RESOLUTION APPROVING AGREEMENT WITH HGM ASSOCIATES INC. FOR ENGINEERING SERVICES – HARLAN LEWIS ROAD BRIDGE REDECK FEASIBILITY STUDY

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104(6), 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, the powers of the County as a body are exercised by the County Board; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 39-810, the County may erect and repair all bridges and the approaches thereto; and,

WHEREAS, the County has determined that the Harlan Lewis Road Bridge may be in need of deck replacement in order to maintain safe roadways for the citizens of Sarpy County; and,

WHEREAS, HGM Associates Inc. has the ability to provide the Engineering services necessary to conduct a study to determine the feasibility of replacing the deck on the Harlan Lewis Road Bridge over the Papillion Creek; and,

WHEREAS, it is in the best interests of the citizens of Sarpy County to enter into such an agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF SARPY COUNTY, NEBRASKA, the Agreement with HGM Associates Inc. for Engineering Services – Harlan Lewis Road Bridge Redeck Feasibility Study, a copy of which is attached hereto, is hereby approved.

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk are hereby authorized to execute said Agreement, and any other related documents, the same being approved by the Board, on behalf of Sarpy County, Nebraska.

The above resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with the applicable law on the __________ day of _______________, 2018.

Attest: ___________________________ ___________________________
Sarpy County Board Chairman     County Clerk

Seal: ___________________________ ___________________________

2018-167
May 21, 2018

Pat Dowse, PE
Sarpy County
15100 S. 84th Street
Papillion, Nebraska 68046

Subject: Harlan Lewis Road Bridge – Redeck Feasibility
HGM Proposal No. 000717-187

Dear Pat:

On behalf of HGM ASSOCIATES INC. (HGM) we are pleased to submit this letter form agreement for engineering services for the referenced project. This agreement consists of this letter, the attached Scope of Services labeled as Exhibit A and the attached General Provisions labeled as Exhibit B.

HGM will provide Basic Services including preparing a Study and Report. These services are more specifically defined in the attached Scope of Services, Exhibit A. We will also provide Additional Services upon your request and receipt of your written authorization.

HGM will provide these Basic Services for a lump sum amount of $6,800. Additional Services will be charged on an hourly basis in accordance with our standard hourly rate schedule.

We will bill you monthly for our services and reimbursable expenses proportionate to the work completed on the project. All fees are due and payable to HGM within 30 days of the invoice date. A service charge of one and one-half percent per month will be added to any amounts outstanding after 30 days.
We anticipate that we will be able to begin work on this project immediately upon receiving your authorization to proceed in the form of your acceptance of this agreement. We estimate that all work can then be completed within 6 weeks of your signed notice to proceed. If at any time we are delayed in the performance of these services, we will notify you immediately. Please note that any information to be provided by you as defined under Client's Responsibilities in the attached Scope of Services will need to be furnished to HGM prior to our beginning work.

Please indicate your acceptance of this agreement by signing where indicated below and returning one original signed copy to this office. We sincerely appreciate the opportunity to work with you.

Yours very truly,
HGM ASSOCIATES INC. - CONSULTANT

[Signature]
Stephen W. Moffitt, PE
Vice President

Acceptance of Proposal:
SARPY COUNTY

[Signature]
Donald R. Kelly, Sarpy County Board Chairman
Printed Name & Title

6/12/18
Date of Acceptance

Approved as to form:

[Signature]
Deputy Sarpy County Attorney
This is an exhibit attached to and made part of the letter agreement dated May 21, 2018, between: SARPY COUNTY (CLIENT) and HGM ASSOCIATES INC. (HGM) (CONSULTANT).

Subject: Harlan Lewis Road Bridge – Redeck Feasibility
        HGM Proposal No. 000718-148

The Basic Services to be provided by the CONSULTANT under this agreement are further described as follows:

I. FEASIBILITY STUDY
   A. CONSULTANT will prepare a study of the feasibility of replacing the deck on the Harlan Lewis Road bridge over Papillion Creek. Study will include a cost estimate of the replacement project, a determination of the maximum width the existing bridge beams can support, and a load rating analysis to determine the effect a new deck will have on the load carrying capacity of the bridge.
   B. Field measurement will be taken to allow a load rating of the bridge to be performed without the as built plans.

CLIENT'S RESPONSIBILITIES:

In order for the CONSULTANT to perform these services, the CLIENT agrees to furnish the following information:
   A. Provide existing plans and load rating information to the CONSULTANT.
This is an exhibit attached to and made part of the letter agreement dated May 21, 2018 between: SARPY COUNTY PUBLIC WORKS (CLIENT) and HGM ASSOCIATES INC. (CONSULTANT). The General Provisions agreed to by CONSULTANT and CLIENT are as follows:

**ENTIRE AGREEMENT:** This Agreement, comprising pages 1 through 2 and Exhibits A and B, is the entire Agreement between the Client and the Consultant. It supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by both the Client and the Consultant.

**OWNERSHIP OF INSTRUMENTS OF SERVICE:** All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by the CONSULTANT as instruments of service shall remain the property of the CONSULTANT. The CONSULTANT shall retain these records for a period of ten (10) years, during which period they will be made available to the CLIENT at reasonable times. CONSULTANT will provide CLIENT with a paper copy of the plans, the specifications, and laboratory test reports for information and reference in connection with the project; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others. Any such reuse will be at CLIENT’S sole risk and without liability or legal exposure to CONSULTANT or CONSULTANT’S subconsultants.

**CADD/ELECTRONIC FILES:** In accepting, and utilizing any drawings, reports and data on any form of electronic media generated by the CONSULTANT, the CLIENT agrees that all such electronic files are instruments of service. The CLIENT agrees to waive all claims against the CONSULTANT resulting in any way from any unauthorized changes to, or reuse of, the electronic files for any projects by anyone other than the CONSULTANT. In the event of a conflict between printed hard copy documents signed and sealed by the CONSULTANT and electronic files, the hard copy documents shall govern.

**TERMINATION OR SUSPENSION:** If the CLIENT fails to make payments to the CONSULTANT in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the CONSULTANT’S option, cause for suspension of performance of services under this Agreement. If the CONSULTANT elects to suspend services, the CONSULTANT shall give seven days’ written notice to the CLIENT before suspending services. In the event of a suspension of services, the CONSULTANT shall have no liability to the CLIENT for delay or damage caused the CLIENT because of such suspension of services. Before resuming services, the CONSULTANT shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the CONSULTANT’S services. The CONSULTANT’S fees for the remaining services and the time schedules shall be equitably adjusted.

If the CLIENT suspends the Project, the CONSULTANT shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the CONSULTANT shall be compensated for expenses incurred in the interruption and resumption of the CONSULTANT’S services. The CONSULTANT’S fees for the remaining services and the time schedules shall be equitably adjusted.

Either party may terminate this Agreement upon not less than seven days’ written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

In the event of termination not the fault of the CONSULTANT, the CONSULTANT shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses indicated in the next paragraph.

Termination Expenses are in addition to compensation for the CONSULTANT’S services and include expenses directly attributable to termination for which the CONSULTANT is not otherwise compensated.

The CLIENT’S rights to use the CONSULTANT’S Instruments of Service in the event of a termination of this Agreement are set forth in the Ownership of Instruments of Service clause above. If the CLIENT requests copies of the CONSULTANT’S Instruments of Service, the cost of the preparation of those copies shall be considered as a Termination Expense.

**PLAN REVISIONS:** If, after any plans or specifications are completed on any portion thereof, and are approved by the CLIENT and other necessary agencies, the CONSULTANT is required to change plans and specifications because of changes made, authorized, or ordered by the CLIENT, then the CONSULTANT shall receive additional compensation for such changes. Fees for these changes will be computed on an hourly basis.

**INFORMATION FURNISHED BY CLIENT:** CLIENT shall be responsible for, and CONSULTANT may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data and other information furnished by CLIENT to CONSULTANT pursuant to this Agreement. CONSULTANT may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

**INFORMATION FURNISHED BY UTILITY COMPANIES:** The utility locations shown on the CONSULTANT’S instruments of service are from locates or drawings provided to the CONSULTANT by the utility companies. The CONSULTANT makes no guarantee that the utilities shown on the CONSULTANT’S instruments of service comprise all such utilities in the area, either in service or abandoned. The CONSULTANT further does not warrant that the utilities shown on the instruments of service are in the exact location indicated.

**SUCCESSORS AND ASSIGNS:** Both parties agree that, upon execution of this agreement, same shall be binding upon their/its successors, assigns, and legal representatives until terminated by the expiration of agreement or termination by written notice, as provided above.
**Limitation of Liability**: The CLIENT agrees that to the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT, CONSULTANT’S officers, directors, partners, employees, agents, and subconsultants, to CLIENT, and anyone claiming by, through, or under CLIENT for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to this Project or Agreement from any cause or causes, including but not limited to torts, negligence, professional errors or omissions, strict liability, breach of contract, or breach of warranty, shall not exceed the total compensation received by CONSULTANT or $100,000 whichever is greater.

**Waiver of Consequential Damages**: Notwithstanding anything in this Agreement to the Contrary, it is agreed that CONSULTANT shall not be liable in any event for any special or consequential damages suffered by the CLIENT arising out of the services hereunder. Special or consequential damages as used herein shall include, but not limited to, loss of capital, loss of product, loss of use of any system, or other property, or any other indirect, special or consequential damage, whether arising in contract, tort (including negligence), warranty or strict liability.

**Opinion of Probable Construction Cost**: Opinions of probable construction costs and detailed cost estimates prepared by the CONSULTANT represent his/her best judgment as a design professional familiar with the construction industry. It is recognized, however, that the CONSULTANT has no control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices or over competitive bidding or market conditions. Accordingly, the CONSULTANT makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from the CONSULTANT’s opinion of probable construction cost.

**Construction Phase Services**: (If included under the scope of this Agreement) The CONSULTANT shall provide administration of the Contract between the CLIENT and the Contractor as set forth below and in General Conditions of the Contract for Construction. The CONSULTANT’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the CONSULTANT issues the Statement of Final Completion.

The CONSULTANT shall advise and consult with the CLIENT during the Construction Phase Services. The CONSULTANT shall have authority to act on behalf of the CLIENT only to the extent provided in this Agreement or the General Conditions of the Contract for Construction. The CONSULTANT shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the CONSULTANT be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

The CONSULTANT shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in substantial compliance with the Contract Documents. However, the CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the CONSULTANT shall keep the CLIENT reasonably informed about the progress and quality of the portion of the Work completed, and report to the CLIENT (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

**Jobsite Safety**: That the General Contractor shall be solely responsible for jobsite safety, and that this intent shall be carried out in the CLIENT’S contract with the General Contractor, and that such contract shall indemnify the CONSULTANT. The CONSULTANT, and his agents, shall be named as an additional insured on the General Contractor’s policies of general liability insurance.

**Construction Staking**: That the Fees the CONSULTANT receives for the task of construction staking are not commensurate with the potential risk. CLIENT, therefore, agrees to check or require General Contractor to check the location of all construction stakes placed by the CONSULTANT. CLIENT further agrees to limit liability of CONSULTANT for construction staking services such that the total liability of the CONSULTANT shall not exceed the CONSULTANT’S compensation received for the particular service, or $5,000.00, whichever is greater.

**Hazardous Materials**: The CLIENT agrees that the CONSULTANT’s scope of services does not include any services related to the presence of any asbestos, fungi, bacteria, mold or hazardous or toxic materials. Should it become known to the CONSULTANT that such materials may be present on or adjacent to the jobsite, the CONSULTANT may, without liability for any damages, suspend performance under this agreement, until CLIENT takes appropriate action to remove or abate said materials. The CLIENT further agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, partners, employees and subconsultants (collectively, CONSULTANT) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys’ fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos, fungi, bacteria, mold, hazardous or toxic substances, or products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the CONSULTANT.

**Mediation**: Any claims or disputes under this agreement shall be submitted to non-binding mediation.
**Indemnification:** The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable. Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

**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.

**Insurance:** During the course of services provided for by this Agreement, the Consultant shall maintain Worker’s Compensation Insurance in accordance with the Worker’s Compensation laws of the State of Nebraska; Professional Liability Insurance with a minimum coverage of $1,000,000 per occurrence, $2,000,000 aggregate; Automobile Liability Insurance with a combined single limit coverage of $1,000,000 for each accident; and Commercial General Liability of $1,000,000 per occurrence, $2,000,000 aggregate. For the Commercial General Liability and Automobile Liability Insurance, the Client is to be named as an additional insured on the insurance coverage identified in this section. In addition, the insurance coverage identified in this section shall be kept in force during the life of the Agreement and if there is any event of cancellation or, or material change in any of the insurance coverage, the Consultant shall notify the Client within thirty (30) days. The Consultant shall furnish proof of insurance coverage, if requested by the Client.

**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.
MEMORANDUM

TO: Sarpy County Board of Commissioners

FROM: Patrick M. Dowse, PE, Chief Deputy Engineer

DATE: June 8, 2018

SUBJECT: Resolution Approving Agreement with HGM Associates Inc. for Engineering Services – Harlan Lewis Road Bridge Redeck Feasibility Study

The Public Works Department has initiated HGM Associates Incorporated to conduct a redeck feasibility of County Bridge Number 5, on Harlan Lewis Road north of HWY 34. This study is to determine the best course of action for deck replacement of the bridge deck through field inspection, engineering analysis and production of cost estimates. Completing the study prior to initiating a full design will give Public Works a better understanding of the condition of the structure and allow for a more informed decision on how to approach this bridge rehabilitation project. The cost for this study is $6,800.

The Public Works Department hereby recommends that the pending resolution be approved by the County Board.

If you have any questions, please contact me at 402-537-6917.