

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MAY 3, 2022 AGENDA**

Subject:	Type:	Submitted By:
PROFESSIONAL SERVICES AGREEMENT – APPLEWOOD CREEK	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

SYNOPSIS

A resolution has been prepared authorizing a professional services agreement with Schemmer to review the hydrologic and hydraulic (H&H) modeling as submitted for Applewood Creek in an amount not to exceed \$9,620.

FISCAL IMPACT

The FY21/FY22 Biennial Budget includes funding for this project.

RECOMMENDATION

Approval

BACKGROUND

As the Cimmaron Woods SID continues to work with the City to provide a solution to convey storm water through the BNSF railroad culvert near the southern boundary of the SID, and to understand potential downstream impacts to Applewood Creek, staff has requested that Schemmer review the H&H Modeling that was recently completed by the SID Engineer, E&A Consulting. The review is intended to confirm that the H&H study as performed by E&A conforms to standard engineering practice.

A copy of the scope is attached.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH SCHEMMER, OMAHA, NEBRASKA, TO REVIEW THE HYDROLOGY AND HYDRAULIC (H&H) MODELING ALONG APPLEWOOD CREEK IN AN AMOUNT NOT TO EXCEED \$9,620.

WHEREAS, the Mayor and City Council have determined that the review of the hydrologic and hydraulic analysis along Applewood Creek is necessary; and

WHEREAS, the FY21/FY22 Biennial Budget provides funding for the proposed services;

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, that a professional services agreement, in a form satisfactory to the City Administrator and City Attorney, be authorized with Schemmer, Omaha, Nebraska, to review hydrology and hydraulic modeling in an amount not to exceed \$9,620.

PASSED AND APPROVED THIS 3RD DAY OF MAY 2022.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethel, MMC
City Clerk



Design with Purpose. Build with Confidence.

April 21, 2022

Mr. Pat Dowse
City Engineer
City of La Vista
9900 Portal Road
La Vista, Nebraska 68128

Re: Applewood Creek H&H Review Proposal
La Vista, NE

Dear Pat:

The Schemmer Associates Inc. (SCHEMMER) proposes to provide professional services to the City of La Vista (Client or Owner) in association with reviewing hydrology and hydraulic analysis along Applewood Creek in La Vista, NE. The development of this scope of services and compensation proposal is based in part on the following:

- Conversations with City staff
- Knowledge of the project area
- April 6, 2022, meeting with Pat Dowse and John Kottmann

I. SCOPE OF SERVICES

A. GENERAL

SCHEMMER shall render for Owner professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as Owner's professional engineering representative for the Project, providing professional engineering consultation and advice and furnishing customary engineering services incidental thereto.

Generally, these services include reviewing the report and associated models for the "Culvert Study FOR Applewood Creek" by E&A Consulting Group, Inc. dated January 17, 2022, (provided by the Owner) and provide a professional opinion on adherence to standard engineering practice.

B. DETAILED SCOPE OF SERVICES

1. Miscellaneous Correspondence with City

SCHEMMER will coordinate with the Owner to discuss the availability of information and findings.

2. "Culvert Study FOR Applewood Creek" Review

PHONE 402.493.4800
FAX 402.493.7951

1044 North 115th Street, Suite 300
Omaha, Nebraska 68154-4436

SCHEMMER.COM

SCHEMMER will obtain drainage report and model files from the Owner and review engineering analysis methodology and adherence to standard engineering practice. In-depth review of drainage report supporting data will include evaluating the methodology for the hydrologic and HEC-RAS hydraulic models. It is anticipated the technical review includes two hydrologic models (HEC-HMS and AutoCAD Hydrographs) and a HEC-RAS hydraulic model (provided by the Owner).

SCHEMMER will verify FEMA requirements have been followed within the Preliminary and Effective floodplain.

SCHEMMER will prepare a letter documenting the findings of the review. The letter will also include suggested content within the hydrologic and/or hydraulic models to consider reexamining (if any).

3. Review Meeting with City

SCHEMMER will conduct a meeting with the City to discuss the findings of the review and respond to questions.

II. CRITERIA, ASSUMPTIONS AND EXCEPTIONS

1. SCHEMMER will not modify any hydrologic or hydraulic models received.
2. SCHEMMER does not take responsibility for accuracy of model input or output.
3. Review of proposed changes to the drainage basin is not included in this proposal.

III. COMPENSATION

A. Basic Services: Our proposed fee for performing the basic services shall be a not-to-exceed amount of nine-thousand six-hundred twenty dollars (\$9,620.00) paid per SCHEMMER standard hourly rates.

B. Additional Services: Additional Services as approved and directed by OWNER will be rendered by SCHEMMER on a lump sum or an hourly rate basis as agreed to at the time such services are requested. If services are to be provided per hourly rates, you will be invoiced in accordance with our Schedule of Hourly Rates in effect at the time the Additional Services are requested plus reimbursable expenses for such services.

IV. SCHEDULE

SCHEMMER shall commence services on the project immediately after receipt of Notice-to-Proceed and receipt of data/information from other parties as outlined herein.

Assumed Notice to Proceed: May 4, 2022
Findings Letter Submittal: May 27, 2022

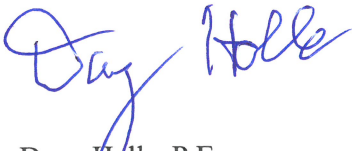
If the foregoing Proposal and attached General Conditions are agreeable, please indicate your acceptance by signing and returning one copy of this proposal. SCHEMMER will consider the signed proposal an Agreement between Owner and SCHEMMER for the services described herein.

Sincerely,

SCHEMMER

ACCEPTED:

City of La Vista, NE



Doug Holle, P.E.
Manager, Transportation Group

BY: _____

TITLE: _____

DATE: _____

GENERAL CONDITIONS

1. **REUSE OF DOCUMENTS.** All documents including, but not limited to, drawings, specifications and CADD data on electronic media furnished by The Schemmer Associates Inc. pursuant to this Agreement are Instruments of Service in respect to the project identified in the Agreement. They are not intended or represented to be suitable for use on extensions of this project or on any other project for any purpose without the specific written permission of The Schemmer Associates Inc., which may be withheld in The Schemmer Associates Inc.'s sole discretion. The Schemmer Associates Inc. may, in its sole discretion, condition permission on payment of additional compensation to The Schemmer Associates Inc. Any use without permission shall be at the user's sole risk and without liability to The Schemmer Associates Inc. Client agrees that it will indemnify and hold harmless The Schemmer Associates Inc. from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.
2. **ESTIMATES.** Since The Schemmer Associates Inc. has no control over the cost of labor, materials or equipment or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, estimates of project cost are made on the basis of experience and qualifications and represent the best judgment of design professionals familiar with the industry, but The Schemmer Associates Inc. cannot and does not guarantee that proposals, bids or project costs will not vary from estimates of cost prepared by The Schemmer Associates Inc.
3. **SUSPENSION OR ABANDONMENT.** If the project is suspended for more than three months or abandoned in whole or in part, The Schemmer Associates Inc. shall be paid compensation for services performed prior to receipt of written notice of such suspension or abandonment, together with reimbursable expenses then due. If, after a period of suspension, the project is restarted, The Schemmer Associates Inc. shall be entitled to payment for any increased costs it incurs as a result of the suspension.
4. **TERMINATION.** This Agreement may be terminated by either party upon seven days' written notice should either party fail substantially to perform in accordance with its terms through no fault of the other. In the event of termination due to the fault of others than The Schemmer Associates Inc., The Schemmer Associates Inc. shall be paid for services performed prior to termination, including reimbursable expenses.
5. **SUCCESSORS AND ASSIGNS.** Each party to this Agreement binds him/herself, his/her partners, successors, assigns and legal representatives to the other party, his/her partners, successors, assigns and legal representatives with respect to all covenants of this Agreement. Neither party shall assign, sublet or transfer his/her interest in this Agreement without the written consent of the other, which consent may be withheld in the sole discretion of the non-assigning party.
6. **PAYMENTS.** Payments due The Schemmer Associates Inc. under this Agreement shall be payable within thirty (30) days of the date of billing. If full payment is not received within sixty (60) days of the date of billing, the unpaid amount shall bear interest at the highest rate permitted by law but not exceeding eighteen percent (18%) from the date of billing.
7. **DELINQUENT PAYMENTS.** If any payment due hereunder remains unpaid for a period of sixty (60) days after invoice, The Schemmer Associates Inc. may, in its sole discretion, cease providing services and not resume providing services until all amounts owing have been paid in full. Cessation of service for nonpayment shall not constitute breach by The Schemmer Associates Inc. of this agreement, or an election of remedies, and Client shall fully indemnify The Schemmer Associates Inc. for any liability or damages caused thereby. All mechanics lien rights available to The Schemmer Associates Inc. may be exercised within the time period allowed by law.
8. **TAX.** The amount of any excise, gross receipts or sales tax that may be due as a result of the work performed by The Schemmer Associates Inc. shall be invoiced to Client as a reimbursable expense.
9. **HAZARDOUS MATERIALS.** Unless otherwise provided in this Agreement, The Schemmer Associates and The Schemmer Associates' consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. Client shall indemnify and hold The Schemmer Associates Inc. harmless from and against all claims arising out of or related in any way to hazardous materials.
10. **NOTICE OF LIMITATION OF AGENTS' AUTHORITY.** Client understands and agrees that no agent, officer, or principal of The Schemmer Associates Inc. is authorized to vary the terms of this

agreement in any way except by a writing, expressly varying the terms of this Agreement.

11. **INVALIDATION OF PROFESSIONAL LIABILITY INSURANCE.** The Schemmer Associates Inc. agrees that it shall not knowingly take any action which shall cause loss of The Schemmer Associates' professional liability insurance coverage for this project or any aspect of it.

12. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, the Client agrees that The Schemmer Associates Inc.'s liability to Client for damages arising out of or in any way related to its work in connection with the project or any error or deficiency in the Instruments of Service for the project, whether arising in contract, tort or otherwise, including, but not limited to, claims for indemnity or contribution shall be limited to the sum of \$50125,000. or the amount paid to The Schemmer Associates Inc. as fees under this Agreement, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory asserted.

13. **COMPUTER AIDED DESIGN/DRAFTING (CADD).** CADD may be utilized to prepare drawings, specifications, calculations, and other instruments of service prepared by The Schemmer Associates Inc. Submitted data files are intended to work only as described in the agreement and are compatible only with the original hardware and software used to create the files.

13.1 Electronic files will be submitted to the Client for a 30-day acceptance period ("the Acceptance Period"). During this period, the Client may review and examine the files. Any errors discovered during the Acceptance Period will be corrected by The Schemmer Associates Inc. at no additional cost to Client. Any work associated with errors discovered or changes requested after the Acceptance Period will be considered additional services and will be performed on a time and materials basis, at The Schemmer Associates Inc.'s customary charge for the work requested. The Schemmer Associates Inc. will not maintain copies of the electronic files beyond the end of the Acceptance Period.

13.2 Because data stored on electronic media can deteriorate undetected or be modified without the knowledge of The Schemmer Associates Inc., Client agrees to accept responsibility for the completeness, correctness, and readability of the electronic media after the end of the Acceptance Period. Client agrees that it will indemnify and save harmless The Schemmer Associates Inc. from any and all claims, losses, costs, damages, awards, or judgments arising

from use of the electronic media files or output generated from them. Upon the expiration of the Acceptance Period, The Schemmer Associates Inc. agrees that it is responsible for the accuracy of the sealed hard copy drawings that are submitted by it to Client. "Accuracy" as used in this paragraph is defined as meeting the care and skill ordinarily used by members of the professional practicing under similar conditions at the same time and in the same locality.

13.3 The Owner shall be permitted to retain copies of the drawings and specifications prepared in CADD format for the Owner's information. Due to the potential that the information set forth on the electronic media can be modified by the Owner, unintentionally or otherwise, The Schemmer Associates Inc. reserves the right to remove all indicia of its ownership and/or involvement from each electronic file.

13.4 Any use or reuse of electronic files by the Owner or others without written authorization from The Schemmer Associates Inc. for the specific purpose intended will be at the Owner's risk. The Schemmer Associates Inc. may refuse authorization in its sole discretion or condition authorization on CADD adaptation by The Schemmer Associates Inc. Any such authorization or CADD adaptation by the Owner will entitle The Schemmer Associates Inc. to additional compensation at the rates established as part of the agreement for the project. Owner will, to the fullest extent permitted by law, defend, indemnify and hold The Schemmer Associates Inc. harmless from any and all claims, suits, liability, demands, or costs arising out of or resulting from use or reuse of electronic files without written authorization from The Schemmer Associates Inc.

14. **LIMITATION OF WARRANTY.** The Schemmer Associates Inc. makes no warranties, express or implied, under this agreement or otherwise, in connection with the services provided.

15. **GEOTECHNICAL MATERIALS TESTING SERVICE.** In the case that geotechnical and/or materials testing services are provided by The Schemmer Associates Inc., our supplementary General Conditions for Geotechnical and Materials Testing shall be considered a part of this document.

16. **CONSTRUCTION STAKING.** In the case that construction staking services are provided by The Schemmer Associates Inc., our supplementary General Conditions for Construction Staking shall be considered a part of this document.