emergency Application C125D6D, Diesel Genset, 60Hz, 125kW Duty Rating-Standby Power (ESP) Emissions Certification, EPA, Tier 3, NSPS CI Stationary Emergency Fuel Tank-Regional, Dual Wall, Sub Base, 24 Hour Minimum Listing-UL 2200 NFPA 110 Type 10 Level 1 Capable Fuel Water Separator High Fuel Level Switch, 90% Low Fuel Level Switch, 40% Mechanical Fuel Gauge Switch-Fuel Tank, Rupture Basin Control Mounting-Left Facing PowerCommand 2.3 Controller Gauge-Oil Pressure Stop Switch-Emergency Relays-Auxiliary, Qty 2, 25A-15V DC/10A-30V DC Control Display Language-English Load Connection-Single Circuit Breaker, Location A, 200A, 3P, 600 Volts AC, 80%, UL Bottom Entry, Right Engine Governor-Electronic, Isochronous Engine Starter-12 Volt DC Motor Engine Air Cleaner-Normal Duty Battery Charging Alternator Battery Charger-6 Amp, Regulated Shutdown-Low Coolant Level Extension-Coolant Drain Engine Cooling-Radiator, High Ambient Air Temperature, Ship Fitted Engine Coolant-50% Antifreeze, 50% Water Mixture Exciter/Regulator-Permanent Magnet Generator, 3 Phase Sensor Coolant Heater, Extreme Cold Ambient Voltage-277/480, 3 Phase, Wye, 4 Wire Engine Oil Heater-120 Volts AC, Single Phase Engine Oil Genset Warranty-2 Years Base Alternator-60Hz, Reconnect, Full Output, 120C, 40C Ambient, Increased Motor Starting (IMS) Literature-English Packing-Skid, Poly Bag Battery Rack Extension-Oil Drain Aluminum Weather Protective Enclosure, with Exhaust System Enclosure Color-Green, Aluminum Enclosure-Wind Load 180 MPH, ASCE7-10 Skidbase-Housing Ready	1
2	OTECB, OTEC Transfer Switch-Electronic Control: 225A OTEC225, Transfer Switch, PowerCommand, 225 Amp Interface-Communications Network, MODBUS RTU Module Listing-UL 1008/CSA Certification Application-Utility to Genset Transfer Switch Warranty-2 Year Comprehensive Cabinet-Type 1 Poles-3 (Solid Neutral) Frequency-60 Hz System-3 Phase, 3 or 4 Wire Voltage-480 Volts AC Genset Starting Battery-12V DC	1

Item	Description	Qty
	PC40 Control	
3	Battery-Wet, 12V, Group 34, 850CCA	2
4	Strobe Light 12-80vdc 2ERP9	1
5	Service - start up & testing	1

**TOTAL: \$ 38,020.00**

*+\$1,500 shipping  
 + tax*

OPTIONS:

**Adder for Service Entrance rated ATS: \$ 1,960.00**

The above option is not needed if the building has a service disconnect already in place. The SE ATS is only needed if there is no disconnect between the utility pole and the ATS.

Quote value does not include any tax.

EXCEPTIONS AND CLARIFICATIONS:

Offloading, rigging/securing, fuel, and all applicable taxes are NOT included. Physical Anchoring, any associated electrical and/or mechanical labor is the responsibility of others. Installation cost, permitting, NDEQ permits, UL2085 Fuel Tanks (if required), conduit, or wiring are NOT included. NETA and Infrared testing not included. Coordination Study not provided. The above generator will ship in an enclosed trailer, if you require that it arrive to job site on a flatbed trailer please add \$1,500.00 to the above pricing. Cummins Standard Genset and ATS Lug sizes will be provided regardless of specification. Any changes to that are the responsibility of others. No additional testing is included beyond Cummins standard startup procedures. Unless otherwise specified in the quote Load bank testing is NOT included. Specific Fault-Current Closing and withstand ratings not defined. Cummins standard ratings have been quoted. Quoted per customer request. Only those items outlined above will be included in this quotation. Any other items or materials added, regardless of specification, are subject to a price review by Cummins.

Recommend five-day notice to schedule start-up. Contractor needs to assure that all engine and electrical systems are installed and connected to enable the system to be tested during the initial start-up and to prevent charges to the contractor for additional trips.

START-UP AND CHECK-OUT SERVICE

Start up services upon the installation of the above equipment by the electrical and mechanical contractors. Start-up services include the use of a trained generator set service technician for testing of the equipment supplied and general operating instructions to the owner/personnel. These services will be performed during normal business hours, Monday through Friday 7:30 am to 3:30 pm. Cummins Sales and Service will deliver generator to site with off-loading by others.

Contractor is responsible for the off-loading of the above equipment and setting it in place.

NOTES:

**Proposal is for equipment only, offloading, rigging, and installation by others.**

Fuel and permits, unless listed above, is not included.

Cummins Standard Start-up and testing is included. Additional tests, such as NETA testing, if required, is by others  
 Coordination Study not provided.

LEAD TIME:

**Genset: 32-33 weeks**

**ATS: 15-16 weeks**

Please feel free to contact me if you require any additional information; or if you have any further questions or concerns that I may be of assistance with.

Thank you for choosing Cummins.



Submitted by:

Garrett Coon  
[lg679@cummins.com](mailto:lg679@cummins.com)  
+1 4029832265

SUBMITTALS. An order for the equipment covered by this quotation will be accepted on a hold for release basis. Your order will not be released and scheduled for production until written approval to proceed is received in our office. Such submittal approval shall constitute acceptance of the terms and conditions of this quotation unless the parties otherwise agree in writing.

THERE ARE ADDITIONAL CONTRACT TERMS AND CONDITIONS ATTACHED TO THIS QUOTATION, INCLUDING LIMITATIONS OF WARRANTIES AND LIABILITIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN. BY ACCEPTING THIS QUOTATION, CUSTOMER ACKNOWLEDGES THAT THE CONTRACT TERMS AND CONDITIONS HAVE BEEN READ, FULLY UNDERSTOOD AND ACCEPTED.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Purchase Order No

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## **TERMS AND CONDITIONS FOR SALE OF POWER GENERATION EQUIPMENT**

These Terms and Conditions for Sale of Power Generation Equipment, together with the Quote, Sales Order, and/or Credit Application on the front side or attached hereto, are hereinafter referred to as this "Agreement" and shall constitute the entire agreement between the customer identified in the quote ("Customer") and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement. Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, any terms and conditions related thereto shall be null and void and of no legal effect on Cummins.

### **SCOPE**

Cummins shall supply power generation equipment and any related parts, materials and/or services expressly identified in this Agreement (collectively, "Equipment"). No additional services, parts or materials are included in this Agreement unless agreed upon by the parties in writing. The Quote is based upon the assumption that the Equipment will be reasonably available and is not subject to unusual market fluctuations. In the event of unusual and/or unanticipated price fluctuations and/or shortage of materials ("Fluctuations"), Cummins reserves the right to adjust the estimated delivery time and/or the price to reflect such Fluctuations. Subject to the foregoing, any Quote is valid for 60 days, and the price is firm provided drawings are approved and returned within 60 days after submission and ship date is not extended beyond published lead times. Any delays may result in escalation charges. A Sales Order for Equipment is accepted on hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received. A Quote is limited to plans and specifications section set forth in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation or fuel, unless otherwise stated. Cummins makes no representation or assurance as to the Equipment complying with any Buy America or Buy American laws, regulations, or requirements unless specifically provided in the Quote.

### **SHIPPING; DELIVERY; DELAYS**

Unless otherwise agreed in writing by the parties, Equipment shall be delivered FOB origin, freight prepaid to first destination. For consumer and mobile products, freight will be charged to Customer. Unless otherwise agreed to in writing by the parties, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. Cummins may deliver in installments. A reasonable storage fee, as determined by Cummins, may be assessed if delivery of the Equipment is delayed, deferred, or refused by Customer. Offloading, handling, and placement of Equipment and crane services are the responsibility of Customer and not included unless otherwise stated. All shipments are made within normal business hours, Monday through Friday. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order and will be in effect after engineering drawings have been approved for production. Cummins shall use best efforts to meet estimated dates, but shall not be liable to customer or any third party for any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result from Fluctuations or directly or indirectly from acts of Customer or any unforeseen event, circumstance, or condition beyond Cummins' reasonable control including, but not limited to, acts of God, actions by any government authority, civil strife, fires, floods, windstorms, explosions, riots, natural disasters, embargos, wars, strikes or other labor disturbances, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities.

***AS A RESULT OF THE OUTBREAK OF THE DISEASE COVID-19 ARISING FROM THE NOVEL CORONAVIRUS, TEMPORARY DELAYS IN DELIVERY, LABOUR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOUR OR SERVICE. WHILE CUMMINS SHALL MAKE EVERY COMMERCIALY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE.***

### **PAYMENT TERMS; CREDIT; RETAINAGE**

Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Equipment. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay Cummins' costs and expenses (including reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. Retainage is not acceptable nor binding, unless required by statute or accepted and confirmed in writing by Cummins prior to shipment.

### **TAXES; EXEMPTIONS**

Unless otherwise stated, the Quote excludes all applicable local, state and federal sales and/or use taxes, permits and licensing. Customer must provide a valid resale or exemption certificate prior to shipment of Equipment or applicable taxes will be added to the invoice.

### **TITLE; RISK OF LOSS**

Unless otherwise agreed in writing by the parties, title and risk of loss for the Equipment shall pass to Customer upon delivery of the Equipment by Cummins to freight carrier or to Customer at pickup at Cummins' facility.

### **INSPECTION AND ACCEPTANCE**

Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects, and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Cummins within three (3) days from date of delivery after which time Equipment shall be deemed accepted. Cummins shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Cummins) or allow Cummins another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.

### **LIEN; SECURITY AGREEMENT**

Customer agrees that Cummins retains all statutory lien rights. To secure payment, Customer grants Cummins a Purchase Money Security Interest in the Equipment. If any portion of the balance is due to be paid following delivery, Customer agrees to execute and deliver such security agreement, financing statements, deed of trust and such other documents as Cummins may request from time to time in order to permit Cummins to obtain and maintain a perfected security interest in the Equipment; or in the alternative, Customer grants Cummins a power of attorney to execute and file all financing statements and other documents needed to perfect this security interest. Cummins may record this Agreement, bearing Customer's signature, or copy of this Agreement in lieu of a UCC-1, provided that it shall not constitute an admission by Cummins of the applicability or non-applicability of the UCC nor shall the failure to file this form or a UCC-1 in any way affect, alter, or invalidate any term, provision, obligation or liability under this Agreement. The security interest shall be superseded if Customer and Cummins enter into a separate security agreement for the Equipment. Prior to full payment of the balance due, Equipment will be kept at Customer's location noted in this Agreement, will not be moved without prior notice to Cummins, and is subject to inspection by Cummins at all reasonable times.

### **CANCELLATION; CHARGES**

Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. If Customer seeks to cancel all or a portion of an order placed pursuant to this Agreement, and Cummins accepts such cancellation in whole or in part, Customer shall be assessed cancellation charges as follows: (i) 10% of total order price if cancellation is received in Cummins' office after Cummins has provided submittals and prior to releasing equipment to be manufactured; (ii) 25% of total order price if cancellation is received in Cummins' office after receipt of submittal release to order, receipt of a purchase order for a generator already on order with the factory, or is asked to make any hardware changes to the equipment already on order with the factory; (iii) 50% of total order price if cancellation is received in Cummins' office 60 or fewer days before the scheduled shipping date on the order; or (iv) 100% of total order price if cancellation is received in Cummins' office after the equipment has shipped from the manufacturing plant.

### **MANUALS**

Unless otherwise stated, electronic submittals and electronic operation and maintenance manuals will be provided, and print copies may be available upon Customer's request at an additional cost.

### **TRAINING; START UP SERVICES; INSTALLATION**

Startup services, load bank testing, and owner training are not provided unless otherwise stated. Site startup will be subject to the account being current and will be performed during regular Cummins business hours, Monday to Friday. Additional charges may be added for work requested to be done outside standard business hours, on weekends, or holidays. One visit is allowed unless specified otherwise in the Quote. A minimum of two-week prior notice is required to schedule site startups and will be subject to prior commitments and equipment and travel availability. A signed site check sheet confirming readiness will be required, and Cummins personnel may perform an installation audit prior to the startup being completed. Any issues identified by the installation audit shall be corrected at the Customer's expense prior to the start-up. Portable load banks for site test (if offered in the Quote) are equipped with only 100 feet of cable. Additional lengths may be arranged at an extra cost. Cummins is not responsible for any labor or materials charged by others associated with start-up and installation of Equipment, unless previously agreed upon in writing. Supply of fuel for start-up and/or testing, fill-up of tank after start up, or change of oil is not included unless specified in the Quote. All installation/execution work at the site including, but not limited to: civil, mechanical, electrical, supply of wall thimbles, exhaust extension pipe, elbows, hangers, expansion joints, insulation and cladding materials, fuel/oil/cooling system piping, air ducts, and louvers/dampers is not included unless specified in the Quote. When an enclosure or sub-base fuel tank (or both) are supplied, the openings provided for power cable and fuel piping entries, commonly referred to as "stub-ups", must be sealed at the site by others before commissioning. All applications, inspections and/or approvals by authorities are to be arranged by Customer.

### **MANUFACTURER'S WARRANTY**

Equipment purchased hereunder is accompanied by an express written manufacturer's warranty ("Warranty") and, except as expressly provided in this Agreement, is the only warranty offered on the Equipment. A copy of the Warranty is available upon request. While this Agreement and the Warranty are intended to be read and applied in conjunction, where this Agreement and the Warranty conflict, the terms of the Warranty shall prevail.

## WARRANTY PROCEDURE

Prior to the expiration of the Warranty, Customer must give notice of a warrantable failure to Cummins and deliver the defective Equipment to a Cummins location or other location authorized and designated by Cummins to make the repairs during regular business hours. Cummins shall not be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc., communication expenses, meals, lodging, and incidental expenses incurred by Customer or employees of Customer, "downtime" expenses, overtime expenses, cargo damages and any business costs and losses of revenue resulting from a warrantable failure.

**LIMITATIONS ON WARRANTIES** THE REMEDIES PROVIDED IN THE WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to designated power rating; (b) inappropriate use relative to application guidelines; (c) inappropriate use of an EPA-SE application generator set relative to EPA's standards; (d) normal wear and tear; (e) improper and/or unauthorized installation; (f) negligence, accidents, or misuse; (g) lack of maintenance or unauthorized or improper repair; (h) noncompliance with any Cummins published guideline or policy; (i) use of improper or contaminated fuels, coolants, or lubricants; (j) improper storage before and after commissioning; (k) owner's delay in making Equipment available after notification of potential Equipment problem; (l) replacement parts and accessories not authorized by Cummins; (m) use of battle short mode; (n) owner or operator abuse or neglect such as: operation without adequate coolant, fuel, or lubricants; over fueling; over speeding; lack of maintenance to lubricating, fueling, cooling, or air intake systems; late servicing and maintenance; improper storage, starting, warm-up, running, or shutdown practices, or for progressive damage resulting from a defective shutdown or warning device; or (o) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

## INDEMNITY

Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Equipment supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

**LIMITATION OF LIABILITY** NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY) IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF EQUIPMENT UNDER THIS AGREEMENT OR THE USE OR PERFORMANCE OF EQUIPMENT SUPPLIED UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF EQUIPMENT SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN EVEN IF THE EXCLUSIVE REMEDY UNDER THE WARRANTY IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## DEFAULT; REMEDIES

Customer shall be in breach and default if: (a) any of the payments or amounts due under this Agreement are not paid; (b) Customer fails to comply, perform, or makes any misrepresentation relating to any of the Customer's obligations or covenants under this Agreement; or (c) prior to full payment of the balance due, Customer ceases to do business, becomes insolvent, makes an assignment for the benefit of its creditors, appoints a receiver, commences an action for dissolution or liquidation, or becomes subject to bankruptcy proceedings, or the Equipment is attached, levied upon, seized under legal process, is subjected to a lien or encumbrance, or transferred by operation of law or otherwise to anyone other than Cummins.

Upon the occurrence of any event of Customer's default, Cummins, at its sole option and without notice, shall have the right to exercise concurrently or separately any one or all of the following remedies, which shall be cumulative and not alternative: (a) to declare all sums due, and to become due, under this Agreement immediately due and payable; (b) to commence legal proceedings, including collection actions and specific performance proceedings, to enforce performance by Customer of any and all provisions of this Agreement, and to be awarded damages or injunctive relief for the Customer's breach; (c) to require the Customer to deliver the Equipment to Cummins' branch specified on the face of this Agreement; (d) to exercise one or more of the rights and remedies available to a secured party under applicable law; and (e) to enter, without notice or liability or legal process, onto any premises where the Equipment may be located, using force permitted by law, and there to disconnect, remove and repossess the Equipment, the Customer having waived further right to possession after default. A waiver of any event of default by Cummins shall not be a waiver as to any other or subsequent default.

## CUSTOMER REPRESENTATIONS; RELIANCE

Customer is responsible for obtaining, at its cost, permits, import licenses, and other consents in relation to the Equipment, and if requested by Cummins, Customer shall make these permits, licenses, and consents available to Cummins prior to shipment. Customer represents that it is familiar with the Equipment and understands operating instructions and agrees to perform routine maintenance services. Until the balance is paid in full, Customer shall care for the Equipment properly, maintain it in good operating condition, repair and appearance; and Customer shall use it safely and within its rated capacity and only for purpose it was designed. Even if Customer's purchase of Equipment from Cummins under this Agreement is based, in whole or in part, on specifications, technical information, drawings, or written or verbal advice of any type from third parties, Customer has sole responsibility for the accuracy, correctness and completeness of such specifications, technical information, drawings, or advice. Cummins make no warranties or representations respecting the accuracy, correctness and completeness of any specifications, technical information, drawings, advice or other information provided by Cummins. Cummins makes no warranties or representations respecting the suitability, fitness for intended use, compatibility, integration or installation of any Equipment supplied under this Agreement. Customer has sole responsibility for intended use, for installation and design and performance where it is part of a power, propulsion, or other system. Limitation of warranties and remedies and all disclaimers apply to all such technical information, drawings, or advice. Customer acknowledges and agrees by accepting delivery of the Equipment that the Equipment purchased is of the size, design, capacity and manufacture selected by the Customer, and that Customer has relied solely on its own judgment in selecting the Equipment.

## CONFIDENTIALITY

Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

## GOVERNING LAW AND JURISDICTION

This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

## INSURANCE

Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

## ASSIGNMENT

This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

## INTELLECTUAL PROPERTY

Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a licence or any other rights to use any of the intellectual property rights of Cummins.

## MISCELLANEOUS

Cummins shall be an independent contractor under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in this Agreement. No amendment of this Agreement shall be valid unless it is writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining

terms hereof. These terms are exclusive and constitute entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Equipment pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. In the event of a conflict in the terms of this Agreement with any Customer terms or conditions or agreement (whether referenced in an order submitted by Customer as the terms that govern the purchase of the Equipment or otherwise) or any terms set forth in any other documentation of Customer with respect to the Equipment, the terms of this Agreement shall govern. Cummins may incur additional charges which will be passed on to the Customer, as applicable.

#### COMPLIANCE

Customer shall comply with all laws applicable to its activities under this Agreement, including, without limitation, any and all applicable federal, state, and local anti-bribery, environmental, health, and safety laws and regulations then in effect. Customer acknowledges that the Equipment, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Equipment or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable all laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall act as the importer of record with respect to the Equipment and shall not resell, export, re-export, distribute, transfer, or dispose of the Equipment or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. In addition, Cummins has in place policies not to distribute its products for use in certain countries based on applicable laws and regulations including but not limited to UN, U.S., UK, and European Union regulations. Customer undertakes to perform its obligations under this Agreement with due regard to these policies. Strict compliance with this provision and all laws of the territory pertaining to the importation, distribution, sales, promotion and marketing of the Equipment is a material consideration for Cummins entering into this Agreement with Customer and continuing this Agreement for its term. Customer represents and warrants that it has not and shall not, directly or through any intermediary, pay, give, promise to give or offer to give anything of value to a government official or representative, a political party official, a candidate for political office, an officer or employee of a public international organization or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities for the purposes of inducing such person to use his influence to assist Cummins in obtaining or retaining business or to benefit Cummins or any other person in any way, and will not otherwise breach any applicable laws relating to anti-bribery. Any failure by Customer to comply with these provisions will constitute a default giving Cummins the right to immediate termination of this Agreement and/or the right to elect not to recognize the warranties associated with the Equipment. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

**To the extent applicable, this contractor and 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, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.**

Check if this Agreement pertains to government work or facilities



**STATE OF NEBRASKA CONTRACT AWARD**Telephone: (402) 471-6500  
Fax: (402) 471-2089

PAGE 2 of 6	ORDER DATE 05/11/21
BUSINESS UNIT 9000	BUYER CHRISTIE KELLY (AS)
VENDOR NUMBER: 503856	

**CONTRACT NUMBER**  
**15529 OC**  
**SECONDARY DIESEL &**  
**PRIMARY E85**  
**AWARDS**

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
	SERIES, CODE, TRIM LEVEL: X2B, 600A, XL ENGINE: 6.7L DIESEL TRANSMISSION #: 10 SPEED AUTOMATIC GEAR RATIO #: 3.31 ELOCKING GVWR: 10,000			
2	2021 OR CURRENT PRODUCTION YEAR 3/4 TON EXTENDED CAB 4X4 TRUCKS (BASE) FFV E85 WHEELBASE: 148" TIRE SIZE: 17" MAKE/MODEL: FORD F250 SERIES, CODE, TRIM LEVEL: X2B, 600A, XL ENGINE: 6.2L V8 TRANSMISSION #: 10 SPEED AUTOMATIC GEAR RATIO #: 3.73 ELOCKING GVWR: 10,000	15.0000	EA	30,242.0000
	***PLEASE CONTACT ANDERSON FORD OF LINCOLN FOR ITEMS NOT LISTED ON THE CONTRACT BUT ARE NECESSARY FOR BUSINESS NEEDS***			
	OPTIONS:			
<del>3</del>	7.3L V8 ALTERNATE ENGINE	15.0000	EA	2,045.0000
4	CLOTH FILLED BUCKET SEATS WITH VINYL TRIM	15.0000	EA	515.0000
5	RIGHT AND LEFT TELESCOPIC MIRRORS (MINIMUM 6"X 8")	15.0000	EA	280.0000
6	SECOND POWER OUTLET	15.0000	EA	175.0000
7	BOX AREA CARGO LIGHT	15.0000	EA	95.0000
8	4 WHEEL DRIVE ELECTRONIC SHIFT SYSTEM	15.0000	EA	295.0000
9	FOG LIGHTS	15.0000	EA	130.0000
10	TWO WHEEL DRIVE (2WD) MODEL INCLUDING ALL SEASON TIRES (DEDUCT)	15.0000	EA	-1,445.0000
11	FORD HD RUBBERIZED SPRAY IN	15.0000	EA	590.0000

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BUYER INITIALS

**STATE OF NEBRASKA CONTRACT AWARD**

PAGE 3 of 6	ORDER DATE 05/11/21
BUSINESS UNIT 9000	BUYER CHRISTIE KELLY (AS)
VENDOR NUMBER: 503856	

**CONTRACT NUMBER**  
**15529 OC**  
**SECONDARY DIESEL &**  
**PRIMARY E85**  
**AWARDS**

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
	BED LINER			
12	INCREASED PICKUP BOX LENGTH AND WIDTH OF 96" X 68.3", A WHEELBASE OF 164" AND THE WIDTH BETWEEN WHEEL WELLS OF 67.2"	15.0000	EA	395.0000
13	BUYERS SNOW DOGG STAINLESS STEEL TRUCK SNOW PLOW ATTACHMENT WITH POWER ANGLING, 8' BOLT ON BLADE, PLOW HEAD AND TURN LIGHTS, SNOW DEFLECTOR, BLADE MARKERS, INCLUDING SNOW PLOW PREP PACKAGE.	15.0000	EA	5,995.0000
14	COMPUTER SELECTED SPRINGS SNOW PLOW PACKAGE WITHOUT SNOW PLOW BLADE	15.0000	EA	250.0000
15	SLIDING REAR-VISION WINDOW (DEALER INSTALLED)	15.0000	EA	395.0000
16	KNAPHEIDE 696 CHASSIS WITH 8' UTILITY BODY FOR SINGLE WHEEL (INCLUDES COST OF 8' PICKUP BOX LENGTH)	15.0000	EA	9,495.0000
17	NO LID ON UTILITY BODY (DEDUCT)	15.0000	EA	-500.0000
18	TAILGATE STEP	15.0000	EA	375.0000
19	PROTECTIVE VINYL SIDE MOLDINGS (DEALER INSTALLED)	15.0000	EA	495.0000
20	DISCONNECTION OF DAYLIGHT RUNNING LIGHTS LAW ENFORCEMENT ONLY	15.0000	EA	95.0000
21	DEALER INSTALLED DOME/COURTESY LAMP TO BE CENTERED AT A 4" FROM THE TOP OF THE WINDSHIELD AND CONTROLLED BY THE ROTATING HEADLAMP SWITCH OR A SEPARATE SWITCH TO REACH MAXIMUM POSITION (THIS MAY REQUIRE AN ADDITIONAL LIGHT) LAW ENFORCEMENT ONLY	15.0000	EA	195.0000

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**STATE OF NEBRASKA CONTRACT AWARD**

PAGE 4 of 6	ORDER DATE 05/11/21
BUSINESS UNIT 9000	BUYER CHRISTIE KELLY (AS)
VENDOR NUMBER: 503856	

**CONTRACT NUMBER**  
**15529 OC**  
**SECONDARY DIESEL &**  
**PRIMARY E85**  
**AWARDS**

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
22	DISCONNECTION OF DOME LIGHT/ COURTESY LIGHT LAW ENFORCEMENT ONLY	15.0000	EA	95.0000
23	710 CCA AUXILIARY DUAL PURPOSE AGM BATTERY WITH DUAL BATTERY SEPARATOR FOR ACCESSORY EQUIPMENT INSTALLATION SHALL INLCUDE A BATTERY TRAY AND BRACKET, AND A HEAVY DUTY FUSE, MINIMUM 1 GAUGE CABLE LAW ENFORCEMENT ONLY	15.0000	EA	920.0000
24	ALTERNATING HEADLIGHT FLASHER: a. WIG-WAG MODULE b. FLASHER OVERRIDE AT NIGHT c. INSTALLED WITH ACTIVATION LEAD d. WIRES TAGGED AS SUCH AND TERMINATING IN THE TRUNK/REAR CARGO AREA LAW ENFORCEMENT ONLY	15.0000	EA	349.0000
25	100-WATT SIREN SPEAKER: a. CENTERED ON PUSH BUMPER WITH SPECIFIC MOUNTING BRACKETS b. LEADS TAGGED AS SUCH THAT TERMINATE IN THE TRUNK/REAR CARGO AREA LAW ENFORCEMENT ONLY	15.0000	EA	349.0000
26	PRO-GARD X PUSH BUMPER WITH INSTALLATION ON THE FRONT OF THE VEHICLE LAW ENFORCEMENT ONLY	15.0000	EA	2,495.0000
27	SETINA PB400 PUSH BUMPER INSTALLED ON THE FRONT OF THE VEHCILE LAW ENFORCEMENT ONLY	15.0000	EA	695.0000
28	POLICE PREP PACKAGE NUMBER 1: a. TWO (2) CLEAR/WHITE LED MODULES VERTICALLY MOUNTED AT A 45-DEGREE ANGLE TO FRONT OF VEHCILE ON THE PUSH BUMPER b. LED'S MUST MEET SAE J845, CLASS ONE (1) SPECIFICATIONS c. MINIMUM OF THREE (3) LED'S IN EACH MODULE d. BLACK BEZEL WITH CLEAR LENSES e. SHOCK AND WATER RESISTANT	15.0000	EA	229.0000

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VENDOR NUMBER: 503856	

**CONTRACT NUMBER**  
**15529 OC**  
**SECONDARY DIESEL &**  
**PRIMARY E85**  
**AWARDS**

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
	f. LEADS TAGGED AS SUCH THAT TERMINATE IN THE TRUNK/REAR CARGO AREA LAW ENFORCEMENT ONLY			
29	POLICE PREP PACKAGE NUMBER 2: a. TWO (2) CLEAR/WHITE LED MODULES MOUNTED ON EITHER SIDE OF THE REAR LICENSE PLATE ON THE LICENSE PLATE BRACKET FOR TWO (2) LIGHT HEADS b. LED'S MUST MEET SAE J845, CLASS ONE (1) SPECIFICATIONS c. MINIMUM OF THREE (3) LED'S IN EACH MODULE d. BLACK BEZEL WITH CLEAR LENSES e. SHOCK AND WATER RESISTANT f. LEADS TAGGED AS SUCH THAT TERMINATE IN THE TRUNK/REAR CARGO AREA LAW ENFORCEMENT ONLY	15.0000	EA	229.0000
<del>30</del>	ROOF MOUNTED BLUE TREE ANTENNA TO BE CENTERED ON THE ROOF 10" FORWARD FROM THE REAR OF THE CAB WITH CABLES RUNNING INTO THE CENTER CONSOLE AREA MAKE: ANTENNAPLUS MODEL: AP85/18GPS-QS22 TRI-MODE CELLULAR, PCS, GPS BLACK ANTENNA 824-896 MHZ 1885-1990 MHZ 1575 MHZ CONNECTORS SMA ON CELL, PCS AND SMA ON GPS FOAM PAD AND THREADED BOLT www.antennaplus.com	15.0000	EA	329.0000
31	ROOF MOUNTED BLUE TREE ANTENNA TO BE CENTERED ON THE ROOF 10" FORWARD FROM THE REAR OF THE CAB BY 12" LEFT FROM ROOF CENTER LINE AND AN NMO MOUNT WITH RG58 CABLE RAN INTO THE REAR SEATING AREA	15.0000	EA	309.0000
32	ROOF MOUNTED BLUE TREE ANTENNA, LOCATION TO BE DETERMINED BY THE VENDOR AND AN NMO MOUNT WITH RG58 CABLE RAN INTO THE REAR SEATING AREA	15.0000	EA	309.0000
33	REVERSE SENSING SYSTEM	15.0000	EA	295.0000

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**STATE OF NEBRASKA CONTRACT AWARD**

PAGE 6 of 6	ORDER DATE 05/11/21
BUSINESS UNIT 9000	BUYER CHRISTIE KELLY (AS)
VENDOR NUMBER: 503856	

**CONTRACT NUMBER**  
**15529 OC**  
**SECONDARY DIESEL &**  
**PRIMARY E85**  
**AWARDS**

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
34	STANDARD PAINT (SEE ATTACHED NO ADDITIONAL COST PAINTS LIST)	10,000.0000	\$	0.0000
35	EXTRA COST PAINT (SEE ATTACHED EXTRA COST PAINTS LIST)	10,000.0000	\$	0.0000
36	FORD #84S53 SCHOOL BUS YELLOW COLOR CODE NDOT USE ONLY	15.0000	EA	995.0000
37	COLOR OF UTILITY BODY TO MATCH MANUFACTURER'S PAINTS LISTS	15.0000	EA	795.0000
38	CD ROM EQUIPMENT/ENGINE SERVICE REPAIR MANUAL	15.0000	EA	295.0000
39	5 YEARS, 100,000 MILES FORD PREMIUM CARE \$100 DEDUCTIBLE ADDITIONAL MANUFACTURER WARRANTY OPTION AND COST	15.0000	EA	2,495.0000
40	DROP SHIPMENT CHARGES OUTSIDE THE LINCOLN AREA	1.0000	MI	2.0000

(DROP SHIPMENT CHARGES APPLY TO VEHICLES  
PURCHASED BY POLITICAL SUBDIVISIONS AND  
OTHER DIVISIONS OF GOVERNMENT)

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BUYER INITIALS

## Jean Thiele

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**To:** James Paul  
**Subject:** RE: test



**C. Jean Thiele | City Clerk**  
100 East 4<sup>th</sup> St., PO Box 276 | York, NE 68467  
jthiele@cityofyork.net | 402.363.2603

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**From:** James Paul <jpaul@cityofyork.net>  
**Sent:** Monday, November 22, 2021 4:02 PM  
**To:** Jean Thiele <jthiele@cityofyork.net>  
**Subject:** FW: test

New Truck for progressive fleet replacement plan. State Bid process was used, Contract #: 15529 OC. \$50,000 was budgeted.

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**From:** Bobby Colclasure <bobby.colclasure@andersonautogroup.com>  
**Sent:** Tuesday, November 16, 2021 10:17 AM  
**To:** James Paul <jpaul@cityofyork.net>  
**Subject:** Re: test

Here is the breakdown of your order  
2022 F250 Supercab 4x4 6.2L Gas automatic: \$30,942  
white exterior  
40/20/40 cloth gray interior  
telescopic trailer mirrors: \$280  
cargo light: \$95  
electronic shift-on-the-fly-\$295  
spray-in bed liner: \$590  
Long box: \$395  
sliding rear window: \$395  
body side moldings: \$495  
reverse sensing system: \$295  
drop ship: \$120

Total price: \$33,902

Please let me know if you have any other questions.

Thank you,

Bobby Colclasure  
Commercial & Fleet Director  
Anderson Ford of Lincoln  
2500 Wildcat Drive  
Lincoln, NE 68521  
402-617-4521  
[bobby.colclasure@andersonautogroup.com](mailto:bobby.colclasure@andersonautogroup.com)

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**From:** Bobby Colclasure <[bobby.colclasure@andersonautogroup.com](mailto:bobby.colclasure@andersonautogroup.com)>  
**Sent:** Monday, November 15, 2021 2:30 PM  
**To:** [jpaul@cityofyork.net](mailto:jpaul@cityofyork.net) <[jpaul@cityofyork.net](mailto:jpaul@cityofyork.net)>  
**Subject:** test

Bobby Colclasure  
Commercial & Fleet Director  
Anderson Ford of Lincoln  
2500 Wildcat Drive  
Lincoln, NE 68521  
402-617-4521  
[bobby.colclasure@andersonautogroup.com](mailto:bobby.colclasure@andersonautogroup.com)

## RESOLUTION NO. 2021-31

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF YORK, NEBRASKA:

That the Cornerstone Bank, York State Bank, Midwest Bank, Union Bank & Trust Co. and Henderson State Bank, herein after called the Banks, be and they hereby are, designated as depositories for the funds of the City of York, Nebraska and that the officials herein named are hereby authorized to open or cause to be opened an account or accounts with said Banks on such terms, conditions and agreements as shall be required by said Banks, to endorse or cause to be endorsed, in the name of the city of York and to cash or negotiate or to deposit or cause to be deposited in such account or accounts any money, checks, drafts, orders, notes and other instruments for the payment of money and to make any other agreements deemed advisable in regard thereto.

RESOLVED FURTHER that checks warrants or other withdrawal orders issued against the funds of the City of York on deposit with said Banks may be signed by any two of the following: Barry Redfern or Jeff Pieper. and Amanda Ring or Pellie Thomas and said banks are hereby fully authorized to pay and charge to the account of the City of York any checks, warrants or other withdrawal orders, so signed, including those payable to the individual order of the persons signing the same and including also checks or other withdrawal orders payable to the said Banks or to any other person or corporation, which are applied in payment of any indebtedness owing to said Banks from the person or persons who signed such checks or other withdrawal orders.

RESOLVED FURTHER that any two of the following: Barry Redfern or Jeff Pieper. and Amanda Ring or Pellie Thomas be and hereby are authorized to register warrants in the name of the City of York.

RESOLVED FURTHER that this Resolution shall continue in force until express written notice of its rescission or modification has been furnished to and received by said Banks.

RESOLVED FURTHER that all transactions, if any, in respect to any deposits, withdrawals, registrants and registration of warrants by or in behalf of the City of York with said Banks prior to the adoption of this Resolution be and the same hereby are in all things ratified, approved and confirmed.

Dated this 2<sup>nd</sup> day of December, 2021.

\_\_\_\_\_  
Barry Redfern, Mayor

Attest:

\_\_\_\_\_  
Amanda Ring, City Clerk

Maintenance Agreement Between  
the Nebraska Department of Transportation  
and the Municipality of YORK  
Municipal Extensions in YORK



**THIS AGREEMENT**, made and entered into by and between **YORK** hereinafter referred to as the "City"; and the State of Nebraska, Department of Roads, acting by and through its Director-State Engineer, hereinafter referred to as the "State" and this agreement is to have an effective date of January 1, 2022.

**WITNESSETH:**

**WHEREAS**, Nebraska Revised Statutes, relating to highways, set out the responsibilities of the State, counties and incorporated municipalities in the establishment of uniform standards of design, construction, operation and maintenance of said highways, and

**WHEREAS**, the State and the City wish to enter into an agreement relative to the maintenance of said highways, and

**WHEREAS**, Neb. Rev. Stat. § 39-1339, § 39-1344, § 39-1372, § 39-2105, § 60-6,120 and § 60-6,121, set out in detail the maintenance responsibilities of the State and the City; said responsibilities shall be incorporated herein by this reference. Therefore, the parties hereto understand that the maintenance responsibilities of the City and State under the above referenced laws are as set forth by Attachment "A" attached hereto.

**NOW THEREFORE**, in consideration of these facts the parties hereto agree as follows:

**SECTION 1a:** The State agrees to perform the maintenance on the above mentioned highways consisting of surface maintenance of those portions of municipal extensions of all rural highways within municipalities of the Metropolitan, Primary and First Class, the design of which

Maintenance Agreement Between  
the Nebraska Department of Transportation  
and the Municipality of YORK  
Municipal Extensions in YORK

exceeds the design of the rural highways leading into the municipality. The State shall maintain the entire traveled portion, not including parking lanes thereon, of the municipal extension and the City shall reimburse the State as set out in Section 8a of this agreement for maintaining that portion of said municipal extension that has been designated by statute as the City's responsibility.

**SECTION 1b.** The State agrees to perform the maintenance on the above mentioned highways consisting of surface maintenance of those portions of municipal extensions of all rural highways within municipalities of the Second Class and Villages, the design of which exceeds the design of the rural highways leading into the municipality. The State shall maintain the entire traveled portion, including parking lanes thereon, of the municipal extension and the City shall reimburse the State as set out in Section 8a of this agreement for maintaining that portion of said municipal extension that has been designated by statute as the City's responsibility.

**SECTION 1c.** The City agrees to perform the maintenance on the above mentioned highways consisting of surface maintenance of those municipal extensions of all rural highways, and the State shall reimburse the City as set out in Section 8b of this agreement for the maintenance of that portion of said municipal extension that has been designated by statute as the State's responsibility. No allowance will be made for turning lanes or for lanes used on a part-time basis as parking lanes, or other auxiliary lanes within municipalities of the Metropolitan, Primary and First Class. No allowance will be made for turning lanes or other auxiliary lanes except parking lanes within municipalities of the Second Class and Villages.

**SECTION 1d.** Special provisions in which the State shall perform partial maintenance and the City shall perform partial maintenance on the same municipal extension(s) shall be set out by addendum, in detail in Attachment "B" attached hereto, referred to in Section 5 of this agreement. Said addendum to include specific responsibilities of the State and the City and dollar amounts allowed for performance of said work by the State and by the City.

**SECTION 2.** Maintenance that may be required by "Acts of God" is not covered by this agreement but shall be performed under special agreement in each specific case.

Maintenance Agreement Between  
the Nebraska Department of Transportation  
and the Municipality of YORK  
Municipal Extensions in YORK

**SECTION 3.** Repair or reconstruction projects beyond the scope of normal surface maintenance, which are let to contract through the State's contract letting procedure, are considered to be beyond the scope of this Agreement. Normal surface maintenance shall include, but is not limited to the following maintenance activities: Crack Seal, Joint Seal, Fog Seal, Seal Coats, Spot patching, Pothole repair, Sweeping, Surface Milling, Concrete patching, miscellaneous full-depth concrete replacement, or Preventive maintenance. In order to facilitate repair or reconstruction of projects which are beyond the scope of normal surface maintenance, the City shall submit, on an annual basis, a long-range plan (5 years) for such projects to the State. In the event the State and/or the City should desire to do such work, the parties hereto may enter into a separate agreement for the appropriate cost sharing.

**SECTION 4.** It is further understood that normal surface maintenance and maintenance of appurtenances by the City shall include the identifying, locating, and marking with flags of all buried municipally owned and state owned utility facilities that occupy Nebraska Department of Roads right-of-way. The above mentioned utility facilities are those that service highways referenced in this agreement and properties adjacent to the above referenced highways and will be identified, located, and marked with flags upon the request of the State or the One Call Notification Center. Identification of buried utility facilities shall follow the provisions of the One Call Notification System Act, §76-2301 through § 76-2330. (NE Rev. Stat.)

**SECTION 5.** Only those municipal extensions of rural highways shown on the attached list marked as Attachment "C" attached hereto, and hereby made a part of this agreement shall be covered by this agreement; however, additions and deletions may be made to Attachment "C" by mutual written agreement of the parties hereto.

**SECTION 6.** The above mentioned highways shall be inspected periodically, at least quarterly, by the Department's District Engineer or the District Operations and Maintenance Manager, or their authorized representatives, and by the City's Director of Public Works or his authorized representative to review the adequacy of the maintenance work which has been performed.

Maintenance Agreement Between  
the Nebraska Department of Transportation  
and the Municipality of YORK  
Municipal Extensions in YORK

**SECTION 7.** Materials used by the City in the performance work hereunder shall be selected by mutual agreement of the parties hereto.

**SECTION 8a.** If Section 1a or 1b of this agreement is incorporated herein, the City will pay to the State the sum of \$ per Attachment "B" per lane mile. The above cost figures shall include all labor, equipment, tools, materials and supplies used or furnished by the State in the performance of the work on the above mentioned highways. Fractional miles or fractional months, if any, will be used in computing the amount payable in this agreement.

**SECTION 8b.** If Section 1c of this agreement is incorporated herein, the State will pay the City the sum of \$ per Attachment "B" per lane mile. The above cost figure price per lane mile shall include all labor, equipment, tools, materials and supplies used or furnished by the City in the performance of such work. Fractional miles or fractional months, if any, will be used in computing the amount payable in this agreement.

**SECTION 8c.** If Section 1d of this agreement is incorporated herein, the costs of partial maintenance by the State and by the City computed by fractional mile or fractional month and as set out in detail in Attachment "B", shall be offset to determine the amount, if any, to which one party or the other may be entitled after said offset.

**SECTION 8d.** Payment under this agreement will be made on an annual basis after December 31, as soon as possible after submission by the State to the City or the City to the State, as the case may be, of a Certificate approved by the District Engineer of the State, providing all work has been done during the period for which payment is made in full conformity with the agreement.

**SECTION 9.** Upon the failure of the City to perform any of the work named herein under the terms of this agreement, the Director or District Engineer of the State may, with concurrence of the City's Director of Public Works, do and perform such work or cause it to be done and performed and may retain from any monies then due to the City or thereafter becoming due, any such amount as is required for the completion of such work, provided, however, that this

Maintenance Agreement Between  
the Nebraska Department of Transportation  
and the Municipality of YORK  
Municipal Extensions in YORK

paragraph shall not be construed to relinquish any rights of action which may accrue in behalf of either party as against the other for any breach of agreement.

**SECTION 10.** It is further understood that all persons working on such highways are employees of the State, City or of contracted third parties. All contracts and agreements made by the City with third parties for the performance of any work to be done under this agreement shall be subject to the terms of this agreement and shall comply with all State laws and requirements relating to construction and maintenance contracts.

**SECTION 11.** The City agrees to keep existing and new right-of-way free of encroachments, except those authorized by permit from the City and approved by the State and Federal Highway Administration (FHWA).

**SECTION 12.** The City agrees to abide by the provisions of the Nebraska Fair Employment Practices Act, as provided by Neb. Rev. Stat. § 48-1101 through § 48-1126.

**SECTION 13.** The parties do further agree, anything to the contrary herein notwithstanding, that the Director-State Engineer of the State of Nebraska, either in his individual or official capacity, shall not be responsible or liable in any manner to the City or to any other person or persons whatsoever for any claim, demand, action or causes of action of any kind or character arising out of or by reason of the execution of this agreement or the negligent performance and completion of the work and improvements provided for herein by the City or its agents or arising out of any contract let by the City for the performance of any of the work provided herein.

**SECTION 14.** The City indemnifies, saves and holds harmless the State and all of its departments, agents, and employees of and from any and all claims, demands, actions or causes of action of whatsoever nature or character arising out of or by reasons of the execution or performance of the work provided for herein by the City or its agents and further agrees to defend at its own sole cost and expense any action or proceeding commenced for the purposes of asserting any claim of whatsoever character arising hereunder as a result of work performed by the City or its agents.

Maintenance Agreement Between  
the Nebraska Department of Transportation  
and the Municipality of YORK  
Municipal Extensions in YORK

**SECTION 15.** This agreement shall not be construed as a relinquishment by the State of any powers or control it may have over the herein before described highways.

**SECTION 16.** This agreement shall terminate December 31, 2022, except that it may be renewed for one year at a time and each January 1 thereafter for up to four additional years by written concurrence of both parties hereto. After five years, a new agreement must be executed. The lane mile payment provided in Section 8 hereof may be renegotiated to the satisfaction of both parties at any renewal date.

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the City this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ATTEST:

CITY OF YORK

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

\_\_\_\_\_  
Mayor

EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

STATE OF NEBRASKA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
District Engineer

**MAINTENANCE OPERATION AND RESPONSIBILITY**  
**Municipal extensions and connecting links**  
*(Streets Designated Part of the State Highway System excluding Freeways)*

Maintenance Responsibility  
 Neb. Rev. Stat. § 39-2105

<u>Maintenance Operation</u> Neb. Rev. Stat. § 39-1339	Metropolitan Cities (Omaha)	Primary Cities (Lincoln)	1 <sup>st</sup> Class Cities	2 <sup>nd</sup> Class Cities & Villages
Surface maintenance of the traveled way equivalent to the design of the rural highway leading into municipality.	Department	Department	Department	Department
Surface maintenance of the roadway exceeding the design of the rural highway leading into the municipality including shoulders and auxiliary lanes.	City	City	City	City
Surface maintenance on parking lanes.	City	City	City	Department
Maintenance of roadway appurtenances <i>(including, but not limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, driveways, fire plugs, or retaining walls)</i>	City	City	City	City or Village
Mowing of the right-of-way, right-of-way maintenance and snow removal.	City	City	City	City or Village
Bridges from abutment to abutment, except appurtenances.	Department	Department	Department	Department

Maintenance Responsibility  
 Neb. Rev. Stat. § 60-6, 120 & § 60-6, 121

<u>Maintenance Operation</u> Neb. Rev. Stat. § 39-1339	Metropolitan Cities (Omaha)	Primary Cities (Lincoln)	1 <sup>st</sup> Class Cities > 40,000	1 <sup>st</sup> Class Cities < 40,000	2 <sup>nd</sup> Class Cities
Pavement markings limited to lane lines, centerline, No passing lines, and edge lines on all connecting links except state maintained freeways	City	City	City	Department	Department
Miscellaneous pavement marking, including angle and parallel parking lanes, pedestrian crosswalks, school crossings, etc.	City	City	City	City	City
Maintenance and associated power costs of traffic signals and roadway lighting as referred to in original project agreement.					
Procurement, installation and maintenance of guide and route marker signs	City	City	City	Department	Department
Procurement, installation and maintenance of regulatory and warning signs.	City	City	City	Department	Department



Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

## City Maintenance Agreement

### Attachment B

City of: York

Date: 1/1/22

Surface Maintenance

From Attachment "C", it is determined that the State's responsibility for surface maintenance within the City limits is 9.16 lane miles. Pursuant to Sections 1d, 8c, 8d of the Agreement and to Attachment "C" made part of this Agreement through reference, the State agrees to pay to the City the sum of \$2,100.00 per lane mile for performing the surface maintenance on those lanes listed on Attachment "C".

Amount due the City for surface maintenance:

$$9.16 \text{ lane miles} \times \$2,100.00 \text{ per lane mile} = \$19,236.00.$$

Snow Removal

From Attachment "A", it is determined that snow removal within City limits is the responsibility of the City. Pursuant to Section 8d of the Agreement and to Attachment "C" made a part of this Agreement through reference, the City agrees to pay to the State the sum of \$665.00 per lane mile for performing snow removal on those lanes listed on Attachment "C".

Amount due the State for snow removal:

$$10.30 \text{ lane miles} \times \$665.00 \text{ per lane mile} = \$6,849.50$$

Other (*Explain*)

$$\$19,236.00 - \$6,849.50 = \$12,386.50 \text{ due the City}$$

**ATTACHMENT C  
CITY OF YORK--2022**

**STATE OF NEBRASKA  
DEPARTMENT OF TRANSPORTATION**

**RESPONSIBILITY FOR SURFACE MAINTENANCE  
OF MUNICIPAL EXTENSIONS**

**NEB. REV. STAT. 39-1339  
and NEB. REV. STAT. 39-2105**

Description	HWY NO.	Reference Post		Length in Miles	Total Driving Lanes	Total Lane Miles	Responsibility	
		From	To				State	City
South City limits to S. 21 <sup>st</sup> St.	81	57.64	59.93	2.29	4	9.16	*9.16**	
West City limits to leave City limits	34	271.31	271.75	0.44	2	0.88	0.88**	
Re-enter City limits to leave City limits	34	271.93	271.96	0.03	2	0.06	0.06**	
Re-enter City limits to east City limits	34	273.38	273.48	0.10	2	0.20	0.20**	
<b>TOTALS:</b>				<b>2.86</b>		<b>10.30</b>	<b>10.30</b>	

**\*State will pay City for surface maintenance 9.16 lane miles.**

**\*\*City will pay State for snow plowing 10.30 lane miles.**

## LANDFILL LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into by and between the York Area Solid Waste Agency, Lessor, and Werner Construction, Inc., Lessee, for the purpose of the lease of a three acre site by Lessor to Lessee on real estate located at the York landfill, which property is owned and maintained by Lessor.

Lessor agrees to lease to Lessee the following real estate located on the landfill site as depicted in the diagram attached to this Agreement as Exhibit "A", which property consists of approximately 3 acres.

The premises shall be leased by Lessor to Lessee on the following terms:

1. The lease shall commence on January 1, 2022 and shall continue for the term of one year to end on December 31, 2022. However, Lessee shall be allowed to occupy and possess the site upon execution of this Agreement.

2. Lessee shall be allowed to lease the site for the initial one (1) year term without payment of rent to lessor. Thereafter, Lessee shall pay rent to Lessor at the rate of \$1,000.00 per acre (\$3,000.00 per year) for each year that the lease is renewed. The rent shall be payable in advance and shall be due by January 1 of each year.

3. As consideration for Lessor's agreement to allow Lessee to possess the site without payment of rent for the 2022 calendar year, Lessee shall remove all equipment, utilities, materials and other items from the site that Lessee currently leases from Lessor, and shall grade the site to a level grade and restore it to its original condition. Lessee shall remove all equipment, materials and items, and complete the site restoration by December 31, 2021.

4. Lessee shall further obtain permission from Lessor prior to the installation of any utilities or underground equipment. No utility or equipment installation shall be permitted that will obstruct or create a potential conflict with the alignment of the leachate forcemain as determined by Lessor. Lessee shall further obtain appropriate permission from any utility provider prior to the installation of any utilities or underground equipment on the site.

5. This Lease Agreement shall automatically be renewed each year and shall continue until December 31 of the subsequent calendar year. Either party may terminate the Lease Agreement by giving written notice to the other party on or before October 1, unless otherwise agreed by the parties.

6. Lessee shall remove all equipment, utilities, materials and other items from this site, and shall grade the site to a level grade and restore it to its original condition, which shall be completed prior to the termination of this Agreement.

7. Each party shall maintain property and liability insurance coverage that shall provide overage for any and all claims that might be brought arising out of the use of the site. Lessee shall be liable for any damage or injury to any person or entity arising out of Lessee's use of the site.

8. The Agreement shall be binding upon the parties, their heirs, assigns, agents and successors.

YORK AREA SOLID WASTE AGENCY (LESSOR)

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

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone/Email

WERNER CONSTRUCTION, INC. (LESSEE)

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

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone/Email



Hustler Turf  
 200 S. Ridge Road  
 Hesston, KS 67602  
 (620) 327-4911  
 HustlerTurf.com



**SOURCEWELL QUOTE FORM CONTRACT #031121-HTE**

**DATE:** 11-05-21

**QUOTE:** 1105BJOD21

**SW#** 84195

**AGENCY:**

City of York Park & Rec  
 Cheree Folts  
 211 E 7th Street, York NE 68467  
 402-363-2630  
[cfolts@cityofyork.net](mailto:cfolts@cityofyork.net)

**DEALER:** 102227

<CONTACT>  
 Hiebner Body Shop  
 704 A Rd B, Henderson, NE 68371  
 402 723 4781  
[lghiebner@mainstaycomm.net](mailto:lghiebner@mainstaycomm.net)

QTY.	PART #	DESCRIPTION	CURRENT MSRP	CONTRACT PRICE	TOTAL
2	941526	Super 104 Kawasaki FX1000 EFI (38.5hp) 104"	\$32,534.00	\$24,401.00	\$48,802.00
2	trade in	Hustler Super 104		-\$8,000.00	-\$16,000.00
2	discount	additional discount give by Hiebner		-\$484.01	-\$968.02
				<b>Total</b>	<b>\$31,833.98</b>

**Terms & Instructions**

Quote is valid for 30 days  
 Price is valid only when PO is made out to Hutster Turf Equipment, Inc.  
 Please include a copy of your Tax Certification with PO

**Email:** Brian.ODonnell@excelii.com  
**Fax:** 630-323-5118

Raylene Portz  
8292 Dorset Drive  
Lincoln, NE 68510

November 11, 2021

Barry Redfern, Mayor  
City of York Municipal Building  
100 E 4th St  
York, NE 68467

Dear Barry,

I am writing to inform you about my decision to leave my position as board member on the Board of Adjustment, effective immediately. We have recently sold our home and moved to Lincoln temporarily with family until we find a home between Lincoln and Omaha.

Thank you for the opportunity to contribute to such an incredible city/county. I've truly valued the opportunity to work with such a strong and dedicated team. I wish the best to you and the other members going forward.

Sincerely,

*Raylene Portz*

Raylene Portz