

**BOARD OF COUNTY COMMISSIONERS**  
**SARPY COUNTY, NEBRASKA**

**RESOLUTION APPROVING CONTRACT FOR PROFESSIONAL SERVICES**

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2007), 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 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, Olsson & Associates ("Olsson") and Sarpy County ("County") desire to enter into an agreement whereby Olsson will provide professional services for the annual sewer inspection and repair design, which Letter Agreement ("Agreement") is attached hereto; and,

WHEREAS, this Board desires to proceed forthwith in order to expedite and facilitate service to the citizens of Sarpy County.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Agreement for Professional Services between Olsson and County is hereby approved and the Chairperson and the Clerk are hereby authorized to execute the same.

DATED this 9<sup>th</sup> day of August, 2011.

Moved by Jim Thompson, seconded by Jim Warren, that the above Resolution be adopted. Carried.

YEAS: [Signature]

NAYS: None

ABSENT: None

[Signature]  
[Signature]

\_\_\_\_\_  
\_\_\_\_\_

ABSTAIN:  
None

[Signature]  
[Signature]

\_\_\_\_\_  
\_\_\_\_\_

Attest:

Seal

[Signature]  
County Clerk





LETTER AGREEMENT FOR  
PROFESSIONAL SERVICES

August 01, 2011

Sarpy County  
c/o Brian Hanson  
1210 Golden Gate Drive, Suite 1129  
Papillion, NE 68046-2845

Re: **AGREEMENT FOR PROFESSIONAL SERVICES**  
Annual Sewer Inspection and Repair Design  
Sarpy County

Dear Mr. Hanson:

It is our understanding that Sarpy County ("CLIENT") requests Olsson Associates ("OLSSON") to perform the following services pursuant to the terms of this Letter Agreement, Olsson's General Provisions and any exhibits attached thereto (hereinafter "the Agreement") for the Project.

1. OLSSON has acquainted itself with the information provided by CLIENT relative to the Project; and based upon such information, offers to provide the services described below for the Project. CLIENT acknowledges that it has reviewed the General Provisions (and any exhibits attached thereto), which are expressly made a part of and incorporated into this Agreement by this reference. In the event of any conflict or inconsistency between this Agreement and the General Provisions regarding the services to be performed by OLSSON, the requirements of this Agreement shall take precedence.
2. OLSSON shall provide CLIENT all Basic Services for the Project as more specifically described in Exhibit A hereto. Should CLIENT request work not described and included in the above Description of Basic Services, such as Additional Services, OLSSON shall invoice CLIENT for such services on the basis of Salary Costs times a factor of 2.5 for services rendered by our principals and employees engaged directly on the Project plus Reimbursable Expenses, unless otherwise agreed to by both parties. OLSSON shall not commence work on Additional Services without CLIENT's prior approval in writing.

OLSSON agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

**SCHEDULE FOR OLSSON'S SERVICES**

- 3. Unless otherwise agreed, OLSSON would expect to perform its services under this Agreement in accordance with the time frame(s) indicated below.

Services During Project:

Anticipated Start	September 1, 2011
Annual Fall Inspection	October 31, 2011
Annual Inspection Report	December 31, 2011
Annual Repair Designs	February 1, 2012

**COMPENSATION**

- 4. For OLSSON's Basic Services, CLIENT shall pay OLSSON for the actual time of personnel performing such Services on the basis of Salary Costs times a factor of 2.5 for services rendered by our principals and employees engaged directly on the Project plus Reimbursable Expenses, unless otherwise agreed to by both parties. Reimbursable Expenses will be invoiced in accordance with the Schedule contained in the General Provisions attached to this Letter Agreement. OLSSON's Basic Services will be provided as described below:
  - a. Basic Services during the Project will be provided on a time and expense basis, not to exceed Twenty Thousand Dollars (\$20,000).

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

**TERMS AND CONDITIONS OF SERVICE**

- 5. Indemnification and Allocation of Risk
  - a. *Indemnification by Olsson.* To the fullest extent permitted by law, Olsson shall indemnify and hold harmless Client, Client's officers, directors, partners, agents, consultants and employees from and against any and all claims, costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Agreement, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness,

disease or death, or to damage to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Olsson or Olsson's officers, directors, partners, employees, or Consultants. The indemnification provision contained in the preceding sentence is subject to the limitation provisions agreed to by Client and Olsson in this Article 5, if any.

- b. *Indemnification by Client.* To the fullest extent permitted by law, Client shall indemnify and hold harmless Olsson, Olsson's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Agreement, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Client or Client's officers, directors, partners, employees, or consultants, or others retained by or under contract to Client with respect to this Agreement.
  - c. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Client, Olsson, and all other negligent entities and individuals.
  - d. *Mutual Waiver.* To the fullest extent permitted by law, Client and Olsson waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Agreement.
6. *Residency Verification.* Olsson agrees to comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114. Olsson is required and hereby agrees to 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.
7. Insurance
- a. Olsson shall not commence work on this Agreement until he/she has obtained all insurance required under this Section and such insurance has been approved by Client, nor shall Olsson allow any subcontractors to commence work on his/her

subcontract until similar insurance required of the subcontractor has been so obtained and approved.

The following insurance coverages shall be kept in force during the life of the Agreement and shall be primary with respect to any insurance or self-insurance programs covering the Client, its commissioners/supervisors, officials, agents, representatives and employees.

- b. *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, Workers' Compensation and \$500,000 each accident for Coverage B, Employers Liability.
- c. *Professional Liability Insurance.* In order to cover the services rendered by Olsson under this Agreement, Olsson shall provide and maintain professional liability insurance coverage with the total limits of \$1 million per occurrence and \$1 million aggregate coverage per year (Professional Liability Insurance), and Olsson will provide a certificate of such Professional Liability Insurance to the Client.
- d. *Commercial General Liability Insurance.* Coverage should include broad form coverage written on a commercial general liability form and 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.

- e. *Automobile Liability Insurance.* Coverage shall be against claims for damages resulting from bodily injury, including death and property damage, which may arise from the operations of any owned, hired or non-owned automobile. The minimum acceptable limit of liability shall be \$1,000,000 Combined Single Limit for each accident.
- f. *Certificate of Insurance.* Olsson shall furnish the Client with a certificate(s) of insurance evidencing the coverages required in this section. Such certificate(s) shall specifically state that the insurance company or companies underwriting these insurance coverages shall give the Client at least thirty (30) days' written notice in the event of cancellation of, or material change in, any of the coverages. If the insurance company is unable or unwilling to provide thirty (30) days' written notice in the event of a material change in the coverage, Olsson will provide such notice. If the certificate(s) is shown to expire prior to completion of all the terms of this Agreement, Olsson shall furnish a certificate(s) of insurance evidencing renewal of its coverage to the Client.

Olsson shall require each and every Subcontractor performing work under this Agreement to maintain the same coverages required of Olsson in this Section, and upon the request of the Client, shall furnish the Client with a certificate(s) of

insurance evidencing the Subcontractor's insurance coverages required in this section.

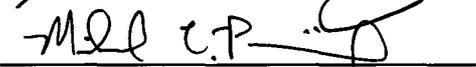
- g. *Insurance Company.* All insurance coverages herein required of Olsson shall be written by an insurance company or companies transacting business as an admitted insurer in the State of Nebraska or under the Nebraska Surplus Lines Insurance Act. All insurance companies must possess a minimum A.M. Best Insurance Company rating of A-. Upon request by the Client, Olsson shall furnish evidence that the insurance company or companies being used by the Olsson meet the minimum requirements listed in this section.

Upon request by the Client, Olsson shall furnish the Client with complete and accurate copies of the insurance policies required within this section. If at any time during the life of this Agreement, Olsson's insurance coverages and limits do not meet or exceed the minimum insurance requirements presented in this section, Olsson is required to notify the Client within thirty (30) days of any deviations from the minimum requirements presented in this section.

8. The Agreement represents the entire understanding between CLIENT and OLSSON with respect to the Project and may only be modified in writing signed by both parties.
9. If this proposal satisfactorily sets forth your understanding of our agreement, please sign the Letter Agreement in the space provided (indicating CLIENT's designated Project representative if different from the party signing the Agreement). Retain a copy for your files and return an executed original to OLSSON. This proposal will be open for acceptance for a period of thirty (30) days from the date set forth above, unless changed by us in writing.
10. By signing below, you acknowledge that you have full authority to bind CLIENT to this agreement.

**OLSSON ASSOCIATES**

By   
Jason Craig, Project Manager

By   
Michael C. Piernicky, P.E., PTOE, Omaha Region Leader

If you are in agreement with the preceding proposal,  
please sign:

**SARPY COUNTY "CLIENT"**

By 

Title Chairman

Dated August 9, 2011

If different from above,

\_\_\_\_\_  
CLIENT's Designated Project Representative

EXHIBIT "A" to GENERAL PROVISIONS ATTACHED TO  
LETTER AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN CLIENT AND OLSSON, DATED August 01, 2011

**DESCRIPTION OF BASIC PROFESSIONAL SERVICES AND RELATED MATTERS**

This is an exhibit attached to and made a part of the General Provisions attached to the Proposed Letter Agreement for Professional Services dated August 01, 2011 between the Sarpy County (Client) and Olsson Associates (Olsson) providing for professional services. The Basic Services of Olsson are as indicated below.

**GENERAL**

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

**BASIC SERVICES DURING PROJECT**

1. Project Management and Meetings – Olsson will hold up to two (2) annual meetings with Client representative to review project objectives and deliverables. Provide summaries of work performed in association with each invoice.
2. Annual Inspection and Report – Olsson will perform annual visual inspection of Sarpy County owned and operated sewer lines. Note any field conditions, abnormalities, or potential issues and record them with pictures and GPS coordinates. Prepare brief report of findings from annual inspection. Note any repairs and provide a cost estimate of what it might take to design and implement them. Conclude report with recommendations of priority repairs.
3. Design Details for Repairs – Olsson will prepare designs and/or design details for all necessary repairs on an as needed basis based on recommendations from the Annual Inspection report and priorities of the Client.

**PROJECT ASSUMPTIONS**

1. No survey will be performed as part of this project.
2. Existing GIS data will not be modified or updated as part of this project.



## GENERAL PROVISIONS

These General Provisions are attached to and made a part of a LETTER AGREEMENT, dated August 01, 2011 between Sarpy County (CLIENT) and Olsson Associates (OLSSON) for professional services in connection with Annual Sewer Inspection and Repair Design (hereinafter called the "Project").

### **SECTION 1—OLSSON'S BASIC SERVICES**

See Exhibit "A", attached.

### **SECTION 2—ADDITIONAL SERVICES OF OLSSON**

2.1 Unless otherwise expressly included, OLSSON's normal and customary engineering services described here or in the LETTER AGREEMENT do not include the following categories of work which shall be referred to as Additional Services.

2.2. If CLIENT and OLSSON mutually agree to perform any of the following Additional Services, CLIENT will provide written approval of the agreed upon scope of services, and OLSSON shall perform or obtain from others such services and will be paid therefore as provided in the LETTER AGREEMENT. EITHER CLIENT or OLSSON may elect not to perform all or any of the following Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project in addition to those required under Basic Services; preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

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

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

2.2.4 Providing renderings or models.

2.2.5 Preparing documents for alternate bids requested by CLIENT for work which is not executed or for out-of-sequence work.

2.2.6 Detailed consideration of operations, maintenance and overhead expenses; value engineering and the preparation of rate schedules, earnings and expense statements, cash flow and economic evaluations, feasibility studies, appraisals and valuations.

2.2.7 Furnishing the services of independent professional associates or consultants for work other than Basic Services.

2.2.8 If OLSSON's compensation for Basic Services is not on the basis of Direct Labor or Salary Costs, Additional Services shall include services necessary due to the Client's award of more than one prime contract for the Project, services necessary due to the construction contract containing cost plus or incentive-savings provisions, services necessary in order to

arrange for performance by persons other than the prime contractor and those services necessary to administer CLIENT's contract(s).

2.2.9 Services in connection with staking out the work of Contractor(s).

2.2.10 Services during out-of-town travel other than visits to the site.

2.2.11 Preparation of operating and maintenance manuals to supplement Basic Services.

2.2.12 Services to redesign some or all of the Project.

2.2.13 Preparing to serve or serving as a consultant or witness or assisting CLIENT with any litigation, arbitration or other legal or administrative proceeding except where required as part of Basic Services.

2.3 When required by the Agreement or Contract Documents in circumstances beyond OLSSON's control, OLSSON shall perform or obtain from others any of the following Additional Services as circumstances require during construction and without waiting for specific instructions from CLIENT, and OLSSON will be paid therefore as provided in the Letter Agreement:

2.3.1 Services in connection with work directive changes and change orders to reflect the changes requested by CLIENT if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.

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

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

2.3.4 Additional or extended services during construction made necessary by (1) work damage by fire or other causes during construction, (2) a significant amount of defective, inefficient or neglected work by any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, (4) default by any Contractor.

### SECTION 3—CLIENT'S RESPONSIBILITIES

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

3.2 If CLIENT fails to make any payment due OLSSON for services and expenses within thirty (30) days after receipt of OLSSON's statement therefore, OLSSON may, after giving seven days' written notice to CLIENT, suspend services to CLIENT under this Agreement until OLSSON has been paid in full all amounts due for services, expenses and charges.

3.3 Payments to OLSSON shall not be withheld, postponed or made contingent on the construction, completion or success of the Project or upon receipt by the CLIENT of offsetting reimbursements or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from OLSSON's compensation for any reason unless OLSSON has been found to be legally liable for such amounts.

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

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

3.4.2 Guarantee access to and make all provisions for OLSSON to enter upon public and private property.

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

3.4.4 Provide engineering surveys to establish reference points for construction.

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

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

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

3.6 CLIENT shall pay all permit application review costs for government authorities having jurisdiction over the Project.

3.7 Contemporaneously with the execution of the LETTER AGREEMENT, CLIENT shall designate in writing an individual to act as its duly authorized Project representative.

### SECTION 4—MEANING OF TERMS

4.1 As used herein, the term "this Agreement" refers to these General Provisions, the LETTER AGREEMENT to which these General Provisions refer, and any other exhibits or attachments made a part thereof as if they were part of one and the same document.

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

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

4.4 "Reimbursable Expenses: The expenses incurred by OLSSON or OLSSON's independent professional associates or consultants directly or indirectly in connection with the Project, and shall be included in periodic billing as applicable as follows:

<u>Classification</u>	<u>Costs</u>
Automobiles	\$0.585/mile*
Suburbans and Pick-Ups	\$0.76/mile*
Duplication	
In-house	Actual Cost
Outside	Actual Cost+10%
Meals	Actual Cost
Postage & Shipping	
Charges for Project	
Related Materials	Actual Cost
Film and Photo	
Developing	Actual Cost+10%
Telephone and	
Fax Transmissions	Actual Cost+10%
Miscellaneous Materials	
& Supplies Applicable	
only to this Project	Actual Cost+10%
Subconsultants	Actual Cost+10%

\* IRS Standard Mileage Rate (Subject to Change)

4.5 "Certify" or "a Certification": A statement of OLSSON's opinion, based on its observation of conditions, to

the best of OLSSON's professional knowledge, information and belief. Such statement of opinion does not constitute a warranty, either express or implied. It is understood that OLSSON's certification shall not relieve the CLIENT or the CLIENT's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.6 "Cost Estimate": An opinion of probable construction cost made by OLSSON. In providing opinions of probable construction cost, it is recognized that neither the CLIENT nor OLSSON has control over the costs of labor, equipment or materials, or over the Contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on OLSSON's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the Contractor's bids or the negotiated price of the Work will not vary from the CLIENT's budget or from any opinion of probable cost prepared by OLSSON.

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

4.8 "Inspect" or "Inspection": The visual observation of construction to permit OLSSON, as an experienced and qualified professional, to determine that the Work when completed by the Contractor, generally conforms to the Contract Documents. In making such inspections, OLSSON makes no guarantees for, and shall have no authority or control over, the Contractor's performance or failure to perform the Work in accordance with the Contract Documents. OLSSON shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the Contractor or for the Contractor's safety precautions and programs nor for failure by the Contractor to comply with any laws or regulations relating to the performance or furnishing of the Work by the Contractor.

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

## **SECTION 5—TERMINATION**

5.1 Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:

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

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

5.1.3 Suspension of the Project or OLSSON's services by the CLIENT for more than ninety (90) calendar days, consecutive or in the aggregate;

5.1.4 Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

5.2 In the event of a "for cause" termination of this Agreement by either party, the CLIENT shall within fifteen (15) calendar days of termination pay OLSSON for all services rendered and all reimbursable costs incurred by OLSSON up to the date of termination, in accordance with the payment provisions of this Agreement.

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

## **SECTION 6—DISPUTE RESOLUTION**

### **6.1. Mediation**

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

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

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

### **6.2. Arbitration**

6.2.1 OLSSON and CLIENT agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of OLSSON, the Project or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, OLSSON and CLIENT agree that all Disputes involving an amount of less than

\$50,000, arising out of this Agreement or related to the services provided under this Agreement shall be resolved by submission to binding arbitration in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 In consideration for the CLIENT's agreement to arbitrate, then, should the CLIENT choose to consolidate an arbitration between the CLIENT and OLSSON with an arbitration between the CLIENT and the Contractor, OLSSON agrees to consolidate its arbitration with the CLIENT with any arbitration between the CLIENT and the Contractor if that arbitration arises out of or relates to OLSSON's acts or omissions in relation to the Project or an alleged breach of the Agreement.

6.2.3 This arbitration may be commenced at any time prior to or after completion of the Project, provided that if it is commenced prior to the completion of the Project, the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration being conducted.

6.2.4 Any arbitration hearings shall take place in Lincoln, Nebraska unless otherwise mutually agreed.

## **SECTION 7—MISCELLANEOUS**

### **7.1 Reuse of Documents**

All documents, including Drawings and Specifications prepared or furnished by OLSSON (and OLSSON's independent professional associates and consultants) pursuant to this Agreement, are instruments of service in respect of the Project and OLSSON 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 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. Any reuse without written verification or adaptation by OLSSON for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to OLSSON, or to OLSSON's independent professional associates or consultants, and CLIENT shall indemnify and hold harmless OLSSON and OLSSON's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle OLSSON to further compensation at rates to be agreed upon by CLIENT and OLSSON.

### **7.2 Electronic Files**

By accepting and utilizing any electronic file of any drawing, report or data transmitted by OLSSON, the CLIENT agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of OLSSON, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the CLIENT. The information

contained in any electronic file is provided for the convenience to the CLIENT and is provided in "as is" condition. The CLIENT is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by OLSSON and the electronic files, which may be transferred, the signed and sealed original documents shall govern. OLSSON specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be CLIENT's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the CLIENT. CLIENT shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless OLSSON, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than OLSSON or from any reuse of the electronic files without the prior written consent of OLSSON.

### **7.3 Opinions of Cost**

Since OLSSON has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, OLSSON's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of OLSSON's experience and qualifications and represent OLSSON's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but OLSSON cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by OLSSON. If prior to the Bidding or Negotiating Phase CLIENT wishes greater assurance as to Total Project or Construction Costs, CLIENT shall employ an independent cost estimator as provided in paragraph 3.4.3. OLSSON's services to modify the Contract Documents to bring the Construction Cost within any limitation established by CLIENT will be considered Additional Services and paid for as such by CLIENT.

### **7.4 Controlling Law and Venue**

7.4.1 The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska.

7.4.2 Any legal action between OLSSON and CLIENT arising out of this AGREEMENT shall be brought in a court of competent jurisdiction located in Lancaster County, Nebraska.

### **7.5 Subconsultants**

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

## **7.6 Assignment**

7.6.1 CLIENT and OLSSON each is hereby bound and the partners, successors, executors, administrators and legal representatives of CLIENT and OLSSON (and to the extent permitted by paragraph 7.6.2 the assigns of CLIENT and OLSSON) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.6.2. Neither CLIENT nor OLSSON shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent OLSSON from employing such subconsultants and other subcontractors as OLSSON may deem appropriate to assist in the performance of services under this Agreement.

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

## **7.7 Indemnity**

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

## **7.8 Limitation on Damages**

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the CLIENT nor OLSSON, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this AGREEMENT. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the CLIENT and OLSSON shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this Project.

## **7.9 Entire Agreement**

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the CLIENT and OLSSON.

# Sarpy County Purchasing Department

SARPY COUNTY COURTHOUSE  
1210 GOLDEN GATE DRIVE  
PAPILLION, NE 68046



Brian Hanson, Purchasing Agent  
(402) 593-2349  
Debby Peoples, Asst. Purchasing Agent  
(402) 593-4164  
Beth Cunard, Senior Buyer/Contract Administrator  
(402) 593-4476  
Lois Spethman, Supply Clerk/Purchaser  
(402) 593-2102

## MEMO

To: Sarpy County Board of Commissioners  
From: Beth Cunard  
Re: Agreement for Sewer Inspection

On August 9, 2011 the Board will be asked to sign the attached agreement with Olsson Associates for the inspection of the County's sewer lines. The basic costs for the sewer inspection will be \$2,735. This agreement is the same as our 2010 agreement and will provide for the design of sewer repairs, but those services would be provided on an as needed basis.

Please call me if you have any questions.

August 3, 2011

Beth Cunard

cc: Mark Wayne  
Scott Bovick  
Brian Hanson  
Deb Houghtaling  
Mike Smith

# Deb Houghtaling

Fred Uhe  
Chief Deputy

# Sarpy County Clerk

Renee Lansman  
Assistant Chief Deputy

---

1210 Golden Gate Drive • Papillion, Nebraska 68046-2895  
Phone: 402-593-2105 • Fax: 402-593-4471 • Website [www.Sarpy.com](http://www.Sarpy.com) • Email: [Clerk@sarpy.com](mailto:Clerk@sarpy.com)

---

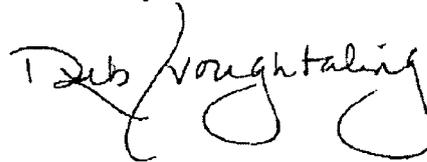
August 11, 2011

Olsson Associates  
2111 S. 67<sup>th</sup> Street Suite 200  
Omaha, NE 68106

RE: Professional Services for Annual Sewer Inspection and Repair Design

Enclosed is an original agreement for the above referenced agreement which has been approved by the Sarpy County Board and signed by the Chairman on August 9, 2011.

Sincerely,

A handwritten signature in black ink that reads "Deb Houghtaling". The signature is written in a cursive style with a large, looping initial "D".

Deb Houghtaling  
Sarpy County Clerk

Enclosures  
DH/sm