RESOLUTION AUTHORIZING AGREEMENT WITH ALFRED BENESCH AND COMPANY FOR PROFESSIONAL CONSULTING SERVICES REGARDING 168TH STREET FROM MORGAN AVENUE SOUTH 0.75 MILES TO I-80, INCLUDING BRIDGE #147 OVER WEHRSPANN CREEK IN SARPY COUNTY

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (6), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 the powers of the County as a body are exercised by the County Board; and,

WHEREAS, general supervision and control of the public roads of each county is vested in the County Board by virtue of Neb. Rev. Stat. §39-1402; and,

WHEREAS, Sarpy County wishes to enter into an Agreement with the firm of ALFRED BENESCH AND COMPANY for professional consulting services in conjunction with the preliminary design and final design for 168th Street from Morgan Avenue south 0.75 miles to I-80 including Bridge #147 over Wehrspann Creek in Sarpy County;

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT this Board hereby approves and adopts the Agreement with ALFRED BENESCH AND COMPANY for professional consulting services in conjunction with the preliminary design and final design for 168th Street from Morgan Avenue south 0.75 miles to I-80 including Bridge #147 over Wehrspann Creek in Sarpy County.

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk are hereby authorized to execute on behalf of this board, agreement with Alfred Benesch and Company, a copy of which is attached, and any other related documents, the same being approved by the board.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 25th day of October, 2016.

Sarpy County Board Chairman

Attest:

SEAL

County Clerk
MEMORANDUM

To: Sarpy County Board of Commissioners

From: Dennis L. Wilson, County Engineer

Subject: Alfred Benesch and Company for Preliminary Engineering

Date: June 9, 2016

I recommend approval of the Alfred Benesch Agreement for Professional Services in conjunction with Sarpy County Project C-77(10-5)A, 168th Street from Morgan Avenue south 0.75 miles to I-80, including Bridge #147 over the Wehrspann Creek, for a Lump sum of $184,078.00. We will be utilizing the ASIP fees (NW Quadrant) as per the current budget.

DLW/bjh
CONSULTING SERVICES AGREEMENT

CLIENT         Sarpy County Public Works
Address        15100 S. 84th Street
              Papillion, NE 68046
Project Name  Bridge #147

Telephone      (402) 537-6900
Client Contact Bill Herr
Client Job No.  C-77(08-1), C-77(10-5)A

This AGREEMENT is made by and between Sarpy County Public Works, 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: 

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: $184,078.00.
BY TIME AND MATERIALS: $_____.
BY OTHER PAYMENT METHOD (See Attachment _____): $_____.
AS SHOWN ON SERIALLY NUMBERED WORK AUTHORIZATIONS USING EXHIBIT A

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

BY: ________________________________ BY: ________________________________
AUTHORIZED REPRESENTATIVE         AUTHORIZED REPRESENTATIVE

PRINT NAME: Don Kelly                PRINT NAME: Jeffrey A. Sockel, PE
TITLE: Chairman                      TITLE: Sr. Vice President, Omaha Division Mgr
DATE: October 25, 2016
DATE: October 14, 2016

BENESCH OFFICE: Omaha
ADDRESS: 14748 W. Center Road, Suite 200
Omaha, NE 68144

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

Sarpy County Client Agree
September 2016
SECTION I - 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 using by 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. 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 II - PAYMENTS TO CONSULTANT

2.1 Method of Payment
Payment for CONSULTANT'S personnel services and direct expenses shall be expressed in U. S. dollars, and 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. Premium rates for overtime hours shall not be assessed against Client without written authorization by the Client in advance of overtime performance.

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.

2.4.3 In the event of a disputed or contested invoice, only that portion so contested will be withheld from payment and the CLIENT will pay the undisputed portion.

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. 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.

SECTION III - 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. In the event of such termination, either 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. 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 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 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 final payment.

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 IV - 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 Workers' Compensation and Employers Liability Insurance. The minimal acceptable limits shall be the statutory limits as required by the State of Nebraska for Coverage A, Worker's Compensation and $500,000 each accident for Coverage B, Employers Liability. Commercial General Liability Insurance. Coverage should include broad form coverage written on an occurrence basis. The coverage must protect against claims for damages resulting from bodily injury, including death, personal injury and property damage. The minimum acceptable limits of liability shall be $1,000,000 each occurrence. If the coverage contains a general aggregate, such limit shall not be less than $2,000,000. The products/completed operations limit shall not be less than $2,000,000. The County is to be named as an additional insured on the insurance coverage required under this section, with the exception of Workers' Compensation.

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 comply with, and cause its subconsultants to comply with, applicable Federal, state, and local laws, orders, rules, and regulations relating to the performance of the services CONSULTANT is to perform under this AGREEMENT.

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 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 those 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 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.

4.7 Location of Underground Utilities

SUBCONSULTANT shall be fully responsible for locating and physically marking subsurface utilities and other subsurface structures or facilities which lie within the work area prior to starting any subsurface work except for private utilities, structures, or facilities that would not be marked by a one-call, locating service. In such case, SUBCONSULTANT shall have the duty to coordinate with the owner prior to performing any Services to properly locate any private utilities, structures, or facilities. 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.

4.8 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.

4.9 CONSULTANT's Personnel at Project Site

4.9.1 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.

4.9.2 The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed work will conform generally to the project documents and that the integrity of the design concept as reflected in the project documents has been implemented and preserved by the contractor(s). 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.

4.10 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.

4.11 Disposition of Samples and Equipment

4.11.1 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.

4.11.2 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.

4.11.3 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 4.11.2 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.

4.12 Discovery of Unanticipated Pollutant and Hazardous Substance Risks

4.12.1 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.

4.12.2 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.

4.12.3 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 practicably 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 personal 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 V - Professional Responsibility

5.1 Performance of Services

Client acknowledges that the performance of professional services is not an exact science, and errors and omissions may occur that are within the industry standard of practice which states that CONSULTANT will strive to perform services under this AGREEMENT in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document, or otherwise.

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 available limit of CONSULTANT's insurance coverage, 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 agrees to indemnify and hold CONSULTANT, its officers, directors, employees, and subconsultants harmless from and against any and all claims, damages, losses and expenses, defense costs including attorneys' fees, and court or arbitration costs and other liabilities arising out of or resulting from, wholly or in part, the performance of CONSULTANT's services hereunder; provided that CLIENT shall not indemnify CONSULTANT against liability for damages or expenses to the extent caused by the negligence of CONSULTANT, its officers, directors, employees, or subcontractors.

CONSULTANT agrees to indemnify and hold CLIENT, its officers, directors, employees, and subcontractors harmless from and against any and all claims, damages, losses, and expense costs including attorneys' fees, and court or arbitration costs and other liabilities arising out of or resulting from actions not within the performance of services outlined in the Agreement, or the negligence of CONSULTANT or its officers, directors, employees, or subcontractors.
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 VI • 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. In addition to service to the signing party, CLIENT shall also be served notice addressed to:

Debra Houghtaling
Sarpy County Clerk
1210 Golden Gate Drive, Suite 1250
Papillion, NE 68046.

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 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, parties may pursue any other remedy available by law.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.

6.5 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.

6.6 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.

6.7 Residency Verification
Pursuant to Neb. Rev. Stat. § 4-114 et seq., each party shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.
SCOPE OF SERVICES
PRELIMINARY AND FINAL DESIGN
SARPY COUNTY BRIDGE NUMBER 147

ATTACHMENT A

PROJECT DESCRIPTION

The scope of the project consists of the reconstruction Bridge #147 over Wehrspann Creek and 0.75 miles of 168th Street in rural Sarpy County. The roadway limits are from Morgan Avenue south to Interstate-80. The existing bridge is a multi-span steel bridge that is in need of replacement. The work required for this project includes: data collection, geotechnical engineering, structural design of a replacement structure as detailed in this scope of services, environmental permit application, design of temporary and permanent erosion controls, preliminary and final roadway design, and utility coordination.

Design and plan preparation will follow Nebraska Department of Roads guidelines including the following:

- NDOR Roadway Design Manual
- NDOR Drainage Design and Erosion Control Manual

Any deviations from the above must be approved by the Sarpy County prior to preparation of plans. Other design manuals include the following:

- AASHTO Policy on Geometric Design of Highways and Streets
- AASHTO Roadside Design Guide
- Manual on Uniform Traffic Control Devices

SARPY COUNTY TO PROVIDE OR COMPLETE

The Consultant anticipates that Sarpy County will provide or arrange for the following items to be used by the Consultant in the development of project deliverables:

1. Sample plans on a similar project
2. As-built plans of existing bridge and roadway (if available)
3. Existing traffic counts and accident data (if available)
4. Existing cadastral maps, plat maps, electronic right-of-way files of the project area (if available)
5. Names of known utilities, addresses and permits listing use and occupancy permit data along the project
6. All Deed and Title Research including deeds for previous R.O.W. projects
7. Control points, ties, and benchmark information
8. Topographic Survey Data Files
9. Hydrologic and Hydraulic Study for Bridge 147 from Lamp Rynearson and Associates
UNDERSTANDINGS AND ASSUMPTIONS

1. NDOR standard plans, provisions, and plan format shall be followed
2. If necessary, Sarpy County will appraise and negotiate for any right-of-way needs
3. Sarpy County will advertise and award the project
4. Sarpy County will complete the topographic survey
5. This project is located on the west edge of the Chalco Hills Recreational Area and will require coordination with the Papio NRD and the Corps of Engineers for any right-of-way impacts and bridge elevation with respect to the reservoir pool elevations.
6. Profile for 168th Street adjacent to Pebblebrooke Subdivision will be coordinated between Benesch and the developer's Engineer.
7. If the developer of Pebblebrooke does not retain their engineer to design 168th Street adjacent to Pebblebrooke, the County may supplement Benesch's contract for the design of 168th Street north to Hwy 370.

ANTICIPATED SCHEDULE

- Notice to Proceed 09-26-16
- Kickoff Meeting 10-03-16
- 30% Plans/TS&L 12-19-16
- Plan-in-Hand 01-12-17
- 60% Plans 02-06-17
- 90% Plans 05-18-17
- Begin Right-of-Way Acquisition 06-01-17
- Final Bid Package 08-07-17
- Final Roadway Package 08-07-17

TASK 1 PROJECT MANAGEMENT

The Consultant Project Manager will serve as point of contact, maintain project schedule and budget. Provide regular progress reports with invoices.

The Consultant will coordinate their design with agencies and/or Consultants that are involved with this project or adjacent projects. Coordination includes up to five (5) one-on-one meetings with the agencies or Consultants. Included with this task is coordination regarding construction access, and right-of-way agreements.

TASK 2 GENERAL PROJECT MEETINGS

Benesch will coordinate, facilitate and attend various meetings associated with the project. The following outlines the anticipated project meetings, the focus of the meetings, and assumed quantity of each meeting type. The meetings identified in this scope of services are based on completing the work for both bridge sites as a single combined project. Any additional meetings not identified in this task shall be performed by supplemental agreement.

a. Kick-Off Meeting (1)

Upon notice from Sarpy County, the Consultant will schedule and attend a kick-off meeting with County staff. The County will supply a list of invitees and the Consultant will be responsible for notifying the attendees.
b. **Concept Meetings (1)**

The Consultant will schedule and attend the concept meeting. At this meeting the Consultant and the County will determine the concept from Task 8 that will be designed as the project. After this meeting Roadway Design will proceed.

c. **Progress Meetings (2)**

The Consultant will schedule and attend all progress meetings. The Consultant will create and distribute a meeting agenda at least 48 hours prior to all progress meetings. Utility review / coordination will occur with the progress meetings.

d. **Review Meetings (2)**

The Consultant will schedule and attend review meetings to receive the County's review comments from the submittals at the 30% plan and 90% plan stages.

e. **Plan-in-Hand**

The Consultant will schedule and attend a plan-in-hand field inspection. This field inspection will follow the review of the plan in hand plans by the County.

**TASK 3 PUBLIC INVOLVEMENT**

Benesch will meet with individual land owners at the request of the County.

**TASK 4 UTILITY COORDINATION**

Benesch will perform utility coordination services for the project. The following outlines the specific scope of the utility coordination services to be performed. Any additional utility coordination services not identified in this task shall be performed by supplemental agreement.

a. **Utility Location/Verification**

The Consultant will survey the locations of marked or above ground utilities within the project area and provide this information to the Consultant. During field inspections, the Consultant will attempt to review the utility locations shown on the plans to identify obvious discrepancies between the plans and the actual field locations. The Consultant does not take responsibility for the accuracy of surveyed underground utilities. After survey is complete, plans will be printed and distributed to the Utility Companies for verification of ownership, type, size, location, and cased or uncased.

The Consultant will request that the Utility Companies return to the Consultant marked up plans with utility verification. The Consultant will incorporate the information into the topography. All utilities identified in the topographic survey and verified by the individual utility will be incorporated into the plans.
It is assumed identification and verification of major utility conflicts such as fiber optic lines, gas pipelines, crude oil pipelines, high-pressure waterlines, transmission lines, etc., will be accomplished by the individual Utility Company or others in a timely manner.

Plans will be submitted to the Utility Companies when plans are at 30% completion.

b. Utility Coordination Meetings

The Consultant will coordinate and facilitate two (2) meetings with the County and impacted utilities to discuss major conflicts and available options to avoid or relocated the affected facilities.

TASK 5 SURVEY PROCESSING

Topographic survey will be completed by Sarpy County. The County will provide Benesch with the data in an acceptable format for processing. The Consultant will create the base map using the topographic survey data.

TASK 6 GEOTECHNICAL EVALUATION

a. Drilling and Sampling Methods

Benesch proposes to drill two (2) exploratory borings at the project site. The proposed boring depth of each boring is 110 feet. The soil borings will be made in accordance with ASTM D 1452, Standard Practice for Soil Investigation and Sampling by Auger Borings. A machine-driven, hollow-stem auger will be used to advance the holes for split-barrel sampling.

Penetration tests will be performed at selected locations in accordance with ASTM D 1586, Standard Method for Penetration Test and Split-Barrel Sampling of Soils. Representative samples of the soil will be obtained for identification purposes. The resistance of the soil to penetration of the sampler, measured in blows per foot (N), is an indication of the relative density of cohesionless soil and of the consistency of cohesive soil.

The subsurface materials will be identified and described in accordance with ASTM D 2488, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure).

b. Geotechnical Evaluation and Recommendations

The field and office data that would be included in the geotechnical engineering report are presented below:

1. Boring logs.
2. Geology:
   a. Depth to groundwater--if encountered.
   b. Summary of surface and subsurface conditions at the site.
3. Soil classification chart and tables listing the criteria used to describe various soil properties.
Benesch's geotechnical engineering report will include predicted pile tip elevations for the foundation of the proposed bridge in accordance with Load and Resistance Factor Design (LRFD) criteria.

**TASK 7 ENVIRONMENTAL PERMITTING**

a. *Preliminary Data Gathering*

Publically available information will be collected for the natural resources assessment. This effort will support more detailed surveys including a Waters of the United States (WUS) determination investigation, a threatened & endangered species (T&E) evaluation, a vegetation inventory and a cultural and historic resources assessment (explained in greater detail below).

Information collected will include National Wetland Inventory (NWI) data, Natural Resources Conservation Service (NRCS) soil information, USGS topographic information, recent aerial imagery, T&E range maps, and nearby cultural and historic resources. Data will also be gathered pertaining to the United States Army Corps of Engineers (USACE) property to the east of the bridge, as well as any easements on the west side of the bridge. Once this information is collected a project base map will be prepared utilizing GIS.

**Deliverable** – Project Base Map

b. *Waters of the U.S. Investigation*

Wetland determinations and delineations will be completed in accordance with the USACE Wetland Delineation Manual, Technical Report Y-87-1 and the Midwest Regional Supplement to the USACE Wetland Delineation Manual. Waterways will be evaluated to determine the presence of an Ordinary High Water Mark (OHWM), flow regime, and connection to a navigable waterway. The USACE delineation manual methodology requires desktop analysis of existing data sources such as: USGS Topographical Maps, NRCS Soil Survey Maps, National Wetlands Inventory Maps and aerial photography.

An on-site field investigation will also be conducted. The field investigation will determine if wetland areas in question have all three jurisdictional wetland parameters: hydrophytic vegetation, hydric soils, and wetland hydrology, and will also determine if waterways have an Ordinary High Water Mark. Drainage patterns and connections to other waterways will also be documented.

If a WUS determination is confirmed, the boundary will be delineated within investigation area according to the above referenced USACE delineation manual. Wetland sample points, photo stations and the WUS boundary will be field surveyed with a Trimble® Geo-XT sub-meter accuracy hand-held GPS unit or equivalent device.
Findings will be documented in a WUS Delineation Report that will include the following:

- Methods of investigation
- Documentation of wetlands on USACE Data Forms and waterways on a stream data form
- Digital photographs of investigation area and all delineated WUS, including wetlands
- WUS delineation map on currently available aerial photography that shows data points, photo points, and WUS boundary.
- Brief discussion of each wetland or waterway, including jurisdictional status.

**Deliverable – Waters of the U.S. Delineation Report**

c. **Section 404 Permit Application**

It is anticipated in this proposal that Nationwide Permits with notification will be required for this project. It is also anticipated that impacts to wetlands will be avoided as much as possible, and be less than 0.1 acre and therefore not require a mitigation plan. Benesch will initiate an over the phone pre-application meeting with the USACE Nebraska Regulatory Office to discuss project plans, impacts to WUS, verify use of a Nationwide Section 404 permit, and discuss application package submittal. This meeting provides the USACE an opportunity to provide input on how to receive a permit in the most efficient manner.

A Section 404 permit application package will be prepared on Sarpy County’s behalf and submitted to the USACE. The permit application package will include a pre-construction notice (PCN) prepared according to USACE Nationwide Permits standards (Federal Register / Vol. 72, No. 47 / 2012), and a wetland delineation report. The PCN will describe the proposed project and anticipated amount of wetland and waterway impacts. This task also includes a pre-application meeting with the Nebraska Regulatory Office to discuss impacts of the project.

This task does not include:

- Submitting a separate Jurisdictional Determination;
- Preparation of a wetland mitigation plan if impacts are greater than 0.1 acres; or
- Preparing and submitting a separate Section 401 Water Quality Certification application.

**Deliverable – Section 404 Nationwide Permit Package**

d. **Threatened and Endangered Species Preliminary Evaluation**

Publicly available information from state and federal lists of threatened and endangered species and preferred habitat in the county will be assessed. Available information about known locations of species habitat and species occurrences will also assessed. These assessments will be supplemented by a walking survey of the project area to document overall site landscape, physical characteristics and site vegetation communities.
Findings of the data assessment and the walking survey will be documented in a letter report. This report will document the potential for any federal or state listed threatened or endangered species to inhabit the project area based on the presence of suitable habitat. The report will be submitted to the U.S. Fish and Wildlife Service (USFWS) for concurrence. If necessary a coordination teleconference meeting will be held with the USFWS to discuss report findings.

This task does not include any additional surveys or formal biological assessments that may be required by the USFWS and/or the Nebraska Game and Parks Commission (NGPC) to determine if species are present if T&E habitat is identified.

**Deliverable** – Threatened and Endangered Species Preliminary Evaluation

e. **Preliminary Cultural and Historic Investigation**

A preliminary cultural and historic resources investigation includes a review of state and federal listed cultural and historic sites, such as, landmarks, homesteads, highways, etc. It is anticipated that project impacts within the project area will not impact any listed sites.

**Deliverable** – Memorandum of findings (may be incorporated into 404 Permit package)

f. **USACE Dam Site 20 Property Coordination**

Due to the presence of property owned by the USACE to the east of the bridge, and possibly easements to the west of the bridge, Benesch will participate in up to three (3) meetings with the USACE Missouri River Project Office, as well as the Omaha District Realty Office, to discuss the project and identify any additional measures needed related to permits, licenses, and possible acquisition of right-of-way from the USACE. This task does not include investigation or preparation of any additional permit, license, or ROW documents except as identified and detailed in other tasks under this scope of work.

g. **Migratory Bird Surveys**

Migratory bird species are protected under the Migratory Bird Treaty Act (MBTA)(16 U.S.C 703-712; Ch. 128 as amended). The MBTA does not allow the take of any migratory bird without permission from the USFWS. If project activities occur within potential migratory bird nesting habitat between February 1 and September 15 a qualified biologist should conduct a field survey to determine the absence or presence of nesting migratory birds. If the proposed project construction will occur within this window, Benesch will conduct one (1) migratory bird survey according to the USFWS Protocol prior to the start of construction.

Surveys will consist of conducting a walking survey along project areas within suitable habitat and observing the presence of migratory birds and their nests. If surveys do not reveal any migratory bird nests documentation of the field visit and surveyor qualifications will be summarized in a technical memorandum and provided to the client. If work is not completed within 7 days of survey that does not reveal any active nests, an additional survey will be required.
If the survey reveals an active nest(s), proposed measures of how the nest will be avoided and, if necessary, applicable conservation measures if the nest cannot be avoided will be prepared. This information is required to be submitted to the USFWS. If nests are identified and the area can be avoided but still requires removal of habitat, follow-up surveys will be required to confirm when the birds have fledged the nest.

**Deliverable** – Migratory Bird Survey Report

**TASK 8 ROADWAY DESIGN**

This task includes completing the preliminary and final design for the project.

a. **Title Sheet.** This sheet will include project location map, construction standards being used, net length of the project, index of sheets and legend.

b. **Typical Sections.** This includes design and drafting the typical sections. (2 sheets)

c. **Horizontal Alignment.** This task includes the design and drafting of the horizontal alignment and/or adjustment of alignment. Alignment Data and Control Points will be in the plan set.

d. **Vertical Alignment.** This task includes the design and drafting of the vertical alignment and/or adjustment of vertical alignment.

e. **Cross-Sections.** Develop the templates necessary to process cross sections. Cross Sections will be spaced at 100’ intervals. Additional cross sections will placed were appropriate.

f. **Drainage Report.** All drainage structures calculations and sizing will be summarized in a Report and submitted to the County with the 30% Plans.

g. **Earthwork.** Process the earthwork for grading and include tables in the plan sets.

h. **Geometric Design.** This task includes the geometric design of all alignments, intersections, driveways, etc. Effort to design guardrail length, guardrail grading and surfacing under guardrail is included with this task.

i. **Pavement Spot Elevations and Joint Layout.** Paving joint plan will be developed in coordination with the construction phasing plans. A typical joint spacing will be specified in the plans. Spot elevations will be calculated every 50 feet.

j. **Construction and Removal.** Development of Removal / Construction plan sheets with appropriate notes detailing construction and removal items. (2 sheets)

k. **Phasing / Traffic Control.** The Consultant will prepare a detour route and appropriate temporary signing.
I. **Aerial/Wetland Plan.** The Consultant will prepare aerial photo sheets showing any delineated wetlands, impacted wetlands and/or channels, and mitigation sites, if applicable.

m. **Quantities/Estimates.** Develop and tabulate all of the quantities. Quantities will be submitted to Sarpy County for each submittal, including the 30%, 60% and 90%/Final Plans, using NDOR standard bid items and NDOR quantities forms. Estimates of probable cost will be prepared by the Consultant using recent bid tabulations and other information.

n. **Special Provisions.** The Consultant shall draft any special provisions necessary for the contract documents including a prosecution and progress; status of right-of-way; and status of utilities.

o. **Pavement Striping and Permanent Signage.** Develop signing and striping plan to be completed on the project.

p. **Permits.** The Consultant shall prepare and submit or assist the County with the following permits, agreements, certifications, and forms.
   - SWPPP - NPDES Permit
   - Nebraska Department of Environmental Quality (NDEQ)
   - Grading Permit

q. **Right-of-Way.** This task involves collecting the Plat drawings, reviewing property titles, reviewing survey data, and other necessary information to establish the existing Right-of-Way, including easements, for the properties abutting the project. The Client will provide the Consultant with the title information for the properties requested.

   The Consultant will determine the easements (temporary and permanent) and right-of-way required to construct the project. It is estimated that there will be up to 4 tracts associated with this project. The Consultant will prepare a strip map, legal descriptions and tract maps (distances and deflections, no bearings or azimuths) for all ROW takings, permanent easements, and temporary easements. ROW plans and documents will be submitted to the County at the time of 60% Plans Submittal.

r. **Plan Package (2 Phases).** This project will be bid as two separate projects. This task includes the effort to prepare two different plan sets and bid packages that will be let at separate times.

s. **Electronic Deliverables.** Benesch will work with the County and the Contractor develop a format for a staking file and a model for grading and paving.

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**TASK 9 HYDROLOGY AND HYDRAULICS**

This work consists of a review of the hydrologic and hydraulic study that was recently completed for Sarpy County for the 168th Street Bridge. Benesch will review the structure recommendations from the study and will give its concurrence of the findings.
If another structure other than the one proposed in the H&H study is recommended by Benesch and approved by the County, the H&H Study will need to be amended to reflect the new proposed structure. Any work to amend the H&H Study will be supplemental to this contract.

**TASK 10 BRIDGE DESIGN (BRIDGE 147)**

All drafting will be completed in Microstation using NDOR Bridge Division drafting standards in accordance with NDOR requirements. Benesch will prepare any special provisions necessary to complete the construction work.

An Estimate of Probable Construction Costs will be prepared for the County based on the most recent, readily available unit prices for similar construction and other current letting information readily available or provided by the County. Adjustments to unit prices and inflationary increases will be considered as deemed appropriate by the Engineer and agreed upon by the County. The Estimate of Probable Construction Costs will be itemized to reflect individual construction items of work anticipated for the project.

a. **Preliminary Bridge Design**

Benesch will develop a preliminary horizontal and vertical layout for the bridge. A maximum of two bridge types and associated substructure layouts will be developed and analyzed with input from County staff. The results of the alternatives analysis will be used to select the final type, size, location and clearances for the proposed bridge. A Type, Size & Location (TS&L) drawing and data sheet will be prepared in accordance with NDOR requirements. The completed TS&L and data sheet will be submitted to the County for review and approval.

The bridge will be designed to accommodate three lanes initially, with the ability to expand to five lanes in the future.

The foundation requirements for the bridge will be coordinated with the geotechnical engineer during the preliminary design phase.

b. **Final Bridge Design**

Benesch will develop the final design and prepare final bridge plans for the bridge in accordance with the requirements outlined in the AASHTO LRFD Bridge Design Specifications, Fifth Edition. The design and plans will also be completed in accordance with the NDOR Bridge Office Policies and Procedures Manual and associated drafting standards. Final bridge design will include a complete set of quantity calculations according to the standard bid items in the Nebraska Standard Specifications.

c. **Final Bridge Plan Preparation**
Benesch will prepare an independent design check of all bridge calculations and plan items in accordance with NDOR requirements. Benesch will also perform a QC/QA review of the plans to verify conformance with design requirements.

Bridge plans will be submitted for review by the County at the 30% stage when the general bridge layout and cross-section are complete for the plan-in-hand review. Final completed bridge plans and special provisions (if necessary) will be submitted to the County for final review. Once the final review process is complete, the PS&E package will be submitted to the County for bid advertisement and letting.

**TASK 11 CONSTRUCTION PHASE**

Construction Phase services are not included with this scope of service, but can be added if desired by the County.
## FEE SUMMARY

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