RESOLUTION APPROVING AND AUTHORIZING CHAIRMAN TO SIGN PROFESSIONAL SERVICES AGREEMENT WITH BURNS AND MCDONNELL

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, the County desires to enter into a master services agreement with Burns and McDonnell for Professional Services, under which agreement specific task orders may be issued; and,

WHEREAS, Burns and McDonnell has provided an agreement which outlines the responsibilities of both parties; and,

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

NOW THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT this Board hereby approves and authorizes the Chairman to sign Professional Services Agreement with Burns and McDonnell for Sarpy County, Nebraska, attached hereto, is hereby approved.

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 11th day of December 2018.

Attest

SEAL

Sarpy County Board Chairman

County Clerk
This AGREEMENT is made as of Dec. 11, 2018, by and between Sarpy County, Nebraska (hereinafter called OWNER) and Burns & McDonnell Engineering Company, Inc. (hereinafter called ENGINEER).

OWNER from time to time requires professional services in connection with construction, design, operation and maintenance. Therefore, OWNER and ENGINEER, in consideration of their mutual covenants, agree as follows:

ENGINEER shall serve as OWNER’S professional engineer in those assignments to which this AGREEMENT applies, and shall give consultation and advice to OWNER during the performance of ENGINEER’S services. Each assignment shall be documented by a Task Order.

SECTION 1 - AUTHORIZATION OF SERVICES

1.1 Services on any assignment shall be undertaken only upon written authorization of OWNER and agreement of ENGINEER. The parties shall use the form of Task Order attached hereto as Exhibit A.

1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of ENGINEER.

1.3 This Agreement is not a commitment by OWNER to ENGINEER to issue any Task Orders.

SECTION 2 - BASIC SERVICES OF ENGINEER

2.1 General. The Basic Services to be provided may include any of those tasks listed in this Section 2, as identified in the Task Order for a specific project.

2.1.1 Civil, structural, mechanical, electrical engineering services, architectural, environmental services, or other consulting services identified in the Task Order(s).

2.1.2 Advise OWNER as to the necessity of OWNER providing or obtaining services or data from others described in Paragraph 4.3, make recommendations as to the possible sources of such services, and act as OWNER’S representative in connection with any such services.

2.2 Concept Development

2.2.1 Consult with OWNER to determine OWNER’S requirements for the Project and available data.

2.2.2 Provide special analyses of OWNER’S needs, planning surveys, site evaluations, and comparative studies of prospective sites and solutions.

2.2.3 Provide general economic analyses of OWNER’S requirements applicable to various alternatives.

2.2.4 Prepare a Concept Development Report summarizing studies performed in accomplishing Paragraphs 2.2.2 and 2.2.3, including findings and recommendations for the Project, and furnish a maximum of five review copies of the Report to OWNER.

2.3 Schematic Design Services

2.3.1 On the basis of OWNER’S concurrence with recommendations of the Concept Development Report, prepare schematic design documents indicating clearly the considerations involved and the
alternative solutions available to OWNER; the schematic design shall include schematic layouts, sketches, and preliminary design criteria, and set forth ENGINEER’S recommendations and establish the scope of the Project.

2.3.2 Prepare a preliminary cost opinion for the Project.

2.3.3 Furnish five copies of the above schematic documents and cost opinion.

2.3.4 Revise schematic design documents in response to OWNER’S and other parties' comments, as appropriate, and furnish five final copies of the revised schematic design documents to the OWNER.

2.4 Preliminary Design Services

2.4.1 On the basis of the approved schematic design documents, prepare preliminary design documents consisting of final design criteria, preliminary drawings, and outline specifications.

2.4.2 Prepare a revised preliminary cost opinion for the Project based on the information contained in the preliminary design documents.

2.4.3 Furnish five approval copies of the above preliminary design documents and revised cost opinion.

2.5 Final Design Services

2.5.1 On the basis of the approved preliminary design documents, prepare for incorporation in the Contract Documents detailed drawings to show the character and scope of the Work to be performed by contractors on the Project (hereinafter called the "Contract Drawings"), and Invitation to Bid, Instructions to Bidders, Bid Form, Agreement and Bond forms, General Conditions, and Specifications (all of which, together with the Contract Drawings, are hereinafter called the "Bid Documents") for review and approval by OWNER, its legal counsel, and other advisors as appropriate, and assist OWNER in the preparation of other related documents.

2.5.2 Provide technical criteria, written descriptions, and design data for OWNER’S use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.

2.5.3 Advise OWNER of adjustments in excess of ten percent of the cost opinion for the Project caused by changes in scope, design requirements, or construction costs and furnish a revised cost opinion for the Project based on the final Bid Documents.

2.5.4 Furnish five approval copies of the final Bid Documents.

2.6 Bidding or Negotiating Services

2.6.1 Assist OWNER in obtaining and evaluating bids or negotiating proposals and preparing construction contracts.

2.6.2 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime construction contractor(s) [hereinafter called "Contractor(s)"], for those portions of the work as to which such acceptability is required by the Bid Documents.

2.6.3 Make recommendations regarding award of construction contracts.

2.7 Construction Phase Services
2.7.1 Consult with and advise OWNER and act as OWNER’S engineer as provided in ENGINEER’S standard General Conditions for the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of ENGINEER as assigned in said General Conditions shall not be modified without ENGINEER’S written consent.

2.7.2 Consult with and advise OWNER and act as OWNER’S engineer as may be provided in OWNER’S construction contract conditions furnished pursuant to Paragraph 4.11 herein. The extent and limitations of the duties, responsibilities, and authority of ENGINEER as may be assigned in said construction contract conditions or in supplements prepared thereto shall not be modified without ENGINEER’S written consent.

2.7.3 As OWNER’S engineer, ENGINEER shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions or programs, or for Contractor’s failure to perform construction work in accordance with the Contract Documents, all of which shall remain the sole responsibility of the OWNER’S Contractor.

2.7.4 Review Contractor(s) schedules for Work progress, equipment and materials procurement, submittals, and values for partial pay purposes, and project cash flow requirements.

2.7.5 Review and accept Submittals of Contractor(s) for conformance with the design concept and intent of the Contract Documents.

2.7.6 Make visits to the Site at intervals appropriate to the stages of construction to (consult with and advise ENGINEER’S Resident Project Representative, if any, and) observe the progress and quality of the executed Work, and to determine, in general, if the Project is proceeding in accordance with the Contract Documents. ENGINEER shall not be required to make exhaustive or continuous inspections to check the quality or quantity of the Work.

2.7.7 Issue all instructions of OWNER to Contractor(s); prepare routine Supplemental Instructions, Change Orders and Construction Change Directives, as required; act as interpreter of the terms and conditions of the Contract Documents and judge of the performance thereunder by the parties thereto, and make decisions on claims of OWNER and Contractor(s) relating to the execution and progress of the Work and other matters and questions related thereto; but ENGINEER shall not be liable for the results of any such interpretations or decisions rendered by ENGINEER in good faith.

2.7.8 Review Contractor(s) applications for payment and supporting data, determine the amounts owing to Contractor(s), and approve in writing all payments to Contractor(s) in accordance with the Contract Documents.

2.7.9 Render periodic Work progress reports to OWNER.

2.7.10 Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the Project has been completed in general in accordance with the Contract Documents, so that ENGINEER may approve, in writing, final payment to each Contractor.

2.8 Post-Construction Services

2.8.1 Provide qualified engineers during equipment start-up and instruct OWNER’S personnel in equipment function and intended use.

2.8.2 Prepare a reproducible Record Set of drawings revised to show significant changes made during construction of the Project in accordance with records provided by Contractor and ENGINEER’S Resident Project Representative, if any.
SECTION 3 - ADDITIONAL SERVICES OF ENGINEER

3.1 General
If authorized in writing by OWNER and agreed to in writing by ENGINEER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services. The scope of Additional Services may include:

3.1.1 Grant and Loan Assistance
Prepare applications and supporting documents for governmental grants, loans, or advances.

3.1.2 Financial Consultation
Consult with OWNER’S fiscal agents and bond attorneys and provide such engineering data as required for any bond prospectus or other financing requirements.

3.1.3 Property Procurement Assistance
Determine land and easement requirements and provide consultation and assistance on property procurement as related to professional services being performed.

3.1.4 Administrative Assistance
Provide Contract and Project administration to the degree authorized by OWNER.

3.1.5 Obtaining Services of Others
Provide through subcontract the services or data set forth in Paragraph 4.3.

3.1.6 Furnishing renderings or models of the Project for OWNER’S use.

3.1.7 Miscellaneous Studies
Investigations involving detailed consideration of operations, maintenance, and overhead expenses, and the preparation of rate schedules, earnings, and expense statements; feasibility studies; appraisals and valuations; detailed quantity surveys of material, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.

3.1.8 Extraordinary Construction-Related Services

3.1.8.1 Additional or extended services during construction made necessary by a force majeure, act of God, governmental action, severe weather, vandalism, terrorism, or other extraordinary event.

3.1.8.2 Consultation or other services after completion of the Construction Phase, such as frequent inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any construction contract.

3.1.8.3 Preparing to serve or serving as a witness for OWNER in any litigation or other legal or administrative proceeding involving the Project.

3.1.9 Preparation of an operating manual for use by OWNER.

3.1.10 Extra Services not specifically defined above that may be authorized by OWNER.

3.2 Resident Services During Construction

3.2.1 If requested by OWNER or recommended by ENGINEER and agreed to in writing by the other party, a Resident Project Representative and assistants shall be furnished and shall act as directed by
ENGINEER in order to provide more extensive representation at the Project site during the Construction Phase.

3.2.2 The Resident Project Representative, through more extensive on-site observations of the work in progress, field checks of materials and equipment, and maintenance of jobsite records on conditions and activities, shall assist ENGINEER in determining that the Project is proceeding in accordance with the Contract Documents. However, the furnishing of such resident project representation shall not make ENGINEER responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs, or for Contractor(s’ failure to perform the construction work in accordance with the Contract Documents.

3.3 Contingent Additional Services

3.3.1 If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the ENGINEER’S control, the ENGINEER shall notify the OWNER prior to commencing such services. If the OWNER deems that such services described in Section 3.3 are not required, the OWNER shall give prompt written notice to the ENGINEER. If the OWNER indicates in writing that all or part of such Contingent Additional Services are not required, the ENGINEER shall have no obligation to provide those services.

3.3.2 Making revisions in Drawings, Specifications, or other documents when such revisions are:

3.3.2.1 inconsistent with approvals or instructions previously given by the OWNER, including revisions made necessary by adjustments in the OWNER’S program or Project Budget.

3.3.2.2 required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents.

3.3.2.3 due to changes required as a result of the OWNER’S failure to render a decision in a timely manner.

3.3.3 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the OWNER’S schedule, or the method of bidding or negotiating and contracting for construction.

3.3.4 Preparing Drawings, Specifications, and other documentation and supporting data, evaluating Contractor’s proposals, and providing other services in connection with Change Orders and Work Change Directives.

3.3.5 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revision to Drawings, Specifications, and other documentation resulting therefrom.

3.3.6 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.7 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the OWNER or Contractor under the Contract for Construction.

3.3.8 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

3.3.9 Prolonged construction administration more than sixty (60) days after substantial completion, or acceleration of the work schedule involving services beyond normal working hours.
3.3.10 Preparing documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the Final Design Phase.

SECTION 4 - RESPONSIBILITIES OF OWNER

OWNER shall, within a reasonable time, so as not to delay the services of ENGINEER:

4.1 Provide full information as to OWNER'S requirements for the Project.

4.2 Assist ENGINEER by placing at ENGINEER'S disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.

4.3 Furnish engineering services or data, such as core borings, probings and subsurface explorations; hydrographic surveys; laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, topographic, and utility surveys; zoning and deed restrictions; and other special data or consultations, all of which ENGINEER may rely upon in performing its services under this AGREEMENT.

4.4 Guarantee access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform its services under this AGREEMENT.

4.5 Examine all studies, reports, sketches, cost opinions, Bid Documents, Drawings, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.

4.6 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.

4.7 Designate in writing a person to act as OWNER'S representative with respect to the services to be performed under this AGREEMENT. Such person shall have complete authority to transmit instructions; receive information; interpret and define OWNER'S policies and decisions with respect to materials, equipment, elements, and systems to be used in the Project; and other matters pertinent to the services covered by this AGREEMENT.

4.8 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in the Project.

4.9 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

4.10 Furnish, or direct ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this AGREEMENT or other services as required.

4.11 If ENGINEER'S standard bidding requirements, agreement forms, and General Conditions are not to be used, but OWNER'S documents are to be used instead, OWNER shall provide copies of such documents for ENGINEER'S use in coordinating the Contract Drawings and Specifications.

4.12 Prior to commencement of the services under any Task Order, the ENGINEER may request in writing that the OWNER provide reasonable evidence that the OWNER has made financial arrangements to fulfill the OWNER'S obligations under this Agreement and the Task Order. Thereafter, the ENGINEER may request such evidence if: (1) the OWNER fails to make a payment to the ENGINEER as required; (2) a change in the scope materially changes the contract amount; or (3) the ENGINEER identifies in writing a reasonable concern regarding the OWNER'S ability to make payment when due. The OWNER shall furnish such evidence as a condition precedent to commencement or continuation of the ENGINEER'S services. After the OWNER furnishes the evidence, the OWNER shall not materially vary such financial arrangements without prior notice to the ENGINEER.
SECTION 5 - PERIOD OF SERVICE

5.1 This AGREEMENT will become effective upon the first written notice by OWNER authorizing services hereunder.

5.2 This AGREEMENT shall be applicable to all assignments authorized by OWNER and accepted by ENGINEER subsequent to the date of its execution. All assignments authorized prior to the execution of this document, even if performed in whole or in part before the execution date, shall be governed by the terms and conditions of this AGREEMENT.

5.3 The provisions of this AGREEMENT have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the services stated in the AGREEMENT. ENGINEER'S obligation to render services hereunder will extend for a period which may reasonably be required for the completion of said services.

SECTION 6 - COMPENSATION

6.1 Compensation. OWNER shall pay ENGINEER for services rendered and reimbursable expenses as follows, or as stated in the Task Order(s):

- All labor and expenses will be charged in accordance with the current Schedule of Hourly Professional Service Billing Rates

6.2 Statements
Monthly statements, in ENGINEER'S standard format, will be submitted by the ENGINEER to the OWNER.

6.2.1 Statements will be based on the ENGINEER'S estimated percent of services completed at the end of the preceding month.

6.2.2 Statements will be submitted for payment covering services performed, costs and expenses incurred, and appropriate fee or markup (if applicable) during the preceding month.

6.2.3 Statements will be submitted for payment representing milestones achieved or deliverables submitted according to the Payment Schedule.

6.3 Payments
Statements are payable upon receipt. Time is of the essence in payments of statements, and timely payment is a material part of the consideration of this AGREEMENT. Costs, including reasonable attorney's fees, incurred by the ENGINEER in collecting any delinquent amount shall be reimbursed by the OWNER. If a portion of ENGINEER'S statement is disputed by OWNER, the undisputed portion shall be paid by OWNER by the due date. The OWNER shall advise the ENGINEER in writing of the basis for any disputed portion of any statement.

6.4 Taxes
Taxes, other than United States federal and state income taxes, and Kansas City, Missouri earnings tax, as may be imposed by the United States, state, and local authorities, shall be in addition to the payment stated under "Amount of Payment".
SECTION 7 - GENERAL CONSIDERATIONS

7.1 Insurance

7.1.1 During the course of performance of these services, ENGINEER will maintain (in United States Dollars) the following insurance coverages:

<table>
<thead>
<tr>
<th>Type of Coverage</th>
<th>Limits of Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers' Compensation</td>
<td>Statutory</td>
</tr>
<tr>
<td>Employers' Liability</td>
<td>$500,000 Each Accident</td>
</tr>
<tr>
<td>Commercial General Liability</td>
<td></td>
</tr>
<tr>
<td>Bodily Injury and Property Damage</td>
<td>$1,000,000 Each Occurrence and Annual Aggregate</td>
</tr>
<tr>
<td>Automobile Liability:</td>
<td></td>
</tr>
<tr>
<td>Bodily Injury and Property Damage</td>
<td>$1,000,000 Each Accident</td>
</tr>
<tr>
<td>Professional Liability:</td>
<td>$1,000,000 Per Claim and Annual Aggregate</td>
</tr>
</tbody>
</table>

The insurance coverages set forth above shall be kept in force during the performance of Services under the AGREEMENT. The Commercial General Liability and Automobile Liability shall include the OWNER, its commissioners/supervisors, officials, representatives, and employees as an additional insured and shall be primary with respect to any insurance or self-insurance programs covering the OWNER, its commissioners/supervisors, officials, representatives and employees. These insurance coverages shall specifically state, or be endorsed to state, that thirty (30) days notice shall be given to the OWNER in the event of cancellation of any of the coverages. ENGINEER shall advise OWNER if any policy limits are reduced below the limits required in section 7.1.1.

If requested, ENGINEER will provide to OWNER certificates as evidence of the specified insurance.

7.1.2 Construction Contractors shall be required to provide (or OWNER may provide) Owners' Protective Liability Insurance naming the OWNER as a Named Insured and the ENGINEER as an additional insured, or, to endorse OWNER and ENGINEER using ISO Form GC 20 10 11 85 endorsement or its equivalent as Additional Insureds on all construction Contractors' liability insurance policies covering claims for personal injuries and property damage in at least the amount required of ENGINEER in Section 7.1.1, above. Construction Contractors shall be required to provide certificates evidencing such insurance to the OWNER and ENGINEER.

7.1.3 OWNER and ENGINEER waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance (including deductibles) during and after the completion of ENGINEER'S services. If the services result in a Construction Phase, a provision similar to this shall be incorporated into all Construction Contracts entered into by OWNER, and all construction Contractors shall be required to provide waivers of subrogation in favor of OWNER and ENGINEER for damage or liability covered by any construction Contractor's policy of insurance.

7.2 Professional Responsibility

7.2.1 ENGINEER will exercise reasonable skill, care, and diligence in the performance of ENGINEER'S services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. If the ENGINEER fails to meet the foregoing standard, ENGINEER will perform at
its own cost, and without reimbursement from OWNER, the professional services necessary to correct errors and omissions which are caused by ENGINEER’S failure to comply with above standard, and which are reported to ENGINEER within one year from the completion of ENGINEER’S services for the Project.

7.2.2. OWNER’S failure to properly operate and maintain the project shall relieve ENGINEER of its liability for any damage caused in whole or in part by improper operation or maintenance.

7.2.3 No warranty, express or implied, is included in this Agreement or regarding any drawing, specification, or other work product or instrument of service or oral or written representation by ENGINEER or its employees or consultants.

7.3 Cost Opinions and Projections
Cost opinions and projections prepared by ENGINEER relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on ENGINEER’S experience, qualifications, and judgment as a design professional. Since ENGINEER has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors’ procedures and methods, unavoidable delays, construction Contractors’ methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, ENGINEER does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by ENGINEER.

7.4 Changes
OWNER shall have the right to make changes within the general scope of ENGINEER’S services, with an appropriate change in compensation and schedule, upon execution of a mutually acceptable amendment or change order signed by an authorized representative of the OWNER and the President or any Vice President of the ENGINEER.

7.5 Suspension of Services
Should OWNER fail to fulfill its responsibilities as provided under Section 4 to the extent that ENGINEER is unduly hindered in ENGINEER’S services or if OWNER fails to make any payment to ENGINEER on account of ENGINEER’S services and expenses within 90 days after receipt of ENGINEER’S bill therefor, ENGINEER may, after giving seven days’ written notice to OWNER, suspend services under this AGREEMENT until OWNER has satisfied OWNER’S obligations under this AGREEMENT.

7.6 Termination
7.6.1. Services may be terminated by the OWNER or ENGINEER by seven days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. Failure on the part of the OWNER to make payments to ENGINEER when due shall be considered substantial nonperformance and cause for termination. If so terminated, OWNER shall pay ENGINEER all amounts due ENGINEER for all services properly rendered and expenses incurred to the date of receipt of notice of termination, plus reasonable costs incurred by ENGINEER in terminating the services.

7.6.2. In the event of premature termination of the Project by the OWNER and through no fault of the ENGINEER, the ENGINEER shall be entitled to: (1) recover all reasonable costs and expenses incurred to date of termination, plus all costs incurred to assemble and close Project files and documents; and, (2) termination penalties/expenses related to third parties retained by ENGINEER in regard to its obligations under this contract.

7.7 Delays
In the event the services of the ENGINEER are suspended or delayed by the OWNER, the ENGINEER shall be entitled to additional compensation for reasonable costs incurred by the ENGINEER in
temporarily closing down or delaying the Project and in organizing Project files, records, and work in progress for suspension and later resumption of the ENGINEER'S services.

7.8 Legal Fees and Expenses
In the event that a dispute should arise relating to the performance of the services to be provided and should that dispute result in litigation, it is agreed that the prevailing party shall be entitled to recover all reasonable costs of litigation, including staff time, court costs, attorneys' fees, and other related expenses.

7.9 Rights and Benefits
ENGINEER'S services will be performed solely for the benefit of the OWNER and not for the benefit of any other persons or entities.

7.10 Dispute Resolution

7.10.1 Scope of Section: The procedures of this Section 7.10 and it subparts shall apply to any and all disputes between OWNER and ENGINEER (including disputes involving an officer, director or employee of either party) which arise from, or in any way are related to, this AGREEMENT, including, but not limited to the interpretation of this AGREEMENT, the enforcement of its terms, any acts, errors, or omissions of OWNER or ENGINEER in the performance of this AGREEMENT, whether in contract or in tort, and disputes concerning payment.

7.10.2 Exhaustion of Remedies Required: No action may be filed unless the parties first make a good faith attempt to negotiate and, if necessary, mediate their disputes as set forth in this Paragraph. If timely Notice is given under Paragraph 7.10.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 7.10.3, 7.10.4, and 7.10.5 have been complied with.

7.10.3 Notice of Dispute

7.10.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

7.10.3.2 For disputes arising after the making of final payment, OWNER shall give ENGINEER written Notice at the address listed in Paragraph 7.18 within ninety (90) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this AGREEMENT that authorize the relief requested.

7.10.4 Negotiation: Within seven (7) days of receipt of the Notice, the Project Managers for the OWNER and ENGINEER shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level within twenty-one (21) days after Notice then, upon written request of either side, the matter shall be referred to the Division President of the ENGINEER and a representative of the OWNER. They shall meet at the Project Site or such other location as is agreed upon within thirty (30) days of the written request to resolve the dispute.

7.10.5 Mediation: If the OWNER'S and ENGINEER'S said officers are unable to resolve the dispute, then either side may request that the matter be submitted to mediation before a mediator mutually agreed upon. If the parties cannot agree on a mediator, then the American Arbitration Association shall appoint one upon request. Any administrative or mediator's fees shall be split equally between the parties. The mediation shall take place in Sarpy County, Nebraska unless the parties mutually agree on another location.
7.10.6 Arbitration:

7.10.6.1 If the parties are unable to resolve their dispute after at least one session of mediation, then any claim, dispute or other matter in question arising out of or related to this AGREEMENT (including disputes involving an officer, director or employee of either party), whether in contract or in tort, shall be subject to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The demand for arbitration shall be filed in writing with the other party to this AGREEMENT and with the American Arbitration Association.

7.10.6.2 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.10.6.3 No arbitration arising out of or relating to this AGREEMENT shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this AGREEMENT (other than disputes involving an officer, director or employee of either party, or subcontractor to ENGINEER), except by written consent containing a specific reference to this AGREEMENT and signed by the OWNER, ENGINEER, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein.

7.10.6.4 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this AGREEMENT shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

7.10.6.5 Any legal action necessary to compel, confirm, vacate, enforce, modify or otherwise affect the mediation or arbitration shall be filed in state or federal courts in Sarpy County, Nebraska and each party expressly consents to jurisdiction therein.

7.10.7 Waiver Upon Final Payment: The making of final payment by OWNER and the acceptance of same by ENGINEER and ENGINEER’S subconsultants shall constitute a waiver of existing claims by the OWNER and such payee except those previously made in writing and identified as unsettled by OWNER at the time of payment, or by the payee at the time of such payee’s final invoice. Except for those claims waived under Paragraph 7.1.3, final payment shall not constitute a waiver of claims by the OWNER relating to liens unsettled, or subsequent discovery of services not in compliance with this AGREEMENT. The waivers contained in Paragraph 7.1.3 shall continue to apply after final payment is made.

7.10.8 Waiver Due to Untimely Notice: Claims arising after the making of final payment shall be barred, and no suit or demand may be filed if Notice as stated in Paragraph 7.10.3.2 is not given. Nothing in this Paragraph shall be construed as directly or indirectly limiting the time to institute suit, but rather to give the responding party timely notice and prompt opportunity to investigate the allegations of the dispute.

7.11 The OWNER represents that it has sufficient funds or the means of obtaining funds to remit payment to the ENGINEER for services rendered by the ENGINEER.

7.12 Publications
Recognizing the importance of professional development on the part of ENGINEER’S employees and the importance of ENGINEER’S public relations, ENGINEER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to ENGINEER’S services for the Project. Such publications will be provided to OWNER in draft form for OWNER’S advance review. OWNER shall review such drafts promptly and provide OWNER’S comments to ENGINEER. OWNER may require deletion of proprietary data or confidential information from such publications, but otherwise OWNER will
not unreasonably withhold approval. The cost of ENGINEER'S activities pertaining to any such publication shall be for ENGINEER'S account.

7.13 Indemnification for Pollution Related Claims
For services involving or related to pollution, toxic substances, or hazardous wastes or asbestos abatement work, OWNER agrees to release, defend, indemnify, and hold harmless ENGINEER and its officers, directors, employees, agents, and consultants and from all liability, claims, demands, damages, losses, and expenses, direct, indirect or consequential, including, but not limited to, claims of OWNER and other persons and organizations, reasonable fees and expenses of attorneys and consultants, and court costs arising out of the performance of this AGREEMENT, except those caused by the gross negligence or intentional tort actions of the ENGINEER. This indemnification provision extends to claims against ENGINEER which arise out of the actual, alleged, or threatened dispersal, escape, or release of chemicals, wastes, liquids, gases, or any other material, irritant, contaminant, or pollutant, or arising out of or resulting from asbestos abatement work. For purposes of this section, gross negligence is defined as: an act or omission which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

7.14 Indemnification

7.14.1 Subject to the provisions of Sections 4 and 8 of this Agreement, ENGINEER agrees to indemnify OWNER for damages, costs and expenses (including reasonable attorney's fees) but only to the extent caused by the negligent acts, errors or omissions of ENGINEER, its officers, directors, shareholders, employees, agents, and consultants, and any of them. Nothing in this Agreement shall require ENGINEER to provide a defense of the OWNER against any claim, suit or complaint.

7.14.2 OWNER agrees to indemnify ENGINEER for damages, costs and expenses (including reasonable attorney's fees) but only to the extent caused by the negligent acts, errors or omissions of OWNER, its officers, directors, shareholders, Contractors, employees, agents, and consultants, and any of them.

7.14.3 OWNER agrees that it will require all construction Contractors to indemnify, defend, and hold harmless OWNER and ENGINEER from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, subcontractors, and suppliers.

7.14.4 If the services under a Task Order involve construction, and ENGINEER does not provide services during construction including, but not limited to, on-site observation, site visits, submittals review, and design clarifications, OWNER agrees to indemnify and hold harmless ENGINEER from or against any liability arising from the Project or this AGREEMENT.

7.15 Computer Models
ENGINEER may use or modify ENGINEER'S proprietary computer models in service of OWNER under this AGREEMENT, or ENGINEER may develop computer models during ENGINEER'S service to OWNER under this AGREEMENT. Such use, modification, or development by ENGINEER does not constitute a license to OWNER to use or modify ENGINEER'S computer models. Said proprietary computer models shall remain the sole property of the ENGINEER. OWNER and ENGINEER will enter into a separate license agreement if OWNER wishes to use ENGINEER'S computer models.

7.16 Reuse of Documents
All documents including Contract Drawings and Specifications prepared or furnished by ENGINEER (and ENGINEER'S independent professional associates and consultants) pursuant to this AGREEMENT are instruments of service in respect of the Project, and ENGINEER shall have the ownership and property interest therein whether or not the Project is completed. OWNER may make and retain copies for
information and reference in connection with the use and occupancy of the project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER'S independent professional associates or consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER'S independent professional associates and consultants from and against all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

7.17 Electronic Media
Any electronic media (computer disks, tapes, and similar items) furnished with respect to ENGINEER'S services are for OWNER'S information and convenience only. Such media are not to be considered part of ENGINEER'S instruments of service. (Due to the potential that information contained in electronic media can be modified by OWNER or others, ENGINEER, at its option, may remove all indicia of ENGINEER'S ownership and involvement from each electronic display.)

ENGINEER shall not be liable for loss or damage directly or indirectly, arising out of use of electronic media including, but not limited to, any loss of business or incidental or consequential damage. OWNER shall assume all risk and release, indemnify, and hold harmless ENGINEER, its officers, directors, employees, servants, agents, successors, and assigns, from and against each and every claim or cause of action that OWNER or others may have or which may arise in the future respecting use of the electronic media.

If there is a discrepancy between the electronic media files and the signed and sealed hard copies, the hard copies shall govern.

7.18 Notices
Any Notice required under this AGREEMENT will be in writing, addressed to the appropriate party at the following addresses:

OWNER'S address:
Sarpy County Public Works
15100 South 84th Street
Papillion, NE 68046-4627

ENGINEER'S address:
Burns & McDonnell Engineering Company, Inc.
1111 North 13th Street
Omaha, NE 68106

7.19 Successor and Assigns
OWNER and ENGINEER each binds itself and its successors, executors, administrators, and assigns to the other party of this AGREEMENT and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this AGREEMENT; except as above, neither OWNER nor ENGINEER shall assign, sublet, or transfer its interest in the AGREEMENT without the written consent of the other.

7.20 Controlling Law
This AGREEMENT shall be subject to, interpreted, and enforced according to the laws of the State of Nebraska without regard to any conflicts of law provisions.
7.21 Entire Agreement
This AGREEMENT represents the entire AGREEMENT between the ENGINEER and OWNER relative to the Scope of Services herein. All previous or contemporaneous agreements, representations, promises, and conditions relating to ENGINEER'S services described herein are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event OWNER issues to ENGINEER a purchase order, no preprinted terms thereon shall become a part of this AGREEMENT. Said purchase order document, whether or not signed by ENGINEER, shall be considered as a document for the OWNER'S internal management of its operations.

7.22 Severability
It is understood and agreed by OWNER and ENGINEER hereto that if any part, term, condition, or provision of this AGREEMENT is held to be illegal or in conflict with any law of the State of Nebraska or of the United States, the validity of the remaining parts, terms, conditions, or provisions shall not be affected, and the rights and obligations of OWNER and ENGINEER shall be construed and enforced as if the Agreement did not contain the particular part, term, condition, or provisions held to be invalid.

7.23 Non-Discrimination Clause
Pursuant to Neb. Rev. Stat. § 73-102, the parties declare, promise, and represent that they have and will continue to comply 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.

7.24 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.

SECTION 8 – LIMITATION OF LIABILITY

8.1 To the fullest extent permissible by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of ENGINEER, its officers, directors, shareholders, employees, agents, and consultants, and any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all claims, losses, liabilities, costs or damages whatsoever arising out of, resulting from or in any way related to the Project or this Agreement from any form of negligence, professional errors or omissions (including breach of contract or warranty) of ENGINEER, its officers, directors, employees, agents or consultants, or any of them, SHALL NOT EXCEED the sum of one million Dollars ($1,000,000). The parties agree that specific consideration has been given by the ENGINEER for this limitation and that it is deemed adequate.

8.2 In no event will ENGINEER or OWNER be liable to each other for any special, indirect, or consequential damages including, without limitation, loss of anticipated revenue or anticipated profit, lost production, claims by customers of OWNER, or governmental fines or penalties.
IN WITNESS WHEREOF, the parties have made and executed this AGREEMENT as of the day and year first above written.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES

OWNER: Sarpy County, Nebraska

By: 
Name: Donald R. Kelly
Title: Sarpy County Board Chairman

ENGINEER: Burns & McDonnell Engineering Company, Inc.

By: 
Name: Benjamin J. Biller, P.E.
Title: Vice President

Approved as to form:

Deputy Sarpy County Attorney

04/26/2013
TASK ORDER FOR
ENGINEER-OWNER AGREEMENT
(Doc. No. AE-2 Exhibit A)

This Task Order is entered into and authorized by Owner this ______ day of ______, 20_____, by and between Sarpy County, Nebraska (hereinafter called OWNER) and Burns & McDonnell Engineering Company, Inc. (hereinafter called ENGINEER).

The parties agree that the ENGINEER shall perform the following Services in accordance with the terms of the Engineer-Owner Agreement dated ______________, 20_____:

1. **Scope of Services:**
   (describe Services here, or in attached Exhibit __)

2. **Compensation:**
The basis of compensation for the above Services shall be:

   □ · Lump Sum Fee of $_____________
   □ · Hourly Rate per ENGINEER's Rate Sheet, attached hereto
   Subject to a Not-to-Exceed Cap of $_____________, without further authorization
   □ · Hourly Rate per ENGINEER's Rate Sheet, attached hereto
   With no maximum
   □ · Other, as follows (describe below):

3. **Other Terms:**
   (describe below)

   A. The terms of this Task Order supersede any contrary terms of the Engineer-Owner Agreement.

IN WITNESS WHEREOF, the parties have made and executed this TASK ORDER as of the day and year first above written.

**OWNER: Sarpy County, Nebraska**

**ENGINEER: Burns & McDonnell Engineering Company, Inc.**

By: ____________________________        By: ____________________________

Name: ____________________________        Name: Benjamin J. Biller, P.E.

Title: ____________________________        Title: Vice President
MEMORANDUM

TO: Sarpy County Board of Commissioners

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

DATE: December 7, 2018

SUBJECT: Resolution Approving and Authorizing Chairman to Sign Professional Services Agreement with Burns and McDonnell

As to set the baseline agreement for professional services with Burns and McDonnell, an engineering consulting firm, Public Works hereby wishes to enter into a Master Services Agreement (MSA). Each project and/or task assigned to Burns and McDonnell will be specifically detailed in scope and fee on subsequent Task Orders, as outlined in the MSA. Using this format of agreement for professional services allows for expedited reviews from a staffing standpoint as many of the contractual provisions will be set by the MSA.

The Public Works Department hereby recommends the aforementioned Master Services Agreement be approved by the County Board. Please feel free to let me know if you have any questions.