

BOARD OF COUNTY COMMISSIONERS  
SARPY COUNTY, NEBRASKA

AMENDED RESOLUTION APPROVING ESCROW AGREEMENT WITH JACQUELINE A. PUEPPKE  
AND PREMIER LAND TITLE COMPANY FOR IMPROVEMENTS TO 114<sup>TH</sup> STREET AND  
CORNHUSKER ROAD

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (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,

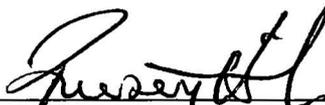
WHEREAS, the County of Sarpy desires to enter into an Escrow Agreement with Jacqueline A. Pueppke, Power of Attorney for Developer, **and Premier Land Title Company** for improvements to roadways in the area of 114<sup>th</sup> Street and Cornhusker Road as outlined in the agreement attached hereto as Exhibit A; and,

WHEREAS, said attached agreement is for unique, non-competitive and professional services and is in the best interests of the citizens of Sarpy County; and,

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves and adopts the Escrow Agreement with Jacqueline A. Pueppke, Power of Attorney, **and Premier Land Title Company**, a copy of which is attached.

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk, is hereby authorized to sign on behalf of this Board the Escrow Agreement with Jacqueline A. Pueppke **and Premier Land Title Company**, a copy of which is attached, and any other related documents, the same being approved by the Board.

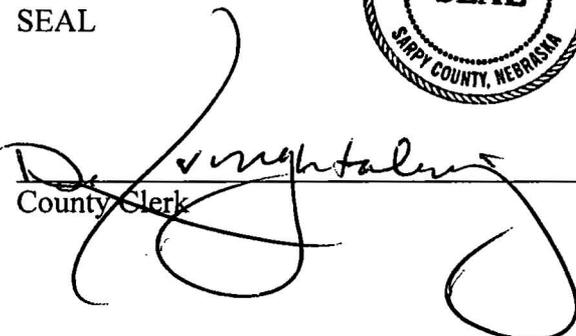
The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 19<sup>th</sup> day of June, 2012.

  
\_\_\_\_\_  
Sarpy County Board Chairman

Attest:

SEAL



  
\_\_\_\_\_  
County Clerk

## ESCROW AGREEMENT

This Escrow Agreement ("**Escrow Agreement**") is made and entered into as of June 20, 2012 by and among Jacqueline A. Pueppke ("**Representative**") acting on behalf of an undisclosed beneficiary ("**Developer**") pursuant to the terms of a Power of Attorney dated as of May 16, 2012; Sarpy County, Nebraska (the "**County**"); and Premier Land Title Company ("**Escrow Agent**").

WHEREAS, Developer has entered into a Sale and Purchase Agreement with Clatterbuck Properties, a Nebraska general partnership and/or Charles R. Clatterbuck and Robert L. Clatterbuck dated as of March 20, 2012 (the "**Purchase Agreement**"), pursuant to which it intends to acquire certain real estate located on 114th and Cornhusker Streets in Sarpy County, Nebraska as more fully described on Exhibit "A" attached hereto (the "**Property**"); and

WHEREAS, in connection with the acquisition and development of the Property, 114th Street and Cornhusker Street must be upgraded from gravel roadways to paved streets; and

WHEREAS, the County is willing to engage Olsson Associates ("**Olsson**") to design the upgrades to 114th Street and Cornhusker Street on behalf of the County and to identify the easements the County must obtain from third parties for the street upgrades and utility relocation, but only if Developer is willing to provide financial assurances to the County that Developer will pay for its share of the cost of Olsson's services; and

WHEREAS, Developer has elected to provide such financial assurances by escrowing the sum of \$90,769 and allowing the County to use such escrowed funds to pay for Olsson's services; and

WHEREAS, Developer has authorized Representative to act, and to enter into this Escrow Agreement, on its behalf.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the parties hereto hereby agree as follows:

1. Appointment of Escrow Agent. Representative and the County hereby appoint Escrow Agent to serve as the escrow agent under this Escrow Agreement, and Escrow Agent hereby accepts such appointment.

2. Deposit. Developer has delivered to Escrow Agent the sum of Ninety Thousand Seven Hundred Sixty-Nine and 00/100 Dollars (\$90,769.00) (which amount, together with all earnings thereon during the term of the escrow is hereinafter, the "**Deposit**"). Escrow Agent agrees that it shall receive, hold in escrow, invest and release or distribute the Deposit subject to and in accordance with the terms of this Escrow Agreement.

3. Investment of the Deposit. Escrow Agent shall maintain the Deposit in a separate deposit account or accounts with an FDIC insured financial institution. Receipt of the Deposit shall be confirmed by Escrow Agent as soon as practicable by an account statement delivered to Representative and the County, and any discrepancies in any such account statement shall be noted by Representative or the County to Escrow Agent within 30 calendar days after receipt thereof. Failure to inform Escrow Agent in writing of any discrepancies in any such account statement within said 30-day period shall conclusively be deemed confirmation of

such account statement in its entirety. For purposes of this paragraph, each account statement shall be deemed to have been received by the party to whom directed on the earlier to occur of (i) actual receipt thereof and (ii) five (5) Business Days (as defined below) after the deposit thereof in the United States Mail, postage prepaid. The term "**Business Day**" shall mean any day of the year, excluding any Saturday, Sunday and any other day on which national banks are required or authorized to close in Omaha, Nebraska.

4. Estimated Cost for Services. The County has requested Olsson to perform the preliminary design services more fully described on Exhibit "B" attached hereto (the "**Services**"). Olsson's estimated fees for the Services are set forth on Exhibit "B" attached hereto. The County agrees to instruct Olsson to promptly notify the County and Representative in the event that Olsson determines that the cost for the Services will exceed the estimated amount as set forth on Exhibit "B". Representative will promptly discuss such cost increase with Developer, and within 5 Business Days after receiving notice of such anticipated cost increase, Representative will notify the County and Olsson whether Developer has approved such increase. In the event Developer does not approve such increase, the County will instruct Olsson to cease performing any Services until the County, Olsson and Representative reach an agreement on the fee for the Services.

5. Disbursement of Deposit. Upon receipt by the County of a pay request from Olsson for the Services, the County will review the pay request and determine whether such fees are consistent with the scope of the Services to be performed by Olsson and described with sufficient detail in such pay request. If the pay request is not acceptable to the County, the County shall make reasonable efforts to negotiate reductions to the pay request with Olsson. If the pay request (or revised pay request, as applicable) is acceptable to the County, the County will deliver a copy of such pay request (which may be via email) to Escrow Agent and Representative. Representative shall deliver each pay request to Developer for review. Developer shall have no right to object to a pay request, unless the aggregate amount of the Services previously paid plus the amount in the current pay request exceeds the agreed upon amount for such category of Services as set forth in Section 4 above.

Unless Developer has a right to object to a pay request pursuant to the terms within this Section, the parties agree that the pay request submitted by the County to the Escrow Agent and Representative shall be sufficient authorization for the Escrow Agent to distribute funds from the Deposit to the County. The County shall pay Olsson pursuant to the terms of a separate agreement between the County and Olsson that encompasses the Services.. Escrow Agent agrees to disburse such funds within two (2) Business Days after receiving authorization from the County.

If Developer has the right to object to a pay request pursuant to the terms within this Section, then Developer and the County will negotiate in good faith to reach an agreement on the amount due and owing to Olsson in accordance with the provisions of Section 4 above, and the County will cause Olsson to participate in such negotiations if necessary to reach an agreement on such amounts. Within two (2) Business Days after the parties reach such agreement, the County and Representative will send written notice to Escrow Agent (which may be via email) authorizing Escrow Agent to disburse funds from the Deposit to the County to pay such pay request. Escrow Agent agrees to disburse such funds within two (2) Business Days after receiving authorization from both the County and Representative.

Upon the earlier of (a) completion of all Services and payment of all amounts due to the County, which the County owes to Olsson or (b) Developer elects to abandon its plans to acquire and/or develop the Property by contemporaneous written notice to the parties and full payment of all amounts due to the County, which it owes to Olsson for the portion of the Services performed through the date of such abandonment, Escrow Agent shall pay any remaining portion of the Deposit to Developer.

6. Tax Matters. Representative shall provide Escrow Agent with Developer's taxpayer identification numbers documented by an appropriate Form W-8 or Form W-9 upon or as soon as practicable after execution of this Escrow Agreement. Failure to provide such forms may result in the assessment of a penalty and Escrow Agent being required to withhold tax on any interest or other income earned on the Deposit. Any payments of income shall be subject to applicable withholding regulations then in force in the United States or any other jurisdiction, as applicable. Representative agrees that Developer shall be responsible for reporting and paying applicable taxes on the taxable portion of the Deposit while held by Escrow Agent.

7. Scope of Undertaking. Escrow Agent's duties and responsibilities in connection with this Escrow Agreement shall be purely ministerial and shall be limited to those expressly set forth in this Escrow Agreement. Escrow Agent in such capacity is not a principal, participant or beneficiary in any transaction underlying this Escrow Agreement and shall have no duty to inquire beyond the terms and provisions hereof. Escrow Agent shall have no responsibility or obligation of any kind in connection with this Escrow Agreement or the Deposit and shall not be required to deliver the Deposit or any part thereof or take any action with respect to any matters that might arise in connection therewith, other than to receive, hold, invest, reinvest and deliver the Deposit as herein provided. Without limiting the generality of the foregoing, it is hereby expressly agreed and stipulated by the parties hereto that Escrow Agent shall not be required to exercise any discretion hereunder and shall have no investment or management responsibility and, accordingly, shall have no duty to, or liability for its failure to, provide investment recommendations or investment advice to the other parties hereto or any of them. Escrow Agent shall not be liable for any error in judgment, any act or omission, any mistake of law or fact, or for anything it may do or refrain from doing in connection herewith, except for its own misconduct, negligence or breach of this Escrow Agreement. It is the intention of the parties hereto that Escrow Agent shall never be required to use, advance or risk its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

8. Reliance; Liability. Escrow Agent may rely on, and shall not be liable for following the instructions contained in any written notice, instruction or request or other paper furnished to it hereunder or pursuant hereto and reasonably believed by it to have been signed or presented by the proper party or parties. Escrow Agent shall be responsible for holding, investing, and disbursing the Deposit pursuant to this Escrow Agreement; *provided, however*, that in no event shall Escrow Agent be liable for any lost profits, lost savings or other special, exemplary, consequential or incidental damages and *provided, further*, that Escrow Agent shall have no liability for any loss arising from any cause beyond its control, including, but not limited to, the following: (a) acts of God, force majeure, including, without limitation, war (whether or not declared or existing), revolution, insurrection, riot, civil commotion, accident, fire, explosion, stoppage of labor, strikes and other differences with employees; (b) the act, failure or neglect of any party hereto or any agent or correspondent or any other person selected by Escrow Agent; (c) any delay, error, omission or default of any mail courier; or (d) the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers.

Escrow Agent is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the subject matter of this Escrow Agreement or any part hereof or for the transaction or transactions requiring or underlying the execution of this Escrow Agreement, the form or execution hereof or for the identity or authority of any person executing this Escrow Agreement or any part hereof or depositing the Deposit.

9. Right of Interpleader. Should any controversy arise involving any of the parties hereto or any other person, firm or entity with respect to this Escrow Agreement or the Deposit, or should a substitute escrow agent fail to be designated as provided in Section 14 hereof, or if Escrow Agent should be in doubt as to the appropriate action to take, Escrow Agent shall have the right, but not the obligation, either to (a) withhold delivery of the Deposit until the controversy is resolved, the conflicting demands are withdrawn or its doubt is resolved, or (b) institute a petition for interpleader in any court of competent jurisdiction to determine the rights of the parties hereto. In the event Escrow Agent is a party to any dispute, Escrow Agent shall have the additional right to refer such controversy to binding arbitration. Should a petition for interpleader be instituted, or should Escrow Agent be threatened with litigation or become involved in litigation or binding arbitration in any manner whatsoever in connection with this Escrow Agreement or the Deposit, then, as between (a) Representative and/or Developer on the one hand and (b) Escrow Agent on the other, the Representative, on behalf of Developer, hereby agrees that Developer will reimburse Escrow Agent for its attorneys' fees and any and all other expenses, losses, costs and damages incurred by Escrow Agent in connection with or resulting from such threatened or actual litigation or arbitration prior to any disbursement hereunder.

10. Indemnification. Representative, on behalf of Developer and not in her individual capacity, agrees that Developer will indemnify Escrow Agent, its officers, directors, partners, employees and agents (each herein called an "**Indemnified Party**") against, and hold each Indemnified Party harmless from, any and all expenses, including, without limitation, attorneys' fees and court costs, losses, costs, damages and claims, including, but not limited to, costs of investigation, litigation and arbitration, tax liability and loss on investments suffered or incurred by any Indemnified Party in connection with or arising from or out of this Escrow Agreement, except such acts or omissions as may result from the misconduct or negligence of such Indemnified Party or breach by Escrow Agent of this Escrow Agreement.

11. Compensation and Reimbursement of Expenses. Representative, on behalf of Developer and not in her individual capacity, hereby agrees that Developer will pay Escrow Agent for all reasonable expenses incurred by Escrow Agent in connection with the performance of its duties and enforcement of its rights hereunder and otherwise in connection with the preparation, operation, administration and enforcement of this Escrow Agreement, including, without limitation, attorneys' fees and related expenses incurred by Escrow Agent. In the event Developer for any reason fails to pay any such fees and expenses as and when the same are due, such unpaid fees and expenses of the Escrow Agent shall be charged to and set off and paid from the Deposit by Escrow Agent without any further notice, but only after all other expenses and payments have been made to Olsson as provided herein.

12. Notices. Any notice or other communication required or permitted to be given under this Escrow Agreement by any party hereto to any other party hereto shall be considered as properly given if in writing and (a) delivered with receipt therefor, (b) mailed by registered or certified mail, return receipt requested and postage prepaid or (c) sent by facsimile in each case addressed as follows:

If to Representative:

Ms. Jacqueline A. Pueppke  
Baird Holm LLP  
1500 Woodmen Tower  
1700 Farnam Street  
Omaha, Nebraska 68102  
Facsimile No.: (402) 344-0588

If to the County:

Debra J. Houghtaling  
Sarpy County Clerk  
1210 Golden Gate Dr  
Papillion, NE 68046-2889  
Facsimile No.: (402) 593-4471

with a copy to:

Sarpy County Attorney's Office  
1210 Golden Gate Dr  
Papillion, NE 68046-2889  
Attn: Michael A. Smith  
Facsimile No.: (402) 593-4359

If to Escrow Agent:

9719 Giles Road  
LaVista, NE 68128  
Attn: Linda Ruma and Sandi Wilds  
Facsimile No.: (402) 891-7162

Except to the extent otherwise provided in the second paragraph of Section 3 herein above, delivery of any communication given in accordance herewith shall be effective only upon actual receipt thereof by the party or parties to whom such communication is directed. Any party to this Escrow Agreement may change the address to which communications hereunder are to be directed by giving written notice to the other party or parties hereto in the manner provided in this section.

13. Consultation with Legal Counsel. Escrow Agent may consult with its counsel or other counsel satisfactory to it concerning any question relating to its duties or responsibilities hereunder or otherwise in connection herewith and shall not be liable for any action taken, suffered or omitted by it in good faith upon the advice of such counsel.

14. Resignation. Escrow Agent may resign hereunder upon ten (10) days prior notice to Representative and the County. Upon the effective date of such resignation, Escrow Agent shall deliver the Deposit to any substitute escrow agent designated by Representative and the County in writing. If Representative and the County fail to designate a substitute escrow agent within ten (10) days after the giving of such notice, Escrow Agent may institute a petition for interpleader. Escrow Agent's sole responsibility after such ten (10) day notice period expires shall be to hold the Deposit (without any obligation to reinvest the same) and to deliver the same to a designated substitute escrow agent, if any, or in accordance with the directions of

a final order or judgment of a court of competent jurisdiction, at which time of delivery, Escrow Agent's obligations hereunder shall cease and terminate.

15. Assignment. This Escrow Agreement may not be assigned by Escrow Agent without the prior written consent of the County and Representative. This Escrow Agreement may not be assigned by any of the other parties hereto without the prior written consent of Escrow Agent; provided, however, that Representative may assign this Escrow Agreement to Developer without the prior consent of any party hereto.

16. Developer Obligations. Representative hereby represents and warrants to the County and Escrow Agent that (a) Representative is authorized to execute and deliver this Escrow Agreement on behalf of Developer and (b) Developer has agreed to the terms of this Escrow Agreement and to perform all of its obligations hereunder.

17. Termination. This Escrow Agreement shall terminate upon disbursement of the entire Deposit in accordance with Section 5 hereof.

18. Miscellaneous.

(a) Governing Law. This Escrow Agreement shall be construed under, and governed by, the laws of the State of Nebraska (excluding any conflicts of law rule or principle that might refer same to the laws of another jurisdiction).

(b) Entire Agreement; Severability. The terms and provisions of this Escrow Agreement constitute the entire agreement among the parties hereto in respect of the subject matter hereof. If one or more of the provisions hereof shall for any reason be held to be invalid, illegal or unenforceable in any respect under applicable law, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Escrow Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and the remaining provisions hereof shall be given full force and effect.

(c) Amendment. This Escrow Agreement or any provision hereof may be amended, modified, waived or terminated only by written instrument duly signed by all parties hereto.

(d) Headings. The section headings contained in this Escrow Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Escrow Agreement.

(e) Counterpart Execution. This Escrow Agreement and any affidavit, certificate, instrument, agreement or other document required to be provided hereunder may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. Unless the context shall otherwise require, the singular shall include the plural and vice versa, and each pronoun in any gender shall include all other genders.

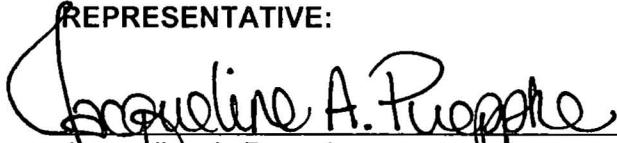
(f) Successors and Assigns. This Escrow Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, devisees, executors, administrators, personal representatives, successors, trustees, receivers and permitted assigns.

(g) No Third Party Beneficiaries. This Escrow Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Escrow Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.

-No further text on this page-

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement to be effective as of the date first above written.

REPRESENTATIVE:

  
\_\_\_\_\_  
Jacqueline A. Pueppke, pursuant to a power of attorney

THE COUNTY:

SARPY COUNTY, NEBRASKA



By: *Rusty Hike* 6/19/12  
Name: Rusty Hike  
Its: Chairman, Sarpy County Board

ATTEST:

By: *Debra L. Noughtaling*

Approved as to form:

*Michelle O'Keefe*  
County Attorney

**ESCROW AGENT:**

PREMIER LAND TITLE COMPANY

By: Linda Ruma  
Name: LINDA Ruma  
Its: Escrow Agent

## EXHIBIT A

### Legal Description of Property

**Parcel I:**

Tax Lot 4, all of the Southeast Quarter of Section 20, except the West 1,239.0 feet of the North 346.5 feet thereof, except the South 100 feet of the East 100 feet of the Southeast quarter; and except commencing at the South quarter corner of said Section 20; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) along the West line of said Southeast quarter of said Section 20, a distance of 1361.36 feet; thence North 90 degrees 00 minutes 00 seconds East, a distance of 8.66 feet to a point on the East right of way line of 114th Street. Said point also being the point of beginning; thence North 00 degrees 46 minutes 11 seconds East, along said East right of way line of said 114th Street, at distance of 265.00 feet; thence South 89 degrees 13 minutes 49 seconds East, a distance of 32.00 feet; thence South 00 degrees 46 minutes 11 seconds West, a distance of 100.00 feet; thence South 11 degrees 44 minutes 43 seconds West, a distance of 168.07 feet to the point of beginning, all in Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska.

**Parcel II:**

Tax Lot 4B in the Southeast Quarter of Section 20, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska.

EXHIBIT B

Description of the Services

See following pages



LETTER AGREEMENT FOR  
PROFESSIONAL SERVICES

June 22, 2012

Mr. Denny Wilson  
Sarpy County  
1210 Golden Gate Dr, Ste 1129  
Papillion, NE 68046

Re: **AGREEMENT FOR PROFESSIONAL SERVICES**  
Sarpy County 114th Street Design "Project"  
Omaha, Nebraska (A12-0616)

Dear Mr. Wilson:

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 for Professional Services, any signed Master 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 warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions (and any exhibits attached thereto), which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, any Master Agreement and/or the General Provisions regarding the services to be performed by Olsson, the requirements of this Letter 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 begin performing its services under the Agreement promptly upon your signing.

Anticipated Start Date: 6/27/2012 Anticipated Completion Date: 11/1/2012

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date and any milestone dates are approximate only, and Olsson reserves the right to readjust its schedule, including, but not limited to, delays caused by Client or delays caused by third parties. Olsson is aware of the County responsibilities and milestone dates and will work to meet all of the requirements for those items which Olsson has control over.

### COMPENSATION

4. Compensation for Olsson's services shall be a fixed fee of Three Hundred Eighty-four Thousand Five Hundred Dollars (\$384,500). Olsson shall submit invoices on a monthly basis, are due upon presentation and shall be considered past due if not paid within 30 calendar days of the due date. In the event that the Client provides portions of the work to Olsson and/or if the scope of the work changes, Olsson will work with the Client to adjust the scope of work and/or the compensation to be commensurate with the work completed.

REIMBURSABLE EXPENSE: Olsson's reimbursable expenses for this Project are included in the fixed fee set forth in Paragraph 4 above.

### TERMS AND CONDITIONS OF SERVICE

5. We have discussed with you the risks, rewards and benefits of the Project and our fees for services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.
6. If this proposal satisfactorily sets forth your understanding of our agreement, please sign in the space provided below (indicating Client's designated Project representative if different from the party signing). Retain a copy for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

7. By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement.

**OLSSON ASSOCIATES**

By Michael C. Piernicky  
Michael C. Piernicky, PE, PTOE

By Anthony Egelhoff  
Anthony Egelhoff, PE

If you accept the preceding proposal and the Agreement, please sign:

Sarpy County "Client"

By [Signature]  
Title Vice Chairman

Dated: 6-26-12

If different from above,

\_\_\_\_\_  
Client's Designated Project Representative

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Approved as to form:

Kerry A. Schmid  
County Attorney

EXHIBIT "A" to GENERAL PROVISIONS ATTACHED TO  
LETTER AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN CLIENT AND OLSSON, DATED JUNE 22, 2012

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 June 22, 2012 between 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.

**TASK-1 PROJECT MANAGEMENT**

- **Project Management** - This task includes time for overall management and coordination of the project team, coordination with Client staff, coordination with key stakeholders, and preparation of progress reports and invoices in accordance with Client requirements. This task also includes coordination effort on Client's behalf for Interlocal agreement.
- **Progress and Project Review Meetings** - Olsson will schedule and attend six (6) progress meetings. It is anticipated these meetings will occur at Kick-off, and following the 60% submittal and the 90% submittal. Additionally, it is assumed that there will be three additional meetings that will be needed throughout the process.
- **Utility Coordination** - Olsson will schedule and attend six (6) utility meetings. It is anticipated these meetings will take place after the 60% and 90% plan submittals in order to discuss possible impacts and relocations with surrounding utility facilities.

**TASK-2 TOPOGRAPHIC SURVEY**

- **Cornhusker Rd West of 114th Street** - Topographic features for Cornhusker Road will be surveyed starting at the intersection of 114th Street extending to the west for approximately 1,800 feet. The survey will extend out 150 feet north and south of the centerline of Cornhusker Road. Items to be surveyed will include buildings, roads, structures, pipes, fences, gravel surfaces, concrete surfaces, asphalt surfaces, trees, landscaping, and utilities generating a surface represented by 1 foot contours.
- **Cornhusker Rd East of 114th Street** - Topographic features for Cornhusker Road will be surveyed starting at the intersection of 114th Street extending to the east through 108

Street. The survey will extend out 150 feet north and south of the centerline of Cornhusker Road. Items to be surveyed will include buildings, roads, structures, pipes, fences, gravel surfaces, concrete surfaces, asphalt surfaces, trees, landscaping, and utilities generating a surface represented by 1 foot contours.

- **114<sup>th</sup> Street North of Cornhusker Rd** - Topographic features for 114<sup>th</sup> Street will be surveyed starting at the intersection of Cornhusker Road extending to the north for approximately 2,700 feet. The survey will extend 200 feet east and 100 feet west of the centerline of 114<sup>th</sup> Street. Items to be surveyed will include buildings, roads, structures, pipes, fences, gravel surfaces, concrete surfaces, asphalt surfaces, trees, landscaping, and utilities generating a surface represented by 1 foot contours
- **Hydraulic and Box Culvert Survey Schram Creek** - Topographic features for Schram Creek and the culvert structure, approximately 1,000 feet north of Cornhusker Road will be surveyed. The limits of the survey will extend 500 feet upstream and downstream from the centerline of 114<sup>th</sup> Street and 50 feet north and south of the top of bank. The surface drawing will be represented by 1 foot contours. This section may be reduced or eliminated depending on information provided by Sarpy County Surveyor that has already been completed.
- **114<sup>th</sup> Street South of Cornhusker Rd** - Topographic features for 114<sup>th</sup> Street will be surveyed starting at the intersection of Cornhusker Road extending to the south for approximately 2,700 feet. The survey will extend 150 feet east and 100 feet west of the centerline of 114<sup>th</sup> Street. Items to be surveyed will include buildings, roads, structures, pipes, fences, gravel surfaces, concrete surfaces, asphalt surfaces, trees, landscaping, and utilities generating a surface represented by 1 foot contours.
- **Drainage Survey South of Cornhusker Rd East and West of 114<sup>th</sup> Street** - Topographic features for the potential drainage area approximately 1,300 feet south of Cornhusker Road will be surveyed extending 500 feet upstream and downstream from the centerline of 114<sup>th</sup> Street and 50 feet north and south of the top of bank. The surface drawing will be represented by 1 foot contours.

### TASK-3 CONCEPTUAL DETENTION BASIN DESIGN

- Olsson will collect past as-built information, surveys, studies, and hydrologic and hydraulic models both for the proposed WP-RB6 Reservoir and for the existing culverts. For the twin 12'x12' Box Culvert under 114<sup>th</sup> Street, Olsson will review existing hydrologic data and select a design flow for the 50%, 10%, 2% and 1% annual chance flood events. A hydraulic model and analysis will be completed for the existing and proposed structure for each of the four flood events. It is anticipated that hydrologic calculations will have to be prepared for the 36" CMP under Cornhusker Road and hydraulic models will consider the performance of the existing and extended CMP with and without the influence of the proposed reservoir. Additionally, the drainage crossing approximately ¼ mile east of 114<sup>th</sup> Street on Cornhusker will also be analyzed as part of the project. Olsson will prepare a Technical Memorandum to summarize the data collected, methods and models used, and results for each of the two drainage structures.

#### **TASK-4 WETLAND INVESTIGATION, SECTION 404 AND 401 PERMITTING, AND MIGRATORY BIRD TREATY ACT SURVEY**

- **Agency Consultation** - The US Army Corps of Engineers (COE) guidance (March, 2007) requires that a prospective applicant must document compliance with the Endangered Species Act and the National Historic Preservation Act. In order to document compliance, agency consultation will include requests for information regarding potential Threatened and Endangered Species and/or critical habitat on the site. Information will be requested from United States Fish and Wildlife Service (USFWS) and Nebraska Game and Parks Commission (NGPC). This information will assist in the field effort to determine potential T&E species and/or habitat on the project site. The Nebraska State Historical Preservation Office (SHPO) will be contacted regarding the potential for cultural resources.
- **Wetland Evaluation** - A Jurisdictional Wetland Evaluation will be conducted in accordance with the U.S. Army Corps of Engineers (COE) 1987 Wetland Delineation Manual. The wetland delineation will be conducted within the north half of the southeast quarter of Section 20, Township 14 North, Range 12 East, Sarpy County, Nebraska. The evaluation will include the following:
  - A review of available existing data including; National Wetlands Inventory Maps, County Soil Surveys and Hydric Soils Lists, USGS Topographic Maps, and Aerial Photos.
  - Field investigations to determine presence/absence of hydrophytic plant species, wetland hydrology, and hydric soils. Routine Wetland Delineation Data Forms will be completed for each sample point location.
  - Color photographs documenting site conditions at the time of field investigations.
  - Mapping of the boundaries of all wetland and other waters using a sub-meter accuracy GPS unit.
- **Wetland Delineation Report and Permit Application** - At the conclusion of the delineation, a wetland report describing the findings will be submitted (if requested) for review by the Client. The report will include text describing wetlands and other waters, color photographs of the site, field data sheets, and maps depicting wetland location(s) and acreage(s). In addition, any findings of Threatened and Endangered Species and/or appropriate habitat will be submitted.

Once the Client has reviewed the delineation report and project plans are available, a Section 404 Pre-Construction Notification for a Nationwide Permit (NWP) will be prepared and submitted to the COE. In addition, coordination with the Nebraska Department of Environmental Quality will be conducted to ensure the project complies with Section 401 of the Clean Water Act and State water quality standards (Title 117, Nebraska Administrative Code).

- **Migratory Bird Treaty Act Survey** - If vegetation clearing is to take place between February 1 and July 15 the USFWS will recommend a migratory bird survey be conducted in order to ensure compliance with the Migratory Bird Treaty Act (MBTA), which prohibits the take of migratory birds and nests. The USFWS and the COE in recent years has increased the awareness and enforcement of the MBTA. Results of the

survey will be coordinated with the USFWS.

- **Exclusions** - It is anticipated that this project will qualify for a NWP and have based the fee on this assumption. If it is determined that an Individual Permit is required for this project, additional fees will apply and will be negotiated between the Client and Olsson.

The MBTA survey must be done within one week of clearing/grubbing activities. If clearing/grubbing activities are not completed within that week, additional surveys may be needed. Additional MBTA surveys are not included in the fee.

In addition, this scope does not include detailed endangered species surveys, cultural resources surveys, meetings with the COE or compensatory mitigation documentation / design. If these services are required, additional fees will apply.

- **Schedule** - The COE requires that wetland delineations in Nebraska be conducted between May 1 and November 1. Field activities would be conducted as soon as practical after May 1, with the submittal of the delineation report to the Client within 30 days of field work. It is anticipated that within 45 day of the completion of field work a PCN will be submitted to the COE (assuming the engineering design is complete and impacts are known). It is anticipated that a NWP can be received in 3-4 months following submission.

#### **TASK-5 GEOTECHNICAL EXPLORATION (114<sup>th</sup> Street & Cornhusker Road)**

- **Field Exploration** - Olsson proposes to use a truck-mounted drill rig to complete a total of eighteen (18) soil test borings for the proposed 114th Street improvements and Cornhusker Road west and east of 114th Street. The 114th Street improvements will extend through, and approximately one-half mile north and south of, the intersection of 114th Street and Cornhusker Road to connect with the existing concrete pavements at each end. The roadway alignment extends across a large box culvert at the north end of the project and a 24" CMP. The Cornhusker Road portion will extend approximately 1,500 feet west of the 114th Street right-of-way and through 108th Street on the east. Estimated final grades were used to prepare this proposal. The proposed borings and depths are summarized as follows:
  - One (1) soil test boring will be completed to a depth of 50 feet near the existing box culvert.
  - One (1) soil test boring will be completed to a depth of 35 feet near the existing box culvert.
  - Nine (9) soil test borings will be completed to depths of 15 feet each along the roadway alignment.
  - Seven (7) soil test borings will be completed to depths of 10 feet each along the roadway alignment.
  - The soil borings will be advanced to the depths proposed, or to refusal, whichever is shallower. This proposal is based on a total drilling footage of 285 linear feet.

We will contact Diggers Hotline of Nebraska to locate underground public utilities. If the County is aware of underground utilities in the area that may not be identified by the Diggers Hotline request, we ask that they provide Olsson with that information so that we may shift or relocate the soil borings slightly if necessary to avoid underground utilities.

We anticipate that all boring locations will be along proposed centerline as is readily accessible to our truck mounted drilling rig. Costs associated with site clearing or drill rig access is not included in this scope and fee, however, Olsson cannot begin the field operations until satisfactory site access is available.

Drilling rigs are heavy equipment and some disturbance of existing grades or surface features are possible. This may include, but is not limited to, soil rutting, pavement cracking, or sidewalk distress (if applicable). Although Olsson will attempt to minimize surface distress, damaged pavements, or sidewalks wherever possible, no restoration other than backfilling the soil borings and patching pavements is included in this work scope.

Sampling of soils in general accordance with ASTM D-1586 and ATSM D-1587.  
Obtain groundwater levels in the test borings while drilling, immediately after drilling, and again within 72 hours after drilling.

- **Laboratory Services** - As soil conditions dictate, laboratory testing may include visual soil classification (ASTM D-2488), unconfined compression tests (ASTM D-2166), thin-walled tube density tests (ASTM D-2937), moisture content tests (ASTM D-2216), Atterberg limit tests (ASTM D4318), a Standard Proctor test (ASTM D-698), one-dimensional consolidation tests (ASTM D-2435), and mechanical sieve analysis (ASTM D-422).
- **Engineering Analysis and Report Preparation** - Pavement analysis, recommended thickness for standard and heavy duty pavements, recommendations for pavement subgrade preparation, and an estimated CBR value will be provided.
  - Recommendations regarding the thickness, moisture, and compaction criteria for backfill or structural fill. Soil excavation criteria in accordance with OSHA Standards will be included or referenced.
  - Recommendations associated with site preparation and structural fill placement.
  - Subgrade preparation and requirements for the new roadway alignment.
  - Recommendations will be provided for core-out and/or overexcavation of soft or unsuitable soils, if applicable.
  - Analysis of the soils encountered regarding shrink/swell characteristics and the potential for reuse as general fill, compacted structural fill, or utility backfill.
  - Discussion of anticipated groundwater concerns, along with recommendations for addressing these concerns during construction, if required.
  - Lateral earth pressure parameters will be provided for below grade or box culvert walls including recommend values for friction and cohesion.
  - We will provide an evaluation of bearing subgrade conditions in the area of the existing box culvert in the event in the event that the existing box must be modified or extended for a specific roadway alignment.
  - An electronic copy and three (3) bound copies of the Report of Geotechnical Exploration will be provided to the designated Client representative.

## TASK-6 114<sup>TH</sup> STREET ROADWAY DESIGN

In general, the extent of this task will include roadway design for South 114<sup>th</sup> Street from approximately 500 feet south of Centennial Road to approximately 900 feet north of Sherman Street. The roadway will be designed for the ultimate four-lane divided urban section, with an interim two lane build scenario. Cornhusker Road will be reconstructed as a three-lane urban section through the intersection and tapered back to existing on the west, and constructed as a three lane section for one half-mile to the east of 114<sup>th</sup> Street including the intersection of 108<sup>th</sup> Street.

- **Site Inspections** - Olsson will conduct site visits as required during the course of the project to verify site features with the proposed design work.
- **Data Collection and Review** - Olsson will assemble and review preliminary data available for the project including as-built information for existing streets, utilities, storm sewers and other features within the project area. This will also include review of existing environmental studies, traffic studies and other study information available that pertains to the proposed improvements.
- **Plan-in-Hand** - Olsson will schedule and attend a plan-in-hand meeting with the key stakeholders to review the sixty (60) percent roadway design plans. Olsson will prepare and submit a memo following the meeting summarizing the findings and decisions made regarding the project design.
- **Plan Production & Note Reduction** - Olsson will create the necessary plan sheets for inclusion into the plan sets. It is assumed the Consultant will prepare plan sets for two submittals, including 60% and 90% plans. Note reduction effort is for incorporation of additional field survey into the base files for use in developing the final design plans.
- **Control Points & General Notes** - Olsson will prepare horizontal control plans showing the control point tie-ins, benchmark information, and alignment design data for the various roadway segments. General Information plans will be prepared to reduce the amount of information shown on other plan sheets and may include topographic legends, standard notes, earthwork tabular notes, and standard details.
- **Horizontal and Vertical Alignment** - Olsson will establish the horizontal and vertical alignments for the various roadway segments on the project shown on plan and profile sheets.
- **Typical Sections** - Olsson will prepare the typical sections for the various roadway segments, major driveway relocations on the project, and phasing sections as needed.
- **Geometrics** - Olsson will prepare the roadway features and provide geometric sheets that show the alignments and corner radii information for the various roadway segments, intersections, and major driveway relocations on the project.
- **Drainage Design / Storm Sewer Design** - Olsson will design the drainage structures associated with the roadway improvements. Extensions of the existing box structure along Schram Creek will be required for the project. In addition, storm sewer design will be completed for the project. Design criteria will follow the City of Omaha drainage

design manual. Olsson will review previous drainage studies provided by the Client and incorporate their findings and recommendations into the project as applicable. Drainage profiles and cross sections will be prepared for the proposed and existing drainage structures within the project area. Special plans for the Schram Creek Box extensions will be prepared as well. Olsson will also provide drainage design for the Cornhusker Road drainage crossings east and west of the 114<sup>th</sup> Street alignment.

- **Roadway Cross Sections** - Olsson will cut cross-sections at twenty-five (25) foot intervals and at such additional intervals as may be necessary to accurately depict the lay of the land, to analyze drainage requirements, and to compute earthwork quantities. Cross sections will also be provided at driveways.
- **Earthwork** - Olsson will calculate the roadway earthwork for the various roadway segments and prepare the appropriate plan sheet information.
- **Limits of Construction** - Olsson will identify and draft the final limits of construction on the plan sheets. These limits will be used to determine any right-of-way or easement needs.
- **Joints & Grades** - Olsson will prepare joint layouts and grades plans for the project. The grades will be located every twenty-five (25) feet along centerline, and at critical spots through intersections.
- **Construction and Removal Plans** - Olsson will prepare construction and removal plans for the project. Construct and Removal tables will match standard NDOR/City of Omaha pay items.
- **Erosion Control** - Olsson will prepare plans showing location and type of erosion control to be used for the project. The design will meet the requirements set forth in the City of Omaha Erosion Control Manual.
- **Construction Phasing** - Olsson will prepare plans showing construction phasing, temporary construction, and completed construction for the initial build condition.
- **Traffic Control** - Olsson will prepare the required traffic plans, including traffic control, temporary pavement markings, and all required traffic control devices for the initial build condition.
- **Roadway Lighting** - Olsson will coordinate with OPPD on the roadway lighting. OPPD will design all the roadway lighting.
- **Right-of-Way** - Olsson will provide preliminary right-of-way plans showing permanent acquisitions, temporary construction easements or permanent easements. At this time up to nine (9) parcels fall within the project areas. Individual Tract maps with legal descriptions will be prepared for use in acquisitions. Right-of-way appraisals and negotiations are not part of this scope.
- **Aerial / Wetland Plan** - Olsson will prepare aerial photo sheets showing any previously delineated wetlands, impacted wetlands, and mitigation sites if applicable.

- **Special Investigation / Guardrail Design / Miscellaneous Design** - Olsson will prepare plans for items special or unique to the project location. These may include guardrail installation, retaining walls, concrete headwalls, etc. This also includes identification of pay items that will require special provisions and providing necessary information regarding special pay item to be used in developing the special provision.
- **Summary of Quantities/Opinion of Probable Costs** - Olsson will compute quantities for each submittal and will submit an opinion of probable cost at the 60% and Final Plans submittals with the plans, using NDOR/City of Omaha standard bid items and unit prices.
- **QA/QC** - Olsson shall conduct internal quality reviews of the design and plan sets during the design of the project.
- **CADD Submittal** - Olsson will submit electronic CADD files to the Client at the completion of the design of the project.

#### **TASK-7 BID PACKAGE DOCUMENTS**

- **Special Provisions** - Olsson will prepare necessary special provisions for inclusion into the final bid documents prepared by the Client.
- **Bid Tabs** - Olsson will help prepare bid tabs for use inclusion into the final bid documents prepared by the Client.
- **Final Construction Plans** - Olsson will prepare two (2) full size plan sets for inclusion into the final bid documents prepared by the Client. These plans will show the final grading with interim paving.

#### **TASK-8 RIGHT-OF-WAY SERVICES**

- **Appraisals** - This task involves preparation of nine appraisal reports which will provide values for the land and easements to be acquired. Tom Stevens of Thomas Stevens and Associates will prepare and provide the reports. He is approved by the State of Nebraska Department of Roads to provide appraisal reports for Federal Aid Projects.
- **Acquisition** - Midwest Right of Way Services' acquisition agents will make every effort to understand the project's objective before meeting with the property owner. They will prepare all documents, present and explain the offer, answer all acquisition-related questions, and secure signatures from all interested parties. Our acquisition agent will obtain tenant information from property owners and proceed to obtain signed a leasehold contract, if applicable. Midwest Right of Way Services will perform the services in accordance with the Nebraska Department of Roads Right of Way Manual. Our goal is to acquire the necessary right of way through amicable negotiations. If condemnation is required, Midwest Right of Way Services will deliver the parcel files to Sarpy County and be available for consultation or condemnation testimony.

## TASK-9 CONSTRUCTION ENGINEERING

- **Construction Administration** – At the option of the Client, Olsson provide construction administration services. Final Fee to be added by addendum.
- **Construction Observation** - At the option of the Client, Olsson provide construction observation services. Final Fee to be added by addendum.
- **Materials Testing** - At the option of the Client, Olsson provide construction observation services. Final Fees to be added by addendum.

Task	Task Description	Amount	Fee Type
1	Project Management	\$65,000	Lump Sum
2	Topographic Survey	\$13,000	Lump Sum
3	Conceptual Detention Basin Design	\$9,000	Lump Sum
4	Welland Investigation, Section 404 & 401 Permitting, & MBTA	\$13,000	Lump Sum
5	Geotechnical Exploration	\$11,000	Lump Sum
6	114th Street Roadway Design, Cornhusker Rd Design	\$233,500	Lump Sum
7	Bid Package Documents	\$12,000	Lump Sum
8	Right-of-Way Services	\$28,000	Lump Sum
9	Construction Engineering	TBD	Lump Sum
	<b>Total Contract</b>	<b>\$384,500</b>	<b>Lump Sum</b>

Olsson proposes to provide the above described roadway design services for a lump sum fee of **\$384,500** (Three Hundred Eighty-four Thousand Five Hundred Dollars). This fee would include expenses associated with the design efforts. Items not listed above are not included in this fee and will be considered additional services above and beyond the original scope and will be invoiced at our standard hourly billing rates plus reimbursable expenses.

### EXCLUSIONS

Excluded from this scope of services are the following:

- Public involvement
- Utility Relocation Design

### SCHEDULE

Upon receiving Notice to Proceed, the Consultant will begin work on the roadway design with estimated milestone dates below:

60% submittal - 7/15/2012  
90% submittal - 10/1/2012  
Final Bid Documents - 11/1/2012

## GENERAL PROVISIONS

These General Provisions are attached to and made a part of a LETTER AGREEMENT, dated June 22, 2012 between Sarpy County (Client") and Olsson Associates ("Olsson") for professional services in connection with the Sarpy County 114th Street 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 Olsson's service.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses 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

3.2.1 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.

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	\$0.555/mile*
Suburbans and Pick-Ups	\$0.75/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%

\* Rates consistent with the IRS Mileage Rate Reimbursement Guidelines (Subject to Change).

#### SECTION 4—MEANING OF TERMS

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 on the project 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 the Contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the inspected work, generally conforms to the Contract Documents. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. In making such visual observations, Olsson makes no guarantees for, and shall have no authority or control over, the Contractor's performance or the Contractor's failure to perform any 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 any 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 on the project 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 of default for any of the following reasons provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

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 Litigation

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, arising out of this Agreement or related to the services provided under this Agreement shall be resolved by litigation.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 Litigation may be commenced at any time prior to or after completion of the Project, provided that if litigation 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 litigation being conducted. Any litigation shall take place in the County and State of the project location, or in the State of Olsson's home office, Nebraska.

6.2.4 The prevailing party in any litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

## 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 or the State of the project locale. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska or the project State locale.

## 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, relating to personal injury or property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only 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

7.8.1 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 delay damages, any punitive damages or 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 delay damages and consequential damages shall include, but

is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or 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.

7.8.2 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the total amount of Olsson's fees earned under this Agreement. Client acknowledges that such causes include, but are not limited to, Olsson's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

## 7.9 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.

## 8.0 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.

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# Office of the County Attorney

Hall of Justice · 1210 Golden Gate Drive · Suite 3147  
Papillion, NE 68046-2889  
(402) 593-2230 · FAX: (402) 593-4359

L. Kenneth Polikov  
Sarpy County Attorney

## MEMO

To: Sarpy County Clerk

From: Kerry Schmid, Deputy County Attorney

Re: Non-substantive error on Escrow Agreement resolution

On June 19, 2012, the County Board approved a Resolution adopting and approving an Escrow Agreement with Jacqueline A. Pueppke, Power of Attorney for Undisclosed Developer. Inadvertently, such resolution failed to mention one of the parties to the agreement: Premier Land Title Company. After reviewing the agreement and resolution, it is my opinion that this is an issue of the identification of one of the parties and is not an issue with the substance of the agreement approved through the resolution. Moreover, the resolution clearly identifies that the Board approved the agreement attached to the resolution, and that agreement does not contain errors in the identification of the parties. As such, I consider to be a non-substantive error the failure to name on the resolution one of the parties. I will provide the County Clerk with an amended resolution clearly identifying all three parties. No further Board action will be required to remedy this error.

In addition, the Escrow Agreement identifies as an attachment Exhibit B, the contract between the County and Olsson and Associates. As of the time of the approval of the Escrow Agreement, the contract with Olsson and Associates has not been finalized or approved by the Board and such approval was tabled until June 26, 2012. The County Clerk should wait until approval of the Olsson agreement before sending the Escrow Agreement to the respective parties for signatures.

If you have questions, please do not hesitate to contact me.

June 20, 2012

  
\_\_\_\_\_  
Kerry Schmid