RESOLUTION AUTHORIZING CHAIRMAN TO SIGN MASTER SERVICES AGREEMENT AND TASK ORDER #C007721717 WITH SPEECE LEWIS ENGINEERS FOR PROFESSIONAL SERVICES

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, Sarpy County wishes to enter into an Agreement with the firm of SPEECE LEWIS ENGINEERS and Task Order #C007721717 for professional engineering services in conjunction with the Bridge Rehabilitation plans, specifications, and Construction Engineering for Bridge #RR13 located on 168th Street and the Burlington Northern Santa Fe Railroad in Sarpy County; and,

NOW THEREFORE, BE IT RESOLVED, by the Sarpy County Board of Commissioners that pursuant to the statutory authority set forth above, the Master Services Agreement with SPEECE LEWIS ENGINEERS for professional services in conjunction with Task Order #C007721717 for Bridge Rehabilitation plans, specifications, and Construction Engineering for Bridge #RR13 located on 168th Street and the Burlington Northern Santa Fe Railroad, in Sarpy County, a copy which is attached hereto, is hereby approved.

BE IT FURTHER RESOLVED that the Chair and the Clerk hereby authorized to execute said agreement 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 14th day of June, 2016.

Attest:

Sarpy County Board Chairman
MEMORANDUM

To: Sarpy County Board of Commissioners
From: Dennis L. Wilson, County Engineer
Subject: Speece Lewis Engineers Master Agreement and Work Order #1
Date: June 9, 2016

I recommend approval of the Speece Lewis Engineers Master Agreement and Work Order #1 for Professional Services in conjunction with the Bridge Rehabilitation plans, specifications and Construction Engineering for Bridge # RR13 located on 168th Street and the Burlington Northern Sante Fe Railroad. For a total not to exceed cost of $10,000.00.

DLW/bjh
This MASTER SERVICES AGREEMENT ("MSA") is between Sarpy County, Nebraska ("Client") and Speece Lewis Engineers, Inc., its subsidiaries and affiliates, ("Consultant") for Services to be provided by Consultant on projects as described in the Project Information section of Individual Task Orders or Task Order Proposals (which sections are incorporated into this MSA). For purposes of this MSA, "Client" shall include Sarpy County, Nebraska, its subsidiaries and affiliates.

1. Scope of Services. The scope of Consultant's services ("Services") will be set forth in the Scope of Services section of an Individual Task Order, or Task Order Proposal (which sections are incorporated into this MSA). Portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.

2. Acceptance/ Termination. Client agrees that execution of this MSA is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this MSA as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this MSA. Additional terms and conditions may be added or changed only by written amendment to this MSA signed by both parties. In the event Client uses a purchase order or other form, including email authorization, to administer this MSA, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This MSA shall not be assigned by either party without prior written consent of the other party. Either party may terminate this MSA or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.

3. Change Orders. Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Consultant shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.

4. Compensation and Terms of Payment. Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the individual Task Order, or Task Order Proposal (which sections are incorporated into this MSA). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Fees do not include sales tax. Consultant will pay applicable sales tax as required by law. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Consultant shall notify Client in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the unsubstantiated portion. Consultant may suspend Services for lack of timely payment. It is the responsibility of Client to determine whether federal, state, or local prevailing wage requirements apply and to notify Consultant if prevailing wages apply. If it is later determined that prevailing wages apply, and Consultant was not previously notified by Client, Consultant agrees to pay the prevailing wage from that point forward, as well as a retroactive payment adjustment to bring previously paid amounts in line with prevailing wages. Client also agrees to defend, indemnify, and hold harmless Consultant from any alleged violations made by any governmental agency regulating prevailing wage activity for failing to pay prevailing wages, including the payment of any fines or penalties.

5. Third Party Reliance. This MSA and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any written reports prepared by Consultant is intended to Client, and is not intended for third parties. For a limited time period not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with Client, however Client understands that such reliance will not be granted until those parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee.

6. Indemnity/Statute of Limitations. Consultant and Client shall indemnify and hold harmless the other and their respective employees from and against legal liability for claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are legally determined to be caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are legally determined to be caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Neither party shall have a duty to defend the other party, and no duty to defend is hereby created by this indemnity provision and such duty is explicitly waived under this MSA. Causes of action arising out of Consultant's services or this MSA regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's acceptance of final payment on the project.

7. Warranty. Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Insurance. During the course of services provided for by this Agreement, the Consultant shall maintain: (i) Workers' Compensation Insurance in accordance with the Worker's Compensation laws of the State of Nebraska having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance ($1,000,000); (ii) Professional Liability Insurance ($1,000,000 per claim/$2,000,000 if aggregate); (iii) Commercial General Liability Insurance ($2,000,000); and (iv) Professional Liability Insurance ($1,000,000 each occurrence/aggregate/alternate limits). For Commercial General Liability and Automobile Liability Insurance, the County 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 even of cancellation, or material change in any of the insurance coverage, the Consultant shall notify the County within thirty (30) days. The Consultant shall furnish proof of insurance coverage.
MASTER SERVICES AGREEMENT

8. CONSEQUENTIAL DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.

9. Dispute Resolution. Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This MSA shall be governed by and construed according to Nebraska law.

10. Testing and Observations. Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client agrees to the level or amount of testing performed and the associated risk. Consultant is not responsible for damages caused by services not performed due to a failure to request or schedule Consultant's services. Consultant's performance of testing and observation services shall not relieve Client's contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by Client's contractor or its subcontractors and is not responsible for their means and methods.

11. Ownership of Documents. Work product, such as plans, specifications and electronic drawings will become owners' property and will be available upon full payment for work performed to date.

12. Utilities. Client shall provide the location and/or arrange for the marking of private utilities, or are incorrectly shown on the plans furnished to Consultant. Consultant shall not be responsible for damage to subterranean structures. Client shall provide test results and opinions based on tests and field observations. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.

13. Site Access and Safety. Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site.

14. 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.A. 1324a, et seq., 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.

15. Nondiscrimination Clause. Pursuant to Neb. Rev. Stat. 73-102, et seq., 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.

Consultant: Speece Lewis Engineers, Inc.
By: Chris Lane Date: 6/8/2016
Name/Title: Vice President
Address: 906 S. 26th Street
Phone: (402) 483-5466 Fax: (402) 483-1722
Email: clane@speecelewis.com

Client: Sarpy County, Nebraska
By: Non Kelly Date: 6/14/2016
Name/Title: Chairman
Address: 121 Old Gate Drive, Suite 1250
Phone: (402) 593-4185 Fax: (402) 593-4711
Email: Clerk@sarpy.com

APPROVED AS TO FORM:

Sarpy County Attorney
Master Service Agreement

Task Order C007721717

This TASK ORDER is issued under the MASTER SERVICES AGREEMENT (Dated 6/8/2016) between Sarpy County Nebraska ("Client") and Speece Lewis Engineers, Inc. ("Consultant") for Services to be provided by the Consultant for the Client on the bridge rehabilitation project, Structure No. C007721717 ("Project"), as described in the Project Information section of the Consultant’s Task Order Proposal dated 6/8/2016 ("Task Order Proposal") unless the Project is otherwise described below. This Task Order is incorporated into and part of the Master Services Agreement.

1. Project Information
   - Provide bridge rehabilitation plans, specifications and Construction Engineering for Sarpy County Nebraska bridge no. C007721717

2. Scope of Services
   - Provide bridge rehabilitation plans for end of floor and sheet pile
   - Provide Plan Distribution to contractors
   - Attend Project Letting
   - Provide Construction Engineering Services (these services will be supplemented to this agreement with a cost plus/not to exceed type agreement)

3. Compensation: Client shall pay compensation of $10,000 lump sum for design plans, specifications and bid documents. A supplemental agreement to this task order will be performed for Construction Engineering Services.

All terms and conditions of the Master Services Agreement shall continue in full force and effect. This Task Order is accepted and Consultant is authorized to proceed.

Consultant: Speece Lewis Engineers, Inc.
By: Chris Lane/Vice President Date: 6/8/2016
Name/Title: Address: 906 S. 26th Street Lincoln, NE 68510
Phone: (402) 483-5466 Fax: (402) 483-1722
Email: clane@speecelewis.com

Client: Sarpy County, Nebraska
By: Daniel B. Cliver Date: 6/14/11
Name/Title: Contact Name/Title: Address: 120 Golden Gate Drive, Suite 1250 Papillion, NE 68046
Phone: 402)593-4165 Fax: (402) 593-4471
Email: clivy@sarpy.com

APPROVED AS TO FORM:

Sarpy County Attorney