

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

**RESOLUTION AUTHORIZING AGREEMENT WITH LAMP RYNEARSON AND
ASSOCIATES 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,

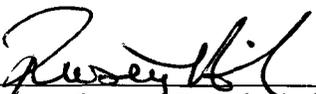
WHEREAS, general supervision and control of the public roads of each county is vested in the County Board by virtue of Neb. Rev. Stat. §39-1402 (Reissue 2007); and,

WHEREAS, Sarpy County entered into an Agreement with the firm of LAMP RYNEARSON AND ASSOCIATES for professional engineering services in conjunction with the preliminary design and final design for Capehart Road from 81st Street to 48th Street and a portion of 72nd Street from Capehart Road to a point 1000' north, in Sarpy County; and,

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Chair and Clerk are hereby authorized to execute on behalf of Sarpy County, Agreement with LAMP RYNEARSON AND ASSOCIATES for professional services in conjunction with the preliminary design and final design for Capehart Road from 81st Street to 48th Street and a portion of 72nd Street from Capehart Road to a point 1000 ft. north, in Sarpy County, which is attached hereto, the same being approved buy 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

21st day of August, 2012.

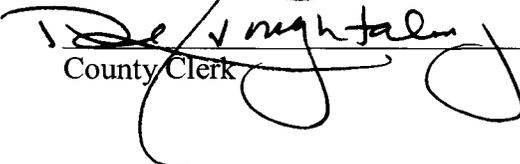


Sarpy County Board Chairman

Attest:

SEAL





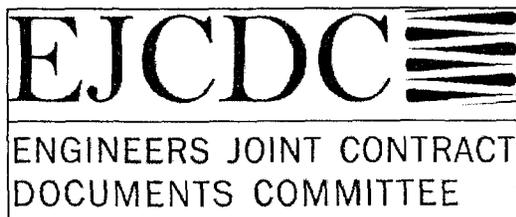
County Clerk

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Laws and Regulations.

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of August 31, 2012 ("Effective Date") between
Sarpy County Public Works Department ("Owner") and
Lamp, Rynearson and Associates, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Sarpy County Project C-77 (13-1), Capehart Road from 81st Street to 48th Street ("Project").

Engineer's services under this Agreement are generally identified as follows:

Engineering study and design.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable ~~within 30 days of~~ upon receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses ~~within 30~~ 60 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) computed from said the thirtieth day after the date of Engineer's invoice; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by

others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. Compliance with Laws and Regulations, and Policies and Procedures:

1. Engineer and Owner shall comply with applicable Laws and regulations.
2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.

G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition), with revisions by the Engineer, unless both parties mutually agree to use other general conditions by specific reference in Exhibit J. Copies of the Engineer revised document are available for review.

H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.

L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, ~~Paragraph A1.05~~. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, ~~Paragraph A1.05~~.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or

modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project, as per the requirements of paragraphs 5.04, 5.05 and 5.06 of the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition, and the Supplementary Conditions prepared by the Engineer. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

- A. Suspension:
 - 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.

2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. *Termination*: The obligation to provide further services under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination*: The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination*:

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of

personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or 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.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused

in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- E. **Mutual Waiver:** To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. **Notices:** Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. **Survival:** All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. **Severability:** Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. **Waiver:** A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. **Accrual of Claims:** To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
 1. **Additional Services** – ~~The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.~~ Any services required which are not specifically outlined in Exhibit A in this agreement shall be considered Additional Services.
 2. **Agreement** – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 3. **Asbestos** – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. **Basic Services** – The services to be performed for or furnished to Owner by Engineer in accordance with ~~Part 1 of Exhibit A~~ of this Agreement.

5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved/Reviewed Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. NOT INCLUDED
- E. Exhibit E, Notice of Acceptability of Work. NOT INCLUDED
- F. Exhibit F, Construction Cost Limit. NOT INCLUDED
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions. NOT INCLUDED

K. Exhibit K, Amendment to Owner-Engineer Agreement.- NOT INCLUDED

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

ARTICLE 9 - RESIDENCY VERIFICATION CLAUSE

- 9.01 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.
- 9.02 If the Consultant is an individual or sole proprietorship, the following applies:
- A. The Consultant must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.
 - B. If the Consultant indicates on such attestation form that he or she is a qualified alien, the Consultant agrees to provide the US Citizenship and Immigration Services documentation required to verify the Consultant's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
 - C. The Consultant understands and agrees that lawful presence in the United States is required and the Consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. Sect.4-108.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Rusty Hike

Engineer: Lamp, Rynearson & Associates, Inc.

By: Rusty Hike

By: Loren M. Steenson

Title: Chairman

Title: Loren M. Steenson, P.E.
Senior Vice President

Date Signed: 8/21/12

Date Signed: Aug 1, 2012

Engineer License or Firm's Certificate No. CA0130E
State of: Nebraska

Address for giving notices:
Sarpy Co. Clerk
1210 Golden Gate Dr.
Papillion NE 68046

Address for giving notices:
Lamp, Rynearson & Associates, Inc.
14710 West Dodge Road, Ste. 100
Omaha, NE 68154-2027

Designated Representative (Paragraph 8.03.A):
Denny Wilson

Designated Representative (Paragraph 8.03.A):
Brett Wawers, P.E.

Title: Engineer

Title: SR. Vice President

Phone Number: 402-537-6908

Phone Number: 402-496-2498

Facsimile Number: 402-537-6955

Facsimile Number: 402-496-2730

E-Mail Address: dwilson@sarpy.com

E-Mail Address: brett.wawers@lra-inc.com

Approved as to form:

[Signature]
County Attorney

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Any previously completed property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Any previously completed explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Any previously completed environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in ~~Part 2 of~~ Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. ~~Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.~~

- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services: None.

EXHIBIT C

Payments to Engineer for Services and Reimbursable Expenses

C1.01 *Compensation for Basic Services (including Resident Project Representative) – Lump Sum Method of Payment*

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, including for services of Engineer's Resident Project Representative, if any, as follows:
1. A Lump Sum amount of \$520,221.04 based on the following estimated distribution of compensation:
 - a. Paving (Arterial Street Improvements) – Design \$520,221.04
 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
 3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
 4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.
- B. Period of Service: The compensation amount stipulated in this Exhibit C is conditioned on a period of service not exceeding 15 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

C1.02 Compensation for Additional Services

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. General: For services of Engineer's personnel engaged directly on the Project pursuant to Exhibit A, except for services as a consultant or witness or for additional services as required by the project and agreed upon by the Owner and the Engineer under Exhibit A, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) a negotiated amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Raw Hourly Rates for each applicable billing class plus the overhead and fixed fee percentages as shown in Exhibit A for all Additional Services performed on the Project, plus negotiated Reimbursable Expenses and Engineer's Consultant's charges, if any.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Each Accident: \$100,000
 - 2) Disease, Policy Limit: \$500,000
 - 3) Disease, Each Employee: \$100,000
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - 2) General Aggregate: \$2,000,000
- d. Excess or Umbrella Liability --
 - 1) Each Occurrence: \$1,000,000
 - 2) General Aggregate: \$1,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
Each Accident \$1,000,000
- f. Professional Liability --
 - 1) Each Claim Made \$1,000,000
 - 2) Annual Aggregate \$1,000,000
- g. Other (specify): \$_____

2. By Owner:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Each Accident \$100,000

2) Disease, Policy Limit	<u>\$500,000</u>
3) Disease, Each Employee	<u>\$100,000</u>
c. General Liability --	
1) General Aggregate:	<u>\$2,000,000</u>
2) Each Occurrence (Bodily Injury and Property Damage):	<u>\$1,000,000</u>
d. Excess Umbrella Liability --	
1) Each Occurrence:	<u>\$1,000,000</u>
2) General Aggregate:	<u>\$1,000,000</u>
e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):	
Each Accident:	<u>\$1,000,000</u>
f. Other (specify):	<u>\$_____</u>

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:

- a. Lamp, Rynearson & Associates, Inc.
Engineer
- b. Terracon
Engineer's Consultant
- c. Thiele Geotech, Inc.
Engineer's Consultant
- d. Midwest Right-of-Way Services
Engineer's Consultant

- 2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
- 3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Dispute Resolution

Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by a mediator approved by both Engineer and Owner and experienced in resolving disputes arising for the performance of engineering services. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Limitations of Liability

Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to the Amount of \$500,000:* Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total amount of \$500,000.

RESIDENCY VERIFICATION CLAUSE

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

Fee Proposal Hours

Project Name: **Capehart Road from 81st Street to 48th Street**
 Project Number: **C-77(13-1)**
 Control Number: **[REDACTED]**
 Location (City, County): **Papillion, Nebraska, Sarpy County**
 Assistant Project Manager: **Scott Austin**
 Phone/Email: **(402) 496-2498/scott.austin@lra-inc.com**
 Responsible Charge: **Bill Herr**
 Phone/Email: **(402) 537-6900/Herrb@sarpy.com**
 Date: **July 27, 2012**

TASKS	PERSONNEL CLASSIFICATIONS**										Total	
	PR	PM	SE	SPE	PE	LSA	TECH	SSURV	SURV	CLER		
For Engineering Services:												
I. Project Management												
A. Meeting attendance												
Pre-design meeting	3	3		3								9
Progress meetings (6)		18		18								36
Plan-in-Hand meeting (1)	4	4		4								12
Public meetings (2)	6	6		6								18
B. Coordinate with Sub-consultants												
Terracon	2	16								2		20
Thiele Geotech	2	16								2		20
Midwest Right-of-Way Services	2	16								2		20
C. General Contract Administration/Scheduling												
Monthly billings	2	12										14
Maintain project schedule		8										8
II. Data Collection and Preliminary Survey												
A. Data collection												
Prepare plans and send to all the utilities with a letter							2			2		4
Mark up plans based on information received from utilities				1			2					3
Send plans back to utility companies for review and comment							1			1		2
Receive and review plans from surrounding SID's				1			1					2
B. Sarpy County information												
Permits required				1								1
Road closures		1		1								2
Construction phasing		1		1								2
C. Survey (Topo survey 60th to 84th to be provided by Sarpy County)												
Establish control points		5							12			17
Obtain & review the topographic survey from Sarpy County		1		1			1					3
Determine where additional survey will be required		1		1			1					3
Topographic survey of additional areas including 72nd St.		1					6	8	32			47
Verify topographic survey 48th to 60th		1					12	4	40			57
Obtain title searches								4				4
Complete a boundary survey for the extent of the project		2						32	80			114
III. Alignment Study at Linemann Acres												
A. Prepare plans and information for three (3) separate options	1	2		8	16		24					51
B. Determine options to reduce access points for from Linemann Acres		1		1	2							4
C. Determine options to reduce direct access driveways		1		1	2							4
D. Prepare a future development option for the property north	1	1		2	24		12					40
E. Prepare plans and profiles for all roadway options				2	16		24					42
F. Run cross-sections of all options to establish LOC's				2	16		24					42
G. Establish preliminary right-of-way requirements for each option		1		2	6		12					21
H. Prepare quantity and cost estimates for each option				1	4		6					11
I. Prepare preliminary exhibits and plans for each option		1		2	4		8					15
J. Prepare for and attend a public meeting	2	4		8	8		4			2		28
K. Track and respond to comments received		4		4	2					2		12
IV. Preliminary Design (30%)												
A. Site Meeting	4	4		4	6					2		20
Review planned alignment												
Discuss phasing plan from neighborhoods												
Discuss detour plan												
Discuss drainage improvements												
Discuss impacts to the utilities in the area												
Discuss options for Linemann Acres												
Discuss sustainability options												
Discuss any need for sidewalks or trails												
B. Signal Warrant Study at 72 nd and Capehart												
Obtain existing traffic counts and turning movements from County				1								1
Determine if signal warrants are met for the intersection				4								4
Prepare a study report		1		6			2			2		11
C. Horizontal Alignment (Capehart, 72 nd Street, Linemann, Inter.)												
Prepare horizontal alignments of the roadways				8	12		20					40
D. Vertical Alignment (Capehart, 72 nd Street, Linemann, Inter.)												
Prepare vertical alignments of the roadways		2		16	24		32					74
E. Geometrics (Capehart, 72 nd Street, Linemann, Inter.)												
Prepare geometrics for the roadways				16	16		32					64
F. Typical Sections (Capehart, 72 nd Street, Linemann, Sideroads)												
Prepare typical sections for each roadway section				4	8		12					24
G. Cross Sections (Capehart, 72 nd Street, Linemann, Inter.)												
Run cross-sections of all new roadway alignments		2		4	8		20					34
Plot and review cross sections and compare with plans		2		4	8		8					22
Revise cross-sections as needed to fit existing terrain				4	8		12					24

Fee Proposal Hours

Project Name: Capehart Road from 81st Street to 48th Street
Project Number: C-77(13-1)
Control Number: _____
Location (City, County): Papillion, Nebraska, Sarpy County
Assistant Project Manager: Scott Austin
Phone/Email: (402) 496-2498/scott.austin@ira-inc.com
Responsible Charge: Bill Herr
Phone/Email: (402) 537-6900/Herrb@sarpy.com
Date: July 27, 2012

TASKS	PERSONNEL CLASSIFICATIONS**											Total
	PR	PM	SE	SPE	PE	LSA	TECH	SSURV	SURV	CLER		
Determine limits-of-construction and adjust sections as needed		2		4	8		12					26
Show limits-of-construction and right-of-way on the cross-sections				4	6		8					18
H. Drainage												
Determine the locations of culverts and drainage structures				2	4		4					10
Determine the drainage areas contributing to each culvert				2	16							18
Complete a hydrologic/hydraulic eval. for all drainage structures				2	20							22
Size the culverts and culvert extensions					8		8					16
Evaluation of potential water quality enhancements												
Determine the need for entrance or exit treatments			4	1	8		2					15
Design of exit erosion control structures			4	1	2		2					9
Determine pipe lengths					4		2					6
Calculate excavation quantities				1	6		6					13
I. Limits of Construction (Capehart , 72nd Street, Linemann, Inter)												
Prepare the limits-of-construction for the project		1		2	6		8					17
J. Prepare 2L sheets												
Removals		1		4	12		20					37
Construction		2		4	12		24					42
Drainage structures			8	8	12		24					52
Utilities		1		2	8		12					23
K. Estimates												
Prepare quantity and cost estimates for all construction items		2	4	6	12		12					36
L. Prepare plans sheets												
Plan and profiles		4		16	20		48					88
Title sheet				1	2		4					7
2A sheets		1		1	2		8					12
2W sheet				1	2		8					11
Typical sections		1		2	4		4					11
Earthwork cross-sections												
Drainage structure plans and details		2		4	8		12					26
Sustainability memorandum		1		2	4	1				1		9
M. Submit Preliminary Plans												
Print and bind the adequate number of sets for distribution:		1		2	4		4			1		12
N. Attend Design Review Meeting		3		3	3							9
V. Public Involvement												
A. Prepare for Public Meeting		8		8	12		16					44
B. Preparation of Preliminary set of plans												
C. Preparation of Aerial Exhibits and other exhibits needed		2		2	4		8					16
VI. Plan-in-Hand												
A. Prepare for the PIH meeting		4		4	4							12
B. Prepare the PIH report and distribute for review		1	2	2						2		7
C. Make revisions as needed		1		1						1		3
VII. Geotechnical Engineering (By Thiele Geotech)												
A. Review geotechnical report		2	2	2	1							7
VIII. Environmental Documentation (By Terracon)												
A. Review the environmental documents		1		1	1							3
IX. 60% Design												
A. Break the preliminary sets into two (2) separate projects												
Divide the projects at 60 th Street		1		1	4		8					14
Prepare separate title sheets					1		2					3
B. Revise Plans												
Address comments received during the PIH												
Plan and profile sheets							40					40
Title sheet							1					1
2L sheets												
Removals				4	12		16					32
Construction				4	12		16					32
Drainage structures			16	2	12		16					46
Utilities				2	12		16					30
Jointing plans		2		8	12		16					38
Spot elevations		2		8	12		16					38
2W sheet				1	1		2					4
Typical sections		1		2	4		4					11
Earthwork cross-sections		4		8	12		24					48
Geometrics		2		4	8		12					26
LOC's				2	4		4					10
Horizontal alignment				2	2		4					8
Vertical alignment				4	8		8					20
Fencing				1	4		6					11
Retaining walls		1	16	6	6		12					41
Signing and striping				6	2		12					20
Signal infrastructure				4	2		6					12
C. Prepare erosion control plans					2		4					14
D. Meet with landowners as needed		12	12		12	4				4		44
E. Show property lines and ownerships				2	2		18					22

Fee Proposal Hours

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Assistant Project Manager: Scott Austin
Phone/Email: (402) 496-2498/scott.austin@ira-inc.com
Responsible Charge: Bill Herr
Phone/Email: (402) 537-6900/Herrb@sarpy.com
Date: July 27, 2012

TASKS	PERSONNEL CLASSIFICATIONS**											Total
	PR	PM	SE	SPE	PE	LSA	TECH	SSURV	SURV	CLER		
F. Show designated work areas and staging areas for the contractor		2		2	2			4				10
G. Prepare plans and details of the detour routes												
Route location				4	8		12					24
Phasing requirements				2	12		24					38
Lane closures				2	2		2					6
Critical detour route requirements				2	2		2					6
Maintenance of traffic to local residences and businesses				6	12		24					42
H. Special Provisions												
Utility revisions					2					1		3
Erosion control measures					2					1		3
Special progress and prosecution					2					1		3
Fencing					2					1		3
Seeding					2					1		3
Landscape items					2	2				1		5
Construction phasing					4					1		5
Rip rap					2					1		3
Geotextile fabric					2					1		3
Erosion control matting					2					1		3
Removals of existing materials					2					1		3
End treatments			4							1		5
Retaining walls			4		1					1		6
Signing and striping				2	2					1		5
Signal infrastructure				2	2					1		5
I. Estimates												
Prepare quantity and cost estimates for all construction items		2	1	2	8		8					21
J. Submit 60% Plans												
Print and bind the adequate number of sets for distribution:		1		2	4		4					11
K. Attend a Functional Design Review Meeting												
Meeting attendance		3		3	3							9
Prepare meeting minutes		1		1	2							4
L. Post Construction Stormwater Management Plan (PCSMP) Design												
Review the County's (PCSMP) requirements.				1	2							3
Complete prelim. calcs, invest. alternatives, and review costs				4	8		4					16
Attend a coordination meeting with the County		3		3	3							9
Complete the PCSMP drainage study				2	8		4					14
Complete the final design of the plan (PCSMP)				4	8		12					24
Coordinate with the County and prepare final application materials		2		1								3
X. Right-of-Way Design (Coord. With Midwest Right-of-Way Services)												
A. Prepare takings and easement exhibits							140					140
B. Write legal descriptions		8					88	72				168
C. Prepare the ROW strip map							16					16
D. Revise exhibits and legal descriptions after negotiations							35					35
E. Revise strip map							12					12
XI. 90% Design												
A. Revise Plans												
Address comments received during the functional design review												
Plan and profile sheets							32					32
Title sheet												
2L sheets												
Removals				4	8		8					20
Construction				4	8		8					20
Drainage structures			2	2	8		8					20
Utilities				2	8		8					18
Jointing plans		2		4	8		8					22
Spot elevations		2		4	8		8					22
2W sheet					1		1					2
Typical sections		1		1	2		2					6
Earthwork cross-sections		2		4	8		16					30
Geometrics		1		2	4		8					15
LOC's				1	2		4					7
Horizontal alignment		2		1	1		1					5
Vertical alignment		2		2	4		4					12
Fencing				2	4		4					10
Erosion control plans				1	4		6					11
Landscaping plans and details		2		4	4	16	16					42
Staging areas				2	2		2					6
Detour routes and details		2		8	12		16					38
Seeding				4	8		12					24
Retaining walls			4	2	4		4					14
Signing and striping				4	2		8					14
Signal infrastructure				4	2		4					10
B. NPDES Permit												
Prepare SWPPP with erosion control plans				4	4		8					16
Prepare NPDES permit and file with appropriate agencies		1		2	2							5

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Phone/Email: (402) 496-2498/scott_austin@lra-inc.com
Responsible Charge: Bill Herr
Phone/Email: (402) 537-6900/Herrb@sarpy.com
Date: July 27, 2012

TASKS	PERSONNEL CLASSIFICATIONS**											Total
	PR	PM	SE	SPE	PE	LSA	TECH	SSURV	SURV	CLER		
C. Prepare the survey control sheet		2			2		12	4				20
D. Show begin and end stations for the project				2	2		4					8
E. Prepare final sustainability memorandum		2		2	2	2				1		9
F. Special Provisions		4		4	8	2				4		22
G. Estimates												
Prepare final quantity and cost estimates for all construction items		1	2	2	8		8					21
H. Submit final plans to the County for review												
Plot and print plan sets		1		2	4		4					11
Print spec books				2	8					4		14
I. Attend a Final Design Review Meeting												
Meeting attendance		3		3	3							9
Prepare meeting minutes		1		1	2							4
XII. Final PS&E Quantities and Special Provisions												
A. Prepare a Pay Item Summary Sheet for each pay item		2		8	24		8					42
B. Prepare final Special Provisions		2		2	8					4		16
C. Prepare a Soil Compaction and Earthwork Quantity Summary table		1		2	4		4					11
D. Submit final plans and Special Provisions to the County		1		2	8		8			4		23
XIII. Bidding Phase												
A. Print plans and specifications (Assume 15 sets)					4		4			8		16
B. Send plans to bidders		1			2					4		7
C. Answer questions during bidding		4		12	12		6					34
D. Organize and attend a pre-bid meeting		3	4		4	8	8					27
E. Prepare addendum		2		4	4		8			2		20
F. Attend bid opening		2	2									4
Total Hours	47	277	71	487	865	47	1,462	124	164	72		3,616
Total Days (8 hrs)	5.9	34.6	8.9	60.9	108.1	5.9	182.8	15.5	20.5	9.0		452.0

CLASSIFICATIONS*:

PR = Principal
 PM = Project Manager
 SE = Structural Engineer
 SPE = Sr. Professional Engineer

PE = Professional Engineer
 LSA = Landscape Architect
 TECH = Technician
 SSURV = Senior Surveyor

SURV = Surveyor
 CLER = Clerical

Fee Proposal Labor Rates

Project Name: Capehart Road from 81st Street to 48th Street
Project Number: C-77(13-1)
Control Number: _____
Location (City, County): Papillion, Nebraska, Sarpy County
Consultant Project Manager: Scott Austin
Phone/Email: (402) 496-2498/scott.austin@ira-inc.com
LPA Responsible Charge: Bill Herr
Phone/Email: (402) 537-6900/Herrb@sarpy.com
Date: July 27, 2012

Labor Costs:		Hours	Actual Rate*	Amount
Code	Classification Title			
PR	Principal	47	\$65.98	\$3,101.06
PM	Project Manager	277	\$43.42	\$12,027.34
SE	Structural Engineer	71	\$43.18	\$3,065.78
SPE	Senior Professional Engineer	487	\$37.84	\$18,428.08
PE	Professional Engineer	865	\$25.38	\$21,953.70
LSA	Landscape Architect	47	\$44.44	\$2,088.68
TECH	Technician	1462	\$27.41	\$40,073.42
SSURV	Senior Surveyor	124	\$35.43	\$4,393.32
SURV	Surveyor	164	\$22.32	\$3,660.48
CLER	Clerical	72	\$16.42	\$1,182.24
TOTALS		3616		\$109,974.10

Overhead Rate:** 199.72% **Fixed Fee**:** 13.00%

CLASSIFICATIONS:

PR	=	Principal	PE	=	Senior Engineer	SURV	=	Surveyor
PM	=	Project Manager	LSA	=	Landscape Arch.	CLER	=	Clerical
SE	=	Structural Engineer	TECH	=	Technician		=	
SPE	=	Senior Professional Engineer	SSURV	=	Sr. Surveyor		=	

Fee Proposal Direct Expenses

Project Name: Capehart Road from 81st Street to 48th Street
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Phone/Email: (402) 496-2498/scott.austin@lra-inc.com
LPA Responsible Charge: Bill Herr
Phone/Email: (402) 537-6900/Herrb@sarpy.com
Date: July 27, 2012

Subconsultants:	Quantity	Unit Cost	Amount
Terracon	1	\$9,400.00	\$9,400.00
Thiele Geotech	1	\$5,425.00	\$5,425.00
Midwest Right-of-Way	1	\$108,545.00	\$108,545.00
Subtotal			\$123,370.00

Printing and Reproduction:	Quantity	Unit Cost	Amount
Full Size plan sheets	3950	\$1.50	\$5,925.00
Final mylar plots	143	\$5.60	\$800.80
Half size progress plots	5000	\$1.00	\$5,000.00
8 1/2 X 11 copies (memos, minutes, specifications, etc.)	7300	\$0.25	\$1,825.00
Obtain title searches	35	\$250.00	\$8,750.00
Subtotal			\$22,300.80

Mileage/Travel:	Quantity	Unit Cost	Amount
Mileage	600	\$0.52	\$312.00
Subtotal			\$312.00

Lodging/Meals:	Quantity	Unit Cost	Amount
Subtotal			

Other Miscellaneous Costs:	Quantity	Unit Cost	Amount
Postage (Lump Sum)	1	\$200.00	\$200.00
GPS topo equipment (Hour)	38	\$33.00	\$1,254.00
Ranger	16	\$20.00	\$320.00
Subtotal			\$1,774.00

TOTAL DIRECT EXPENSES			\$147,756.80
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Fee Proposal Project Cost

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LPA Responsible Charge: Bill Herr
Phone/Email: (402) 537-6900/Herrb@sarpy.com
Date: July 27, 2012

Labor Costs:	Hours	Rate	Amount
Personnel Classification			
Principal	47	\$65.98	\$3,101.06
Project Manager	277	\$43.42	\$12,027.34
Structural Engineer	71	\$43.18	\$3,065.78
Senior Professional Engineer	487	\$37.84	\$18,428.08
Professional Engineer	865	\$25.38	\$21,953.70
Landscape Architect	47	\$44.44	\$2,088.68
Technician	1462	\$27.41	\$40,073.42
Senior Surveyor	124	\$35.43	\$4,393.32
Surveyor	164	\$22.32	\$3,660.48
Clerical	72	\$16.42	\$1,182.24
TOTAL	3616		\$109,974.10

Direct Expenses:	Amount
Subconsultants	\$123,370.00
Printing and Reproduction Costs	\$22,300.80
Mileage/Travel	\$312.00
Lodging/ Meals	
Other Miscellaneous Costs	\$1,774.00
TOTAL	\$147,756.80

Total Project Costs:	Amount
Direct Labor Costs	\$109,974.10
Overhead @ 199.72%	\$219,640.27
Total Labor Costs	\$329,614.37
Fixed Fee @ 13.00%	\$42,849.87
Direct Expenses	\$147,756.80
PROJECT COST	\$520,221.04

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

August 28, 2012

Brett Wawers
Lamp, Rynearson & Associates
14710 West Dodge Rd., Ste. 100
Omaha NE 68154-2027

Dear Mr. Wawers,

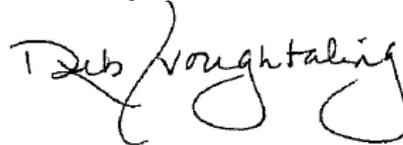
Action by the Sarpy County Board of Commissioners on August 21, 2012 is as follows:

Resolution 2012-257: Authorize Chairman to sign agreement with Lamp Rynearson and Associates for professional services for improvements to Capehart Road, 81st to 48th Street. Denny Wilson, Engineer

MOTION: Thompson resolved, seconded by Nekuda, to approve the resolution for the agreement with Lamp Rynearson and Associates for the preliminary design and final design for Capehart Road, 81st to 48th Street and a portion of 72nd Street from Capehart Road to a point 1000 feet north. Ayes: Hike, Thompson, Richards, Nekuda & Warren. Nays: None.

Enclosed are two fully executed originals for your files.

Sincerely,



Deb Houghtaling
Sarpy County Clerk

Enclosure
DH/kk