

13/001613

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

**RESOLUTION AUTHORIZING MASTER AGREEMENT WITH FYRA
ENGINEERING, LLC FOR ON CALL PROFESSIONAL SERVICES**

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2012), 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 2012), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, general supervision and control of the public roads of each county is vested in the County Board by virtue of Neb. Rev. Stat. §39-1402 (Reissue 2008); and,

WHEREAS, Sarpy County desires to enter into a Master Agreement with the firm of FYRA ENGINEERING, LLC for on call Professional Engineering Services, documents are attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT this Board hereby approves and adopts the Master Agreement and associated documents with FYRA ENGINEERING, LLC for on call professional services

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk are hereby authorized to execute on behalf of this Board , the Master Agreement with FYRA ENGINEERING, LLC 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 22nd day of October, 2013.

Attest

SEAL



[Signature]
Sarpy County Board Chairman

[Signature]
County Clerk

FYRA



PROJECT: Open Ended Engineering Services **FYRA Engineering, LLC JOB #:** 025 13-01
CLIENT: Sarpy County **SUB. CONTRACT NO.:** _____
ADDRESS: 15100 S 84th Street, Papillion NE 68046-4627
CONTACT: Pat Dowse **TEL:** 402 537 6900 **FAX:** 402 537 6955
CONSULTANT: FYRA Engineering, LLC
ADDRESS: 3925 S 147th Street Suite 117 Omaha NE 68144
CONTACT: Michael K Sotak P.E. **TEL:** 402 502 7131 **FAX:** 402 933 1346
DESCRIPTION: Master Services Agreement to provide technical assistance on an as needed basis.

COMPENSATION:

The total compensation under this Agreement shall not exceed the dollar amount indicated herein or the amount authorized by Amendment(s) and/or Notice(s) to Proceed (NTP), whichever is the lesser.

- LUMP SUM** Compensation for these services shall be a lump sum of \$ _____
- TIME AND MATERIALS** Compensation for these services will be based on the following option (per the attached Budget or List of Hourly Rates), and Reimbursable Expenses based on actual costs incurred and approved by the Client prior to the commencement of any work. No task order shall exceed \$5,000.00 under this MSA.
 - Consultant's Direct Job Wages times a factor of _____
 - List of Consultant's Hourly Rates (See Attachment)
- COST PLUS FIXED FEE** Compensation for these services shall be Subconsultant Cost plus a fixed professional fee, including Reimbursable Expenses. The estimated compensation for services is \$ _____ plus a fixed fee of \$ _____ for a total of \$ _____

COMPENSATION DETAIL (See Following Pages)

SCHEDULE OF PAYMENTS (See Following Pages)

SERVICES AUTHORIZED BY: Execution of Agreement or Amendment(s) and/or NTP

EXECUTION: Execution of this document by the Chairman and Clerk of the Sarpy County Board of Commissioners and a duly authorized representative of FYRA Engineering, LLC including FYRA Engineering, LLC's Standard Conditions (reverse side) and any attachments. Additional Provisions as indicated and addenda represents the entire Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified by written instrument, but such instrument is valid only upon signature by both parties. Consultant shall not assign, transfer, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of FYRA Engineering, LLC.

FYRA Engineering, LLC

By: Michael K Sotak PE, Owner

EXECUTED by the COUNTY this 22nd day of October, 2013.

ATTEST:

County Clerk

Approved as to form:

Sarpy County Attorney

COUNTY OF SARPY

Sarpy County Board Chairman

FYRA ENGINEERING, LLC STANDARD CONDITIONS

SERVICES. FYRA Engineering, LLC (Consultant) shall provide professional services in accordance with this Agreement on an as needed basis, requested by Sarpy County (Client) staff that include but are not limited to Pat Dowse, Bill Herr and Denny Wilson. With each request, a Work Authorization for scope of services and schedule must be completed and agreed upon by Client and Consultant. Work Authorization may be limited to a simple email, detailing tasks and approved compensation. Consultant will provide appropriate personnel, equipment and other resources reasonably necessary to perform the duties and responsibilities in the Work Authorization, and agrees not to assign or sublet any portion of work without consent of Client.

EXECUTION. This Agreement becomes effective upon signatures by authorized representatives of Client and Consultant and upon receipt of a fully executed original by Client and Consultant. If facsimile transmittal is initially sent and executed thereon by FYRA Engineering, LLC a signed original will be provided to the Client for record as soon as practicable.

INITIATION/COMPLETION. Consultant shall provide and complete these services in accordance with the terms of this Agreement and any Work Authorizations herein or initiate services in accordance with and upon receipt of Amendment(s) and/or Notice(s) to Proceed from Client as indicated on the front side of this Agreement. Established completion time shall not be extended because of unwarranted delays attributed to Consultant but shall be extended by Client in the event of delays attributed to Client or because of unavoidable delays caused by any governmental/client action or other conditions beyond the control of Consultant.

TERMINATION. This Agreement shall remain in force until terminated by written instrument by mutual agreement, or by Client for convenience, or if Consultant fails to provide services in accordance with the Agreement. In the event of such termination, Consultant shall immediately discontinue any and all work. If terminated for convenience, Consultant shall be paid for services performed prior to the date of termination. If terminated for cause, Consultant shall be paid for services performed but shall be liable for any additional costs and expenses thereby incurred by Client.

COMPENSATION. Consultant shall notify Client of the status the work completed when 75 percent of the budget authorized by each Work Authorization has been expended. In the event services beyond those specified in the Work Authorization are required, Consultant shall identify this work for Client shall submit a labor estimate for such services and a contract modification shall be negotiated and approved in writing by Client prior to any effort being expended on such services.

SCHEDULE OF PAYMENTS: Consultant shall invoice Client for work done in a monthly cycle in a format acceptable to the Client. Project costs spent by the last Friday of the cycle will be included in the FYRA Engineering, LLC invoice to the Client for the prior period. All invoices shall include a written description of the work performed, the hours and expenses incurred as a basis for payment requested, and FYRA Engineering, LLC's contract number. Invoices will be paid by the client within 30 days of the time FYRA Engineering, LLC submits the invoice.

AUDIT AND ACCESS TO RECORDS. Consultant cost records and accounts pertaining to this Agreement are to be kept for inspection by representatives of the Client for a period of three (3) years after final payment, and in accordance with any additional Agreement provisions.

OWNERSHIP OF INSTRUMENTS OF SERVICE. The Client acknowledges the Consultant's deliverables, including electronic files, as the work papers of the Consultant and the Consultants instruments of professional service. Nevertheless, the deliverable prepared under this Agreement shall become the property of the Client upon completion of the services and payment in full of all monies due to the Consultant. The Client shall not reuse or make any modification to the documents without the prior written authorization of the Consultant. The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents from or through the Client without the written authorization of the Consultant.

Under no circumstances shall the transfer of ownership of the Consultant's documents be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose, nor shall such transfer be construed or regarded as any waiver or other relinquishment of the Consultant's copyrights in any of the foregoing, full ownership of which shall remain with the Consultant, absent the Consultant's express prior written consent.

FYRA



EQUAL OPPORTUNITY EMPLOYMENT. Consultant shall comply with the applicable provisions of federal and state Equal Opportunity Employment. Subconsultant will comply with applicable local, state, and federal regulations concerning minority hiring. Consultant shall treat applicants and employees equally without regard to race, creed, sex, age, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community, of its continuous commitment to equal opportunity and fair employment practices.

Consultant's equal opportunity employment practices extend to all phases of employment, including recruiting, hiring, job assignment, supervision, training, upgrading, transfer, compensation, benefits, promotion, education, recreation, layoff and termination.

INDEPENDENT CONSULTANT AND STANDARD OF CARE. Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Services provided by Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

COMPLIANCE WITH LAWS, ORDINANCES, AND CITY, COUNTY, AND STATE LICENSING. Consultant shall comply with Federal, State, and local laws, ordinances, and City, County, and State licensing (professional business, etc.) requirements applicable to the services to be provided under this Agreement.

INSURANCE. Consultant shall procure and maintain the following insurance which shall provide primary coverage with respect to the services provided under this Contract. FYRA Engineering, LLC's insurance shall be excess and noncontributory.

- a. **Worker's Compensation (and Employer's Liability Insurance)** — as required by applicable state statute;
- b. **Commercial General Liability** — \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate;
- c. **Automobile Liability** — minimum of \$1,000,000 combined single limit for bodily injury and property damage, and
- d. **Professional Liability** — \$1,000,000 each claim and \$2,000,000 in the aggregate.

All policies shall be endorsed to provide Client with 30 days' written notice prior to cancellation of the insurance. Policies b. and c. shall name Client as additional insureds. Claims-made policies shall be kept in force during and for two years after completion of the services. Consultant shall submit Certificates or Evidence of Self Insurance for the above policies to Client prior to commencing work.

INDEMNIFICATION AND HOLD HARMLESS. Consultant shall indemnify and hold harmless the Client and its employees and agents from any and all liability, settlements, loss, defense costs, and expenses in connection with any action, suit, or claim resulting from the negligent acts, errors, or omissions in services provided pursuant to this Agreement by Consultant, its employees, or its subconsultants and/or subcontractors. Client shall indemnify and hold harmless the Consultant and its employees and agents from any and all liability, settlements, loss, defense costs, and expenses in connection with any action, suit, or claim resulting from the negligent acts, errors, or omissions in services provided pursuant to this Agreement by Client, its employees, or other consultants and/or subcontractors. However, if any such liability, settlements, loss, defense costs or expenses result from the concurrent negligence of Client and Consultant this indemnification applies only to the extent of the negligence of Consultant. Any liability on the part of the Client is limited to the extent provided by the Nebraska Political Subdivisions Tort Claims Act and any other applicable provisions of law.

DISPUTES. In the event of a dispute between parties, FYRA Engineering, LLC shall have the right to join any other subconsultant(s) or Client as a party or parties to the dispute proceeding, if in the judgment of FYRA Engineering, LLC the dispute may involve the Client and/or another subconsultant and/or consultant. Any action for claims arising out of or relating to this Agreement and/or respective services shall be governed by the laws of the State of Nebraska. Venue shall be in Douglas County District Court. Mediation is an express condition precedent to the filing of any legal action. Unless the parties agree otherwise, the mediation shall be conducted pursuant to the Construction Mediation Rules of the American Arbitration Association.

FYRA



LIMITATION OF LIABILITY. 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, Consultant and all other negligent entities and individuals.

RESIDENCY VERIFICATION CLAUSE: Pursuant to Neb. Rev. Stat. § 4-114 et seq., each party shall 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.

NONDISCRIMINATION CLAUSE: Pursuant to Neb. Rev. Stat. § 73-102, the parties declare, promise, and warrant that they have and will continue to comply fully with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.A. § 1985, et seq.), and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. § 48-1101, et seq., in that there shall be no discrimination against any employee who is employed in the performance of this Agreement, or against any applicant for such employment, because of age, color, national origin, race, religion, creed, disability or sex.

CONFLICT OF INTEREST: Pursuant to Neb. Rev. Stat. § 23-3113, the Parties hereto declare and affirm that no officer, member, or employee of the Client, and no member of its governing body, and no other public official of the Client who exercises any functions or responsibilities in the review or approval of the undertaking described in this Agreement, or the performing of services pursuant to this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or any corporation, partnership, or association in which he or she is directly or indirectly interested; nor shall any employee of the Client, nor any member of its governing body, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

FYRA



FYRA Engineering Schedule of Fees/Expenses

Current Standard Rates

Title	Rate
Project Manager / Principal Engineer	\$180/hr
Senior Scientist	\$170/hr
Senior Project Engineer	\$125/hr
Project Engineer	\$105/hr
CADD Technician	\$70/hr
Clerical	\$60/hr
Student Intern	\$40/hr

Reimbursable Expenses

8"x11" Copies/ B&W	<u>\$0.10</u> /page
8"x11" Copies/ Color	<u>\$0.30</u> /page
11" x 17" Copies / B&W	<u>\$0.15</u> /page
11" x 17" Copies / Color	<u>\$0.45</u> /page
Presentation Boards (Color Plot)	<u>\$5.00</u> /Per Sq. Ft.
Presentation Boards (Foam Board Mount)	<u>\$10.00</u> /Per Sq. Ft.
Mileage (auto)	<u>\$0.565</u> /mile
Meals and Lodging	at cost

* All other direct costs will be invoiced at actual cost plus 15% overhead.