

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

**RESOLUTION AUTHORIZING MASTER AGREEMENT WITH KIRKHAM
MICHAEL AND ASSOCIATES, INC. 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, 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 (Reissue 2008); and,

WHEREAS, Sarpy County desires to enter into a Master Agreement with the firm of KIRKHAM MICHAEL ASSOCIATES, Inc. for professional engineering services in conjunction with the design to extend an existing concrete box culvert structure under 204th Street, approximately 1/3 mile north of Platteview Road in Sarpy County as further detailed in Task Order No. 1 and the Scope of Services documents. A copy of the Master Agreement, Task Order No. 1 and the Scope of Services documents are attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT this Board hereby approves and adopts the Master Agreement and associated documents with KIRKHAM MICHAEL ASSOCIATES, Inc. for professional services in conjunction with the design to extend an existing concrete box culvert structure under 204th Street approximately 1/3 mile north of Platteview Road 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, the Master Agreement with KIRKHAM MICHAEL ASSOCIATES, Inc., a copy of which is attached, and any other related documents, the same being approved by the Board.

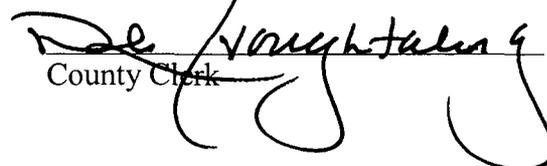
The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 13th day of December, 2011.

Attest

SEAL




Sarpy County Board Chairman


County Clerk

**MASTER AGREEMENT FOR PROFESSIONAL
ENGINEERING, SURVEYING AND RELATED SERVICES BETWEEN
SARPY COUNTY, NEBRASKA
AND KIRKHAM, MICHAEL & ASSOCIATES, INC.**

THIS MASTER AGREEMENT is entered into this 13th day of December, 2011 between **Sarpy County, Nebraska** (the "COUNTY") and **Kirkham, Michael & Associates, Inc.** (the "CONSULTANT"). The COUNTY and the CONSULTANT, in consideration of their mutual promises herein set forth, agree as follows:

I. DEFINITIONS

The following words and terms shall have the following meanings in this Agreement:

"COUNTY" shall mean: **Sarpy County, Nebraska**
15100 South 84th Street
Papillion, NE 68046
Attn: Dennis L Wilson, P.E.

"CONSULTANT" shall mean: **Kirkham, Michael & Associates, Inc.**
12700 West Dodge Road
Omaha, Nebraska 68154
Attn: Eric Johnson

"Project" shall mean the project for which the COUNTY desires to engage the Services of the CONSULTANT. Each Project will be defined by an individual Task Order (the "TO") submitted by the CONSULTANT to the COUNTY for approval.

"Services" shall mean the professional services of the CONSULTANT described in Paragraph II below.

II. SERVICES OF THE ENGINEER

The COUNTY has retained the CONSULTANT to provide services on an on-call basis. The CONSULTANT shall perform the Professional Engineering, Surveying and Related Services as requested by the COUNTY in accordance with the General Terms and Conditions set forth in Paragraph IV.

Professional Services to be provided by the CONSULTANT include any and all services requested by the COUNTY as defined in a Task Order. The format of the Task Order is attached to this Master Agreement. Each Task Order shall include the following elements: 1) Scope of Services, 2) Compensation, 3) Deliverables, 4) Scheduled Milestones, and 5) Execution.

III. COUNTY'S RESPONSIBILITIES

The COUNTY shall provide all criteria and information with respect to the COUNTY'S requirements for the Project in the drawings and specifications in order to assist the CONSULTANT in the performance of the Services. This will include placing at the CONSULTANT's disposal all information available to the COUNTY which is pertinent to the Project.

The COUNTY shall furnish approvals and permits from governmental authorities having jurisdiction of the Project.

The COUNTY shall provide budgetary constraints for the Project, insurance and legal counseling, and if necessary the services of a testing laboratory to perform and interpret soil investigation and test soil, concrete and other materials during construction. If necessary and not included in the Task Order, the COUNTY will also provide environmental assessments, audits, investigations, impact statements, and other relevant environmental studies as required.

COUNTY will make prompt review and submit comments to CONSULTANT at the time of each submittal of documents prepared under Paragraphs II and IV and COUNTY will promptly advise CONSULTANTS of other entities, including their scope of services, working in connection with the project.

CONSULTANT is entitled to rely on criteria and information furnished by COUNTY.

The COUNTY shall designate a Representative who shall have complete authority to transmit instructions, receive information, interpret and define COUNTY'S policies and make decisions with respect to the Project.

IV. GENERAL TERMS AND CONDITIONS

A. Time of Beginning and Completion of Services

The Services to be performed under this Agreement shall commence upon execution of individual Task Orders by the COUNTY. Completion of Services will be defined within individual Task Orders.

B. Compensation to the CONSULTANT

1. Any Service provided by the CONSULTANT shall be paid in accordance with the provisions of each Task Order.
2. COUNTY shall pay CONSULTANT for Professional Services on a Lump Sum basis as specified within the Task Order prepared for the Project.

Or

3. COUNTY shall pay CONSULTANT for Professional Service on an Hourly Fee plus Reimbursable Expense basis as specified within the Task Order prepared for the Project.
4. Any progress payments on Lump Sum Task Orders are the portion of the total services actually completed at the time of billing, as estimated by the CONSULTANT.
5. In the event of termination of the Project (individual Task Order), CONSULTANT will be paid for Services performed through date of termination. This will include all incurred costs associated with CONSULTANT'S employees engaged directly on the Project, reimbursable expenses and sub-consultant fees.
6. COUNTY shall pay CONSULTANT for Reimbursable Expenses as determined by Task Order. Examples of Reimbursable Expenses include items such as subsistence, lodging, transportation and mileage; courier and express delivery services; postage and shipping charges for project-related materials; reproduction of reports, drawings, specifications, bidding documents and similar project related items in addition to those required to be delivered to COUNTY under Paragraph II; photography; and costs of acquiring other materials specifically for and solely applicable to this Project.

C. Invoices

Invoices will be prepared and linked to approved Task Orders submitted by the CONSULTANT not more often than monthly, and are due and payable by the COUNTY on receipt. In addition, the CONSULTANT may, if payment is not received within 30 days of billing date, after giving seven days written notice to the COUNTY, suspend Services without liability until the COUNTY has paid in full all amounts due the CONSULTANT.

D. Termination

The obligations of the CONSULTANT to provide Services under this Agreement, or any individual Task Order, may be terminated (i) by the COUNTY on seven days' written notice or (ii) by either party upon seven days' written notice in the event of a substantial failure of the other party to perform its obligations under the Agreement through no fault of the terminating party. The right of termination in this paragraph shall in no way limit the remedies available to COUNTY or CONSULTANT in the event of a default by the other party.

E. Insurance

The CONSULTANT agrees to purchase at its own expense Worker's Compensation insurance, Professional Liability insurance and Commercial General Liability insurance and will, upon request, furnish insurance certificates to the COUNTY. The CONSULTANT agrees to purchase whatever additional insurance is requested by the COUNTY (presuming such insurance is available), provided the premiums for additional insurance are reimbursed by the COUNTY.

F. Indemnification

It is understood and agreed that, in providing the Services the CONSULTANT shall indemnify the COUNTY for any loss or damage solely caused by the CONSULTANT'S negligent act, error or omissions in performance of the Services except for Uninsurable Activities.

Uninsurable Activities shall be defined as undertaking uninsurable obligations for the COUNTY'S benefit which may involve the presence or potential presence of hazardous substances, including, but not limited to, activities relating to hazardous waste disposal and cleanup of environmental pollutants ("pollutants" meaning any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor soot, fumes, acids, alkalis, chemicals, waste and waste materials to be recycled, reconditioned or reclaimed); liability relating to asbestos including specification of a product, material or process containing asbestos; failure to detect the existence or proportion of asbestos in a product, material or process; the abatement, replacement or removal of a product, material or process containing asbestos, and activities resulting in the actual, alleged or threatened discharge, dispersal, release or escape of pollutants and any other similar activity for which insurance is reasonably unavailable.

G. Limitation of liability

In order for the COUNTY to obtain the benefits of a fee which includes a lesser allowance for risk funding, the COUNTY agrees to limit CONSULTANT'S liability arising from CONSULTANT'S professional acts, errors or omissions, such that the total aggregate liability of CONSULTANT shall not exceed CONSULTANT'S fee for services rendered on the Project.

H. Gratuities

The CONSULTANT represents that no gratuities (in the form of the entertainment, gifts or otherwise) were offered or given to any officer, agent, employee or representative of the COUNTY with a view towards securing a contract or securing favorable treatment with respect to the wording, amending or the making of any determination with respect to the performance of this Agreement.

I. Confidentiality

The CONSULTANT shall maintain as confidential and not disclose to others without COUNTY'S prior written consent, all information obtained from COUNTY, not otherwise previously known to the CONSULTANT or in the public domain, as owner expressly designates in writing to be "CONFIDENTIAL". The provisions of this paragraph shall not apply to information in whatever form which is published or comes into the public domain through no fault of the CONSULTANT, is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or is required to be disclosed by law on order of a court, administrative agency or other authority with proper jurisdiction.

COUNTY agrees that CONSULTANT may use and publish COUNTY'S name and general description of the CONSULTANT'S services with respect to the Project in describing the CONSULTANT'S experience and qualifications to other clients or potential clients.

J. Use of Documents

All documents, including drawings, specifications, and electronic media prepared or furnished by CONSULTANT (and CONSULTANT'S subsidiaries, independent professional associates, consultants and subcontractors) pursuant to this Agreement are instruments of service in respect of the Project and CONSULTANT shall retain an ownership and property interest therein whether or not the Project is completed. COUNTY may make and retain copies for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for use or reuse by owner or others to complete the project or for extensions of the Project or on any other project. Any use or reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at COUNTY'S sole risk and without liability or legal exposure to CONSULTANT or to the CONSULTANT'S subsidiaries, independent professional associates, special consultants and subcontractors. COUNTY agrees to defend, indemnify and hold harmless the CONSULTANT from any and all costs, expenses (including reasonable litigation costs), fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of such reuse or alteration by the COUNTY or acting through the COUNTY. Any such verification or adaptation will entitle the CONSULTANT to further compensation at rates to be agreed upon by COUNTY and the CONSULTANT.

K. Proprietary Data

COUNTY considers information, documentation and other materials associated with this Agreement to be of a non-confidential and/or non-proprietary nature and therefore shall be subject to public disclosure under Neb. Rev. Stat. § 84-712.05. CONSULTANT is hereby notified that COUNTY strictly adheres to all statutes, court decisions, and opinions of the Nebraska Attorney General with respect to disclosure of information. Any "proprietary, trade secret, or confidential commercial or

financial" information, provided by CONSULTANT to COUNTY pursuant to this Agreement, must be clearly identified as such in writing from CONSULTANT to COUNTY (such information so designated by CONSULTANT in writing to COUNTY being collectively referred to herein as "Proprietary Information"). CONSULTANT will be required to fully defend, in all forums, COUNTY'S refusal to produce such information; otherwise, COUNTY will make such information public. Upon receiving a written request pursuant to Neb. Rev. Stat. §84-712(3), COUNTY agrees to provide immediate notice of said request to CONSULTANT. COUNTY shall release the requested information unless CONSULTANT notifies COUNTY within two (2) business days of the receipt of the COUNTY notice that CONSULTANT objects to said release. In the event of said objection, CONSULTANT agrees to defend any subsequent legal action regarding said request and to hold COUNTY harmless from any expense or liability, including reasonable attorneys' fees, resulting from the denial of the request.

L. Governing Law - Miscellaneous

This Agreement is to be governed by and construed in accordance with the laws of the State of Nebraska.

The Agreement expresses the entire Agreement between the parties, and no representations, promises or warranties have been made by either of the parties that are not fully expressed herein.

M. Non-Discrimination

The CONSULTANT shall not discriminate against any employee, or applicant for employment, to be employed in the performance of the work on the Project, because of race, color, religion, sex, disability, or national origin, with respect to the hire, tenure, terms, conditions, or privileges of employment of such employee or applicant. The CONSULTANT shall include this same, or substantially similar, provision in any contract with any subcontractor hired by the CONSULTANT for the performance of work on the Project.

N. Services Utilizing Federal Funds

Services provided to the COUNTY by the CONSULTANT that are funded with federal funds will utilize the appropriate contracts which stipulate the necessary terms and conditions, if required. Such requirement shall be spelled out in the specific Task Order. In the absence of such requirements, the terms and conditions stipulated herein shall apply.

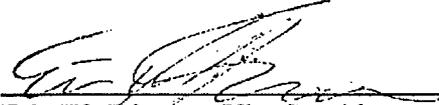
O. Residency Verification Clause

The Consultant agrees to comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114. The Consultant 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.

This Agreement is binding on successors and assigns of either party; and neither party shall assign any rights under or interest in this Agreement without the consent of the other party, except that the CONSULTANT may without such consent employ consultants and others in the performance of the Services.

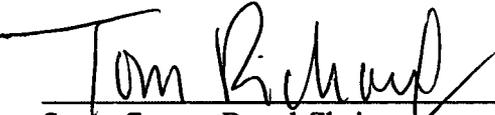
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officials as of the first day and year above written:

CONSULTANT: **KIRKHAM, MICHAEL & ASSOCIATES, INC.**

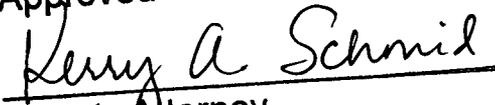

Eric W. Johnson, Vice President

12-8-11
Date

COUNTY: **SARPY COUNTY, NEBRASKA**


Sarpy County Board Chairman

12/13/11
Date

Approved as to form:

County Attorney

KIRKHAM, MICHAEL AND ASSOCIATES, INC. - "CONSULTANT"
 SARPY COUNTY, NEBRASKA - "COUNTY"

TASK ORDER NO. 1

TASK ORDER No 1
Design of box culvert extension on 204th St. north of
Platteview Road

CLIENT NAME: Sarpy County
PROJECT NAME: Box Culvert Extension -
 204th St. North of
 Platteview Road
PROJECT NO.: 43

SERVICES PROVIDED SHALL BE IN ACCORDANCE WITH PROVISIONS OF MASTER AGREEMENT EXECUTED ON December 13, 2011

1. SCOPE OF SERVICES

2. COMPENSATION

Topographic and Hydraulic Surveys
 Wetland Delineation
 Hydraulic Analysis
 Box Culvert Design
 Bank Stabilization Design
 Right-of-Way Design
 Section 404 Permit Application

\$2,500
 \$2,900
 \$2,700
 \$8,000
 \$4,200
 \$1,800
 \$2,200

Total Proposed Lump Sum Fee **\$24,800**

(see attached Exhibit A "Scope of Services" for detailed information)

Construction Services, if desired by the County (includes shop drawing review, answering contractor questions, periodic site visits)

Hourly Rate = \$150

3. DELIVERABLES

4. SCHEDULED MILESTONES

Hydraulic Letter report, final plans, special provisions, Opinion of Probable Cost, Right-of-Way Plats, and Section 404 permit application

TBD

5. EXECUTION

KIRKHAM, MICHAEL AND ASSOCIATES, INC.
 "CONSULTANT"

SARPY COUNTY, NEBRASKA
 "COUNTY"



By: Michael S. Olson, P.E.
 Vice President

11/23/2011

Date



By: Tom Richard
 Sarpy County Board Chairman

12/13/11

Date

Exhibit A
SCOPE OF SERVICES

PROJECT UNDERSTANDING

Sarpy County, Nebraska (County) wishes to extend the east end of the existing box culvert under 204th Street, 1/3 mile north of Platteview Road, which carries Buffalo Creek. The existing box culvert is located in Section 13, T13N, R10E and Section 18, T13N, R11E.

It is anticipated this project will require some right-of-way acquisitions and temporary construction easements. Roadway work will be minimal. It is anticipated that the box culvert extension will be a twin, brokenback, cast-in-place concrete box culvert, with a concrete headwall and wings.

The project will be bid and 100% funded through the County.

SCOPE OF SERVICES

The scope of services to be performed shall be completed in accordance with generally accepted standards of practice and shall include the services and supplies to complete the following tasks:

I. Preliminary Design

- A. Topographic and Hydraulic Surveys – Kirkham Michael (CONSULTANT) will perform the topographic survey to provide required background information in the vicinity of the box culvert. The CONSULTANT will obtain the hydraulic survey needed for the design of the box culvert extension. This will include channel cross sections in the vicinity of, and upstream and downstream from the box culvert, channel flowline elevations, and top of bank and toe of slope shots where channel changes occur, and roadway centerline shots.
- B. Wetland Delineation – CONSULTANT will contract with a qualified biologist to conduct a site visit to identify any wetlands in the vicinity of the project. It is anticipated that there will be less than 0.1 acres of wetlands encountered and therefore, wetland mitigation is not included in this scope of services.
- C. Hydraulic Analysis – The drainage area for the box culvert is approximately 450 acres. The CONSULTANT will determine the peak flows utilizing the rational method and coefficients for existing land use will be used. The hydraulic analysis and design for the box culvert extension will be completed using BCAP which was created by the Nebraska Department Roads (NDOR) for the design of brokenback culverts. Backwater elevations and outlet velocities will be determined. A report in letter format will be submitted to the County for approval.

- D. Box Culvert Design – CONSULTANT will perform the preliminary structural design and prepare plan and profile sheets depicting the layout and size of the box culvert. Details for the connection of the new box culvert extension to the existing precast box culvert components will be developed.
- E. Bank Stabilization – CONSULTANT will perform the design and prepare preliminary plans for proposed outfall structures and bank stabilization measures.

II. Final Design

- A. Final Plans - Final plans will be prepared in accordance with NDOR policies and procedures and the AASHTO LRFD Bridge Design Specifications Manual, 3rd Edition.
- B. Right-of-Way Plats – We anticipate that the replacement structure will require additional right-of-way. The CONSULTANT will prepare up to two (2) right-of-way plats.
- C. Permits – The CONSULTANT will prepare the US Army Corps of Engineers (USACE) Section 404 permit application for the County’s submittal. Coordination and meetings with the USACE is limited to 12 hours under this Task Order. Additional coordination and meeting time with the USACE will be considered additional services. The CONSULTANT anticipates that the construction activities will not impact more than one acre. Therefore, an NPDES CSW-NOI permit or a PCWP Grading permit will not be required.
- D. Cost Estimate – CONSULTANT will prepare a final opinion of probable construction cost utilizing the NDOR’s Average Unit Prices.
- E. Special Provisions – CONSULTANT will prepare required special provisions for items not addressed in the NDOR Standard Specification for Road and Bridge Construction Manual.

III. Not Included in Contract

The following items are not included in this Scope of Services and will not be completed by the CONSULTANT as part of this original agreement.

- A. Bidding services
- B. Wetland mitigation
- C. Construction services
- D. Geotechnical services / borings

- E. Utility coordination
- F. Right-of-Way negotiations / acquisitions

The above services are available through the CONSULTANT and will be considered extra work, if requested by the County.

V. County to Provide / Prepare

- A. Bidding letting services
- B. Construction engineering services
- C. Utility company coordination
- D. Section corner ties
- E. Right-of-Way negotiations / acquisitions
- F. Traffic control

MEMORANDUM

To: Sarpy County Board of Commissioners
From: Bill Herr, Engineering Manager
Subject: Kirkham Michael and Associates Master Agreement and Task Order #1
Date: December 8, 2011

I recommend approval of the Master Agreement with Kirkham Michael and Associates, Inc for Professional Engineering, Surveying and Related Services. Also I recommend approval of Task Order #1 with Kirkham Michael for Professional Engineering Services to extend an existing Concrete Box Culvert on 204th Street approximately 1/3 mile north of Platteview Road for Lump Sum Fee of \$ 24,800.00.

BJH/bjh

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 • Email: Clerk@sarpy.com

December 15, 2011

Eric Johnson
Kirkham, Michael & Associates
12700 West Dodge Road
Omaha, NE 68154

Dear Mr. Johnson,

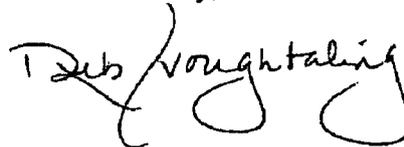
Action by the Sarpy County Board of Commissioners on December 13, 2011 is as follows:

Resolution 2011-416: Authorize Chairman to sign Master Agreement with Kirkham, Michael and Associates, Inc. for professional engineering services in conjunction with the design to extend an existing concrete box culvert structure under 204th Street. Denny Wilson, Engineer

MOTION: Warren resolved, seconded by Hike, to approve the resolution for the master agreement with Kirkham, Michael and Associates. Ayes: Hike, Thompson, Richards, Nekuda & Warren. Nays: None.

Attached is the above referenced master agreement and task order #1 for your files.

Sincerely,



Deb Houghtaling
Sarpy County Clerk

Enclosure
DH/cv