# A G E N D A

## City Council Meeting

**December 5, 2016 - 6:00 p.m.**

## Call to Order

"I am required by law to inform the public that a copy of the Open Meetings Act is posted on the bulletin board to your right. This meeting is being recorded. If you wish to speak, come to the podium, state your name and address and speak directly towards the microphone the entire time you are addressing the governing body. Thank you".

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**

***CONSENT***

3. **Approve minutes from the November 21, 2014 City Council Meeting.**
4. **Accepting the report of new claims against the City and approving disposition of claims set for the period of November 22, to December 5, 2016.**

**ADJOURNMENT SINE DIE**

The term *adjournment sine die* refers to the close of a session of several meetings: where the adjournment dissolves the assembly as in the case of a session of a legislature or by the bylaws or constitution of a body. The motion should be similar to the following. *" I move that we adjourn sine die."* This motion is made only after any unfinished business that has been carried forward has been addressed.

**TRANSITION TO NEW COUNCIL MEETING**

a. **Restate Open Meetings Act is posted as referenced**
b. **ROLL CALL**
c. **ADMINISTER OATH OF OFFICE TO NEWLY ELECTED COUNCIL MEMBERS**

**MAYOR'S APPOINTMENTS & ANNOUNCEMENTS**

- **Re-appoint Grayson Path as City Administrator**
- **Re-appoint Randy Dunster as City Clerk – Treasurer**
- **Re-appoint Patricia Moore as Deputy City Clerk–Treasurer**
- **Re-appoint David Lacy as Chief of Police**
- **Re-appoint David Partsch as City Attorney**
- **Re-appoint John R Palmtag as Deputy City Attorney**
- **Re-appoint Dr. Brad Vasa as City Physician**
- **Re-appoint JEO Consulting as City Engineer**
- **Re-appoint Evan Wickersham as the City Street Superintendent**
- **Re-appoint Marty Stovall as City Traffic Engineer**
- **Re-appoint Alan Viox as Plumbing Inspector**

**NEW BUSINESS**

5. Discussion/action to approve a new Employment Agreement with the City Administrator.
6. Discussion/action to approve signing agreement with JEO Consulting as City Engineer.
7. Discussion/action to approve signing agreement with Evan Wickersham as the City Street Superintendent.
8. Discussion/action item to approve the City Council Retreat Facilitator proposal with Christian Janousek, PhD. and estimated retreat expenditures.
9. Discuss removal of blight and substandard designation from north industrial site; submission of question to Planning and Zoning Commission.
10. Ordinance 2982-16 adopting the economic development plan.
11. Discussion/action to approve signing the non-disclosure agreement with ADP.
12. Discussion/action to authorize Mayor to sign a letter of subordination for housing rehab lien at deeds instrument # 201102079.

**ADJOURNMENT**

CITY OF NEBRASKA CITY, NEBRASKA
MINUTES OF CITY COUNCIL REGULAR MEETING
November 21, 2016

Pursuant to due call and notice thereof, a Regular Meeting of the City Council of the City of Nebraska City was conducted in the William F. Davis Room at City Hall, 1409 Central Avenue, on November 21, 2016. Notice of the meeting was given in advance thereof by posting in at least three public places, the designated method for giving notice, as shown by the Certificate of Posting Notice attached to these minutes. Availability of the agenda was communicated in advance to the media, Mayor and Commissioners of this proceeding and said meeting was open to the public.

Mayor Bequette called the meeting to order at 6:00 p.m. The Mayor publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the room where the meeting was being held. Mayor Bryan Bequette then led in the Pledge of Allegiance. Upon roll call the following answered present: Erv Friesen, Jeff Crunk, Vic Johns, Gloria Glover and Mayor Bequette. Absent: None. The following City Officials were present: City Clerk-Treasurer Randy Dunster, Police Chief David Lacy, Utilities Director Leroy Frana, Utilities Treasurer Jeff Kohrs, Director of Parks and Recreation Scooter Edmisten, and Construction and Facility Manager Marty Stovall.

Mayor Bequette moved to approve the following consent items:
Approve minutes from the November 7, 2016 City Council Meeting.
Approve parking exception for the south side of Sylvan Road on Saturday, January 14, 2017 from 5:00 PM – 1:00 AM.
Approve the Board of Public Works recommendation to approve Electric Work Order #114 in the amount of $20,309.89.
Approve the Board of Public Works recommendation to approve Natural Gas Work Order #294 in the amount of $27,779.37. Motion seconded by Commissioner Crunk. Upon roll call the following voted YES: Friesen, Crunk, Glover, Johns and Mayor Bequette. Voting NO: None. Motion carried

Moved by Mayor Bequette to appoint Pat Wehling to the Nebraska City Recreational Agency Board. Upon roll call the following voted YES: Johns, Crunk, Glover, Friesen and Mayor Bequette. Voting NO: None. Motion carried.

Mayor Bequette stated that the Public Hearing for the use of $250,000 of LB840 Funds for SAI Properties, Inc. for the development of a hotel/motel/lodging at Lot 3 Grundman Parcel ID 2890500, Nebraska City, NE was voluntarily withdrawn until further notice.

Mayor opened the Public Hearing on the use of $30,000 of LB840 Funds for Prairie City, LLC for building renovation at 610 Central Avenue Nebraska City, NE. Jim Kuhn, Kiel Vanderveen and William Heng spoke in favor of the proposal. Mayor Bequette moved to close the Public Hearing, seconded by Commissioner Crunk. Upon roll call the following voted YES: Johns, Crunk, Glover, Friesen and Mayor Bequette. Voting NO: None. Motion carried.

Treasurer's report was given, as of October 31, 2016, Total Nebraska City funds of $7,551,374.87. Total Cash and Reserve for Nebraska City Utilities of $16,178,239.46. Total City of Nebraska City and Utility funds $23,729,614.33.
Council acknowledged receipt of City Administrator Report. Grayson Path spoke regarding his report.
Council acknowledged receipt of Utility Financial Report for period ending September 30, 2016.
Council acknowledged receipt of Utility Claims for period ending October 31, 2016.

Moved by Mayor Bequette and seconded by Glover to accept the report of new claims against the City and approving disposition of claims set for the period of November 8, 2016 to November 21, 2016 excluding an invoice for $100 to CNA Surety. Upon roll call the following voted YES: Johns, Crunk, Glover, Friesen and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Mayor Bequette and seconded by Glover to approve the claim from CNA Surety for $100 that came in during that same period. Upon roll call the following voted YES: Crunk, Glover, Friesen and Mayor Bequette. Voting NO: None. Abstain: Johns. Motion carried.

| CLAIMS LIST | | | | | | |
|---|---|---|---|---|---|---|
| November 21, 2016 | | | | | | |
| Aetna Better Health of NE | Rfnd | 211.70 | | Mercer's Do-It-Best | Rep/Sup | 688.84 |
| Aksamit, D & J | Rfnd | 25.00 | | Mullenax Auto Supply | Sup | 17.34 |
| Arbor Mart, Inc | Fuel | 1582.75 | | Napa Auto Parts | Rep | 211.03 |
| Berry | Tele | 24.69 | | Nationwide | Ins | 12,052.18 |
| BKD | Audit | 6500.00 | | Nationwide Trust Contribut | Pension | 2146.00 |
| Bob's Welding Shop | Rep | 95.00 | | NC Dance Studio | Dance | 2435.00 |
| Brown's Shoe Fit Co | Rep | 391.49 | | NC Newspress | Adv | 409.70 |
| Capital Business Sys | Contr | 150.88 | | Nebraska City Utilities | Utilities | 6156.36 |
| Card Services | Multi | 647.44 | | NE Dept of Revenue | Sls Tax | 344.70 |
| Carrot-Top Industries | Rep | 208.04 | | Office Warehouse | Sup | 15.99 |
| City of NC Wildwood | Artists | 2437.80 | | O'Reilly Auto Parts | Sup | 6.99 |
| CNA Surety | Bond | 100.00 | | Otoe County Clerk | Dispatch | 4423.46 |
| Danko Emergency | Rep | 139.17 | | Otoe County Court | Court Exp | 1.00 |
| Douglas Tire Co. | Rep | 344.00 | | Payroll | Payroll | 93,188.87 |
| Eakes Office Sol | Sup | 269.99 | | Qualchoice | Rfnd | 574.20 |
| EMS Billing Services | Contr | 3306.80 | | Quill Corporation | Sup | 69.87 |
| Fireguard | Rep | 873.93 | | S Systems | Computer | 64.50 |
| Flint Trading, Inc. | Rep | 141.83 | | Sanchez, J. | Rfnd | 25.00 |
| Galls, LLC | Unif | 322.07 | | Shell | Fuel | 1743.07 |
| Gatehouse Media | Adc | 233.91 | | SIGERSON JR. WILSON | Rfnd | 970.00 |
| Green Lamb Prop | LB840 Loan | 3850.00 | | Spiral Communications | Tele | 1113.90 |
| Ideal Pure Water | Sup | 61.95 | | Stevenson Rentals | Rfnd | 25.00 |
| Johnny's Cycle | Flwr Bskt | 110.75 | | Tree Worx Tree Service, LL | Stump Rem | 940.00 |
| Landis Engine Co | Rep | 228.13 | | UHC | HRA | 105.15 |
| Larson Motors | Rep | 78.26 | | Unifirst Corporation | Contr | 122.76 |
| Lourdes Central Catholic | Adv | 50.00 | | Verizon Wireless | Tele | 14.04 |
| M.J. Amerine Farm | Rfnd | 100.00 | | Westlake Ace Hardware | Sup | 100.80 |
| Mead Lumber | Rep | 19.99 | | Windstream,Inc. | Tele | 1460.40 |

Mayor Bequette stated that **Resolution 2721-16** has been withdrawn at the request of SAI Properties.

Moved by Commissioner Johns and seconded by Friesen to approve **Resolution 2722-16** for Prairie City, LLC loan agreement for $30,000 of LB840 Funds for building renovation at 610 Central Avenue Nebraska City, NE. Upon roll call the following voted YES: Johns, Crunk, Glover, Friesen and Mayor Bequette. Voting NO: None. Motion carried.

Marty Stovall reported that the Steinhart Trail Project received the Recreational Trails award from the Nebraska Paving Association. Marty will receive the award on behalf of the City in Lincoln Nebraska on January 17th.

David Partsch gave an update regarding reducing street width at 4th Rue between 4th and 5th Terrace. The survey should be paid for and completed before mid-December at which point the Ordinance to vacate the Right-of-Way will be revisited.

Moved by Commissioner Glover and seconded by Johns to renew with our current Health, Life, Vision, Dental and AD&D employee insurance benefits providers. Beau Reid and Leroy Frana spoke to explain the options. Upon roll call, the following voted YES: Crunk, Friesen, Johns, Glover and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Crunk and seconded by Johns to approve CDBG Housing Rehabilitation Projects #3 and #14. Tracy Wieckhorst of the Nebraska City Housing Authority spoke to explain the options. Upon roll call, the following voted YES: Crunk, Friesen, Johns, Glover and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Glover and seconded by Crunk to table **Resolution 2723-16** to make adjustments to the Golf Course Professional position step plan to increase above the minimum FLSA required threshold. Upon roll call, the following voted YES: Crunk, Friesen, Johns, Glover and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Commissioner Johns and seconded by Mayor Bequette to approve plans, specifications and contract documents as submitted and begin to advertise Invitation to Bid the Kearney Hill Road Improvements Project CDBG #14-CIS-003. Upon roll call, the following voted YES: Crunk, Friesen, Johns, Glover and Mayor Bequette. Voting NO: None. Motion carried.

Moved by Mayor Bequette and seconded by Friesen to approve starting pay of 100% of step 3 with benefits for the new Library Director. Cindy Patton spoke for the Library Board in favor of the recommendation. Upon roll call, the following voted YES: Crunk, Friesen, Johns, Glover and Mayor Bequette. Voting NO: None. Motion carried.

Mayor Bequette congratulated Commissioners elect Pat Wehling as the Parks and Recreation Commissioner and Paul Davis as the Utilities Commissioner.

Meeting Adjourned at 7:15 P.M.

AFFIDAVIT

I, the undersigned City Clerk for the City of Nebraska City, Nebraska, hereby certify that the foregoing is a true and correct copy of proceedings had and done by the Mayor and Board of Commissioners, that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes from which the foregoing proceedings have been extracted were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

_____

Randy A. Dunster, City Clerk-Treasurer

# EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective this _____ day of December, 2016, by and between the City of Nebraska City, Nebraska, a municipal corporation (hereinafter referred to as the "Nebraska City" or "City"); and Grayson A. Path (hereinafter referred to as "Employee"), an individual who has education, training and experience in local government management; and who, as a member of the International City/County Management Association (ICMA), is subject to the ICMA Code of Ethics; both of whom agree as follows:

WHEREAS, Nebraska City desires to employ the services of Grayson A. Path as its City Administrator as provided by law; and,

WHEREAS, Employee desires to accept employment as City Administrator for Nebraska City, and,

WHEREAS, Nebraska City and Employee believe it to be in the best interest of both parties to establish by contract certain terms and conditions of employment as set forth herein with the goal of providing the City Administrator the ability to have honest and open communication advising Nebraska City with information, good and bad, needed to make policy decisions; allowing him to represent the staff effectively; and insulating Employee from political pressure and/or special interest groups by allowing situation analysis for the good of the community as a whole.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, and the performance thereof by the parties, it is agreed as follows:

**Section 1: Term**

A. The term of this Agreement shall be from December 5, 2016 to December 3, 2018, at a beginning gross annual salary of $92,878.00, pursuant to the 2016-2017 Step Play Plan. This Agreement shall be subject to review in December of every even-numbered year by the Mayor and new City Council, otherwise it shall automatically renew for an additional two (2) year term. In the event the Mayor and Council in December of any even-numbered year do not extend this Agreement without cause, then Employee shall have the option at his discretion to remain employed by Nebraska City as its City Administrator, under the same terms and conditions of employment, until his successor is appointed and qualified, and in any event shall receive compensation (including salary, accrued vacation, and continuation of all benefits) for the remainder of the term of the Agreement or for a period of four (4) weeks, whichever is longer, after which the provisions of sections 9 and 10 shall take effect. All contract payments are void if Employee is terminated for cause.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council acting for Nebraska City to terminate the services of Employee at any time, with or without cause, subject only to the provisions set forth in Sections 9 and 10.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with Nebraska City, subject only to the provisions set forth in Section 11 of this Agreement.

**Section 2: Duties**

Nebraska City hereby agrees to employ the Employee as City Administrator in charge of the administration of Nebraska City's business, to perform the functions and duties specified in state statutes and the City Code and Ordinances, and to perform other legally permissible and proper duties and functions as the City Council shall assign from time to time.

**Section 3: Compensation**

Nebraska City shall pay Employee an annual base salary payable in installments at the same time that other management employees of Nebraska City are paid. Employee shall begin on Step Two (2) of City's 8-Step Pay Plan, with an annual performance review. Step increases shall only be based upon merit and are determined at Nebraska City's sole discretion. This Agreement will automatically be amended to reflect any salary adjustments provided or required by Nebraska City's employment policies.

**Section 4: Health, Disability and Life Insurance Benefits**

Employee shall be provided with the same health insurance, life insurance, disability and general benefits not otherwise provided herein as other general full-time Nebraska City employees.

**Section 5: Vacation and Sick Leave**

Employee shall be credited with vacation and sick leave at a rate not less than that specified for other general full-time Nebraska City employees in the City Personnel Policy Handbook. Employee is entitled to all accrued and unused vacation leave, and in the event his employment is terminated, either voluntarily or involuntarily, he shall be compensated for all accrued vacation time, all paid holidays, and other benefits to date, as specified in said Handbook. Employee shall plan the use of his leave so as to insure his presence in office during the majority time of the budget process.

**Section 6: Automobile**

Employee's duties may at times require use of an automobile for travel. Nebraska City shall provide a City-owned vehicle for business travel; however, if it is in use by another City employee or is otherwise out-of-service, then Nebraska City shall reimburse Employee for the business use of his personal vehicle at the then-prevailing mileage rate utilized by the Internal Revenue Service.

**Section 7: Retirement**

Employee shall be provided with the same retirement benefits as other general full-time Nebraska City employees.

**Section 8: General Business Expenses**

A. Nebraska City agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for the Employee's continued professional participation, growth, education and advancement and for the good of the employer.
B. Nebraska City agrees to budget for and to pay for Employee's travel and subsistence expenses, at City-allowed rates, for professional and official travel, meetings and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Nebraska City, the Nebraska League of Municipalities, and other such state and local governmental groups and committees in which Employee may serve as a member.
C. Nebraska City also agrees to budget for and to pay for Employee's travel and subsistence expenses, at City-allowed rates, for short courses, institutes and seminars in the State of Nebraska which are necessary for the Employee's professional development and for Nebraska City's good. Employee can request Council authority, in advance, to attend education and/or professional conferences outside of the State of Nebraska.
D. Nebraska City recognizes that certain expenses of a non-personal but job-related nature are incurred by Employee, and agrees to reimburse or to pay said reasonable general expenses as budgeted. The City Council is authorized to disburse such monies upon receipt of duly executed expense statements with attached detailed receipts, upon their advance review and approval.
E. Nebraska City acknowledges the value of having its City Administrator participate in and have direct involvement in local civic and charitable clubs and organizations. Accordingly, Nebraska City shall pay for reasonable membership fees and/or dues to enable Employee to become an active member in such clubs and organizations as approved by Council.
F. Nebraska City shall provide Employee with a computer, software, scanner and cell phone required for Employee to perform the job and to maintain communication. However, said devices and all other City-provided equipment are for City use and reasonable de minimis personal use that does not conflict with Employee's work, and Employee has no privacy expectations in their use or content. All must be turned back to Nebraska City at the end of employment.

**Section 9: Termination**

For the purpose of this Agreement, termination shall occur when:

A. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting before the expiration of the term set forth in Section 1 during such time as the Employee is willing and able to perform his duties under this Agreement.
B. The majority of the governing body votes not to extend this Agreement for a subsequent term, and during such time the Employee is willing and able to perform his duties under this Agreement.
C. If Nebraska City, its citizens or legislature acts to amend any provisions of the Code pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government so as to impact the role of City Administrator, the Employee shall have the right to declare that such amendments constitute termination.
D. If Nebraska City reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this Agreement and will be regarded as a termination.
E. If the Employee resigns following an offer to accept resignation, whether formal or informal, by Nebraska City as a representative of the majority of the governing body, then the Employee may declare a termination.
F. The City Council can terminate Employee at any time under this Agreement, and if the termination is for cause, then the Employee is not eligible for continued salary and benefits past the then-current month, and as required by law.

**Section 10: Severance**

A. Severance shall be paid to Employee only when employment is terminated as defined in Section 9, and not if he resigns voluntarily or is terminated for cause.
B. If Employee is terminated without cause, Nebraska City shall provide a minimum severance payment equal to four (4) months' salary at his then-current rate of pay. This severance shall be paid in monthly payments unless otherwise agreed to by both parties. Also Nebraska City shall pay the cost of continuing the same health, life and disability coverage provided through Nebraska City for the Employee and his dependents.
C. Employee shall receive all other benefits payable upon separation of employment as specified in the Handbook.
D. If Employee is terminated because of a conviction of a law violation or for cause, then Nebraska City is not obligated to pay any severance under this section, but will pay out accrued vacation leave only.

**Section 11: Resignation**

A. If Employee voluntarily resigns for any reason, then Employee shall provide a minimum of thirty (30) days' notice, unless the parties agree otherwise.
B. Voluntary resignation by the Employee shall not invoke any severance requirements of this Agreement.
C. If Employee resigns pursuant to the terms set forth in Section 9E, the resignation is not considered voluntary for the purposes of this Section 11.

**Section 12: Performance Evaluation**

Nebraska City shall annually review the performance of the Employee within thirty (30) days of the hire-date anniversary using the same process, form, criteria and format used with other general full-time employees. The Mayor shall provide Employee with a summary statement of the findings of the City Council and shall provide an adequate opportunity for the Employee to discuss his evaluation with the City Council. Employee may determine if such discussion with Council is to be conducted in a meeting open to the public or closed to the public.

**Section 13: Hours of Work**

The City Administrator must devote an extraordinary amount of time outside of normal business hours of Nebraska City, including evenings and weekends. As Nebraska City's chief administrative officer, Employee shall be allowed to arrange and organize his work schedule to best achieve his duties and responsibilities that may occasionally include taking of administrative leave during normal business hours; however, Employee will be present at City Council meetings unless excused by the Mayor or Council in advance. Employee understands that the job may often require more than forty (40) hours of work in a week, and as an exempt employee, he is not subject to overtime pay or compensation time.

**Section 14: Outside Activities**

Employee agrees to remain in the exclusive employment of Nebraska City and neither to accept other employment nor to become employed by any other employer until date of termination and/or resignation. The term "exclusive employer" shall not be construed to include occasional teaching, writing, consulting or paid philanthropic work performed on the Employee's time off, provided it does not interfere with the Employee's duties and responsibilities as City Administrator.

**Section 15: Residence**

Employee agrees to establish and maintain residence within the corporate limits of the City of Nebraska City, Nebraska, or its zoning jurisdiction.

**Section 16: Indemnification**

A. Beyond that required under federal, state or local law, Nebraska City shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of his work duties or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act of omission involves willful or wanton conduct. Nebraska City shall indemnify Employee against any and all losses, damages, judgments, interest, settlement, fines, court costs and other reasonable costs and expenses of legal proceedings and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit or proceeding, actual or threatened, arising out of or in connection with the performance of his work duties.
B. Any settlement of any claim must be made with prior approval of Nebraska City in order for indemnification, as provided in this section, to be available.
C. Employee recognizes that Nebraska City shall have the right to compromise any claim, and Employee shall have no veto right over the settlement, unless said compromise or settlement is of a personal nature to Employee. Further, Nebraska City agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any work-related litigation to which the Employee is a party, witness or advisor as long as litigation is pending.

**Section 17: Bonding**

Nebraska City shall bear the full costs of any fidelity or other bonds required of the Employee under any law or ordinance as a result of his employment as City Administrator.

**Section 18: Other Terms and Conditions of Employment**

Nebraska City shall fix any such other terms and conditions of employment as it may determine from time to time relating to the performance of Employee, provided such terms and conditions of employment are consistent with the provisions of this Agreement, City Code and other law, and are also consistent with those same terms being applicable to other general employees of Nebraska City as provided in City Code, Personnel Policy and regulations or by practice.

**Section 19: Notices**

Notice pursuant to this Agreement shall be given directly to the Employee, or in the case of Nebraska City, to the City Clerk-Treasurer. Notices may be delivered personally, by email, or by regular United States Postal Service to the last known address. Personally delivered notices must be in the same manner applicable to civil judicial practice.

**Section 20: General Provisions**

A. INTEGRATION. This Agreement encompasses the entire agreement of the parties and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent, by affixing their hands and seals hereto, that said parties have not relied on any representation, assertion, guarantee, collateral contract or other assurance, except those set out in this Agreement, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Agreement. The parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party's reliance on such representation, assertion, guarantee, collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of said party's right to remedies associated with the gross negligence, willful misconduct or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Agreement.

B. BINDING EFFECT. This Agreement shall be binding on Nebraska City and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. SEVERABILITY. If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the validity or enforceability in that jurisdiction of any other provision of this Agreement, nor shall it affect the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

D. CHOICE OF LAWS. This Agreement shall be construed under and according to the laws of the State of Nebraska.

**IN WITNESS WHEREOF,** the City of Nebraska City has caused this Agreement to be signed and executed on its behalf by the Mayor and duly attested by the City Clerk-Treasurer. Employee has personally signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY OF NEBRASKA CITY, NEBRASKA

_____

By: Bryan W. Bequette, Mayor

ATTEST:

_____

Randy Dunster, Clerk-Treasurer

EMPLOYEE:

_____

Grayson A. Path

# CITY OF NEBRASKA CITY

**1409 Central Avenue**
**Nebraska City, NE 68410-2223**
**Phone: 402-873-5515**
**Fax: 402-873-5685**


## Agenda Information Support Sheet

**To:** **Mayor and Commissioners**

**Council Meeting:** December 5, 2016
**Agenda Item:** #6_____
**Submitted By:** Vic Johns, Street Commissioner
Grayson Path, City Administrator
Marty Stovall, Construction and Facility Manager
Evan Wickersham, City Engineer and Street Superintendent

**A. Synopsis of Issue:**

a. This agenda support sheet covers two agenda items: City Engineer and Street Superintendent.
b. On November 7, 2016, the above City Staff approached the City Council recommending the re-appointment of JEO as the City Engineer and Evan Wickersham as the Street Superintendent.
c. At that time, the City Council agreed to this instead of asking that these positions be RFQ'd. Please see the attached agenda sheet from that meeting for history on this.
d. Tonight, assuming that the current council approves JEO as the City Engineer and Evan Wickersham as the Street Superintendent in the appointment section of the agenda, we have prepared the attached City Engineer Agreement and Street Superintendent Agreement.
e. The City Engineer Agreement matches the term in the City Code for City Engineer and is therefore good for two years.
f. The Street Superintendent Agreement is an annual re-appointment to match State Statute.

**B. Options:**

a. Approve the City Engineer Agreement and Street Superintendent Agreement and authorize the Mayor to sign.
b. Reject either or both agreements and provide the City staff with guidance as to how to proceed with selecting a City Engineer and Street Superintendent.
c. Request changes to the drafted agreements and direct staff to make the changes and either bring it back to the next council meeting or authorize the Mayor to sign once the changes have been made.

**C. Fiscal Note:**

a. Both agreements will follow the 2016 rate schedule (City Engineer agreement will use this rate for both 2017 and 2018). JEO has stated that they will not have an updated 2017 rate schedule until next year and therefore since we are presenting this tonight, they will honor the 2016 rates for both agreements for both listed terms.
b. These are pay-as-need agreements; meaning the City only pays when we request services and at the rates established. For the City Engineer Agreement, there is a task order process that is followed, determining the cost of larger projects prior to starting the work.
c. The City receives $6,000.00 in state funds for the Street Superintendent position and the agreement is written to not exceed this amount unless the City requests additional services.
d. The City has budgeted $15,000.00 for Engineering services under 12-12-5598 in the Street Department. This service is normally only used in emergencies (4th Corso Viaduct, 4th Rue Tube, citizen concerns regarding water runoff, etc.).

**D. Recommendation:**

a. Approve the City Engineer Agreement and Street Superintendent Agreement and authorize the Mayor to sign.

**E. Background:**

a. Please see the attached agenda support sheet from the November 7, 2016 council meeting for additional details and history.

b. The City negotiated these contracts in early 2016. There have been no issues so far with these agreements, thus no changes have been made other than clean up and organization of the exhibits (example: the old Exhibit C was brought up in to Article 4 as it was amending Article 4 previously).

**********

**Department Heads:** **Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.**

# CITY OF NEBRASKA CITY

**1409 Central Avenue**
**Nebraska City, NE 68410-2223**
**Phone: 402-873-5515**
**Fax: 402-873-5685**


## Agenda Information Support Sheet

**To:** **Mayor and Commissioners**

**Council Meeting:** November 7, 2016
**Agenda Item:** #7_____
**Submitted By:** Street Commissioner Vic Johns
Marty Stovall, Construction and Facility Manager
Grayson Path, City Administrator

**A. Synopsis of Issue:**

a. According to City Code 2-142, the City Council shall appoint a City Engineer for the City of Nebraska City.
b. According to the County Highway and City Street Superintendent Act (sections 39-2301 through 39-2311), the City is allowed to have a Street Superintendent for the purposes of completing required State Reporting (such as the One & Six Year Plan, Lane Mile Report, NDOR NBCS forms 1-11, etc.) and to such, the State will fund to have that position. For the City at a population of 5,001 – 10,000, to have a Class A license holder, the City receives $6,000.00.
c. Last year, the City completed contracts for both positions with JEO and Evan Wickersham respectively. Evan serves as JEO's direct contact for the City Engineer agreement as well.
d. It was discussed last year that the City Council would consider sending out RFQs in preparation for the December re-appointment.
e. After discussing this, Street Commissioner Vic Johns, Construction and Facility Manager Marty Stovall and City Administrator Grayson Path would request that the City Council not RFQ this out, but instead re-appoint JEO as the City's City Engineer and Evan Wickersham as the Street Superintendent.

**B. Options:**

a. Re-appoint JEO Consulting Group as the City Engineer and Evan Wickersham as the Street Superintendent.
b. Request that either the City Engineer, Street Superintendent or both be placed for RFQ prior to the December 5th or 19th council meetings. It is strongly recommended that both positions be kept with the same firm for simplicity and to prevent confusion.

**C. Fiscal Note:**

a. Currently, the City only pays the City Engineer when services are requested. There has not been a retainage fee.
b. The Street Superintendent revenue collected from the State has never been exceeded as it has always been (and is now written as) a not-to-exceed amount.
c. Pricing for engineering firms is normally based on their published schedule of hourly rates which is amended the beginning of the calendar year. Engineers are normally priced based on experience. If the City were to seek savings, the true savings is if the City can find an inexperienced engineer whose hourly rate is less, but that is not the recommended goal. Instead, it is recommended that the City seek experience which therefore consequently means a higher cost. To that point, bidding this service will not be a RFP but rather a RFQ.

d. An additional cost will be mileage, which the City has not had much of using a local engineering firm (JEO). All other firms would have to travel to Nebraska City when their schedules allow for it which could cause delays and problems.

**D. Recommendation:**

a. Re-appoint JEO Consulting Group as the City Engineer and Evan Wickersham as the Street Superintendent. Contracts will be prepared in time for the December 5, 2016 council meeting and re-appointments.

**E. Background:**

a. The pros of using JEO are 1) Local Engineer – avoid the mileage costs and time issues of waiting to get an engineer on site when emergencies happen (ex: 4th Corso Viaduct hole when it originally formed) and 2) History – JEO has served as the City's engineer firm and Evan has served as the City's superintendent for many years thus they have the experience and knowledge of our community that exceeds others. Cons would be having used the same firm for as long as the City has could mean that the City has only been influenced in certain ways, but we do not feel that is true because the City routinely RFQs large projects.
b. Commissioner Johns and Marty have enjoyed their working experience with Evan Wickersham over the past year and feel it should continue.
c. The City is not required to use JEO for all projects – nothing prevents the City from RFQ'ing any project (ex: North 11th Street Project). The City Engineer Agreement just streamlines small projects that are beyond staffing's ability to design and prevent us from having to go through the time consuming RFQ process.
d. It must be remembered that selecting an engineering firm and engineer for the City Engineer and Street Superintendent roles is not about hourly rates, but rather experience, qualifications and availability.

**********

**Department Heads:** **Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.**

# City of Nebraska City
# Street Superintendent Agreement

Nebraska Revised Statutes §§39-2301 – 39-2311 and 39-2501 – 39-2520

Whereas, the City of Nebraska City recognizes the need to further professional management of its street programs (39-2301);
Whereas, the State of Nebraska has instituted the County Highway and City Street Superintendents Act in Neb. Rev. Stat. §§ 39-2301 to 39-2311;
Whereas, the State has set aside certain funds from the Highway Trust Fund to be used as an incentive program for municipalities to employ a Street Superintendent in §§ 39-2501 to 39-2520;
Whereas, the State has set aside $6,000.00 for a city with population 5,001 to 10,000 (which would currently include the City of Nebraska City) to employ a Street Superintendent with a Class A license (39-2513);
Whereas, the State has conditioned this incentive program with the employment or contracting of an individual licensed under the Nebraska Board of Examiners for County Highway and City Street Superintendents Act (§39-2302);
Whereas, the State has established the Highway Allocation Fund under §39-2501 of which the amount distributed to the City of Nebraska City is computed and directed under §§39-2517 to 39-2520;
Whereas, the City of Nebraska City is required to perform annual reporting to the State regarding the expense of said distributed funds;
Whereas, the duties of said Street Superintendent are provided in §39-2512;
Whereas, the City of Nebraska City has chosen to contract for the services of a consulting engineer licensed under the County Highway and City Street Superintendents Act for said incentive funds (§39-2514);

Now, therefore be it resolved that the City of Nebraska City contracts the position of Street Superintendent with Evan Wickersham, Professional Engineer ("Superintendent"), employed with JEO Consulting Group, Inc. ("Company") who has in his name a Class A license under the Nebraska Board of Examiners with the following terms and conditions:

A. <u>Responsibility of Superintendent:</u> Superintendent shall provide the following duties which fall under §39-2512(1) and §39-2512(6) and of which are required annually by the Nebraska Department of Roads (NDOR):
   a. Preparation of the Annual Reporting forms:
      i. NBCS 1a and 1e – Budget & Expenditure Report
      ii. NBCS 2 – Roads & Streets Financial Report
      iii. NBCS 3 – Material & Inventory Report
      iv. NBCS 4 – Machinery & Equipment Inventory Report
      v. NBCS 5 – Equipment Cost Report
      vi. NBCS 6 – Certification
      vii. Review and Update the Lane Mile Report

   b. Preparation of the Annual Reporting of One and Six Year Plans
      i. NBCS 7 – One and Six Year Plan Highway & Street Improvement Plan
      ii. NBCS 8 – Summary of the One Year Plan
      iii. NBCS 9 – Summary of the Six Year Plan
      iv. NBCS 10 – Notification of Revision of One Year Plan
      v. NBCS 11 – Report of Previous Year Highway or Street Improvement
      vi. Preparation of the One and Six Year Plan Sheets
   c. Provide information for the Public Hearing on the One and Six Year Plan and timely file the plan with NDOR.

   Superintendent shall comply with the license, renewal and professional development requirements required under §39-2308.02 for a Class A License. If Superintendent's license is suspended or revoked by the Board of Examiners under §39-2309, this contract is immediately terminated and a new agreement with a different professional engineer with Class A License employed with Company may be created for the remainder of this calendar year under the same terms and conditions at the discretion of the City.
   Superintendent agrees to provide all of his services in a timely, competent and professional manner. The necessary reporting shall be completed and submitted to the NDOR no later than December 31, 2017. The One and Six Year Street Plan will be submitted to the City prior to the selected Public Hearing.

B. <u>Compensation:</u> In exchange for such services, the City agrees to pay an amount not to exceed the incentive payment provided by the State each year per §39-2513. Said payment shall be written to Company for services offered by Superintendent as per the attached 2016 Hourly Rate Schedule Range. Invoices shall be distinguished with the designation "Nebraska City Road Program" written clearly in the subject line.

Should the City request additional duties which fall under the various possible duties under §39-2512 for a Street Superintendent, then invoice and reimbursement shall be in accordance with the attached 2016 Hourly Rate Schedule Range and may exceed the incentive payment provided by the State. Superintendent shall not commence work on optional additional services without prior written approval of the City.

C. Term: This agreement is set for a time period from January 1, 2017 through December 31, 2017. This agreement will not roll over in to any subsequent years, but instead shall require a new agreement be signed and executed. This agreement is terminable by either party at any time, with or without cause, effective upon written notice to the other party. Any and all compensation for work performed up until notice of termination shall be given.

D. Responsibility of City: The City shall designate the Construction and Facility Manager as the City's liaison to work with Superintendent. Said liaison shall be responsible for coordinating the City's efforts in providing the necessary data and information to complete the responsibilities in section A.

E. Indemnification: The parties agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorney's fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

F. Relationship of the Parties: Under no circumstances shall Superintendent or any other Company employee look to the City as his/her employer nor shall they be entitled to any benefits accorded to the City's employees. Superintendent and Company shall be responsible for providing, at their own expense and in their own name, any and all benefits as necessary for conducting their services. Both parties agree to provide and maintain their own separate levels of proper insurance.

G. Assignment: Neither Superintendent nor Company shall assign or transfer any of their rights or duties under this agreement without the prior written consent of the City.

H. Controlling Law: This Contract shall be construed and enforced in accordance with the laws of the State of Nebraska. The parties agree to the personal jurisdiction and exclusive venue of a court of subject matter jurisdiction in the County of Otoe, State of Nebraska.

I. Notices: Any notice(s) to be given under and pursuant to the terms of this agreement shall be made by registered or certified mail, postage prepaid, and notice shall be deemed given as of the date of mailing. Any notice to Superintendent shall be addressed as follows: Attention: Evan Wickersham, PO Box 160, Nebraska City, NE 68410-0160. Any notice to the City shall be addressed as follows: Attention: Public Properties Director, 1409 Central Avenue, Nebraska City, NE 68410.

J. Waiver: Except where specifically indicated, no waiver of any provisions of this Contract shall be effective unless it is in writing and signed by the party against whom it is asserted. Such waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing waiver.

K. Severability: Any provision of this Agreement prohibited by, or unlawful or unenforceable under, any applicable law or any jurisdiction shall be ineffective as to such jurisdiction without invalidating the remaining provisions of this Agreement.

This agreement is hereby passed and approved this _____ day of _____ 20_____.

ATTEST:

| | |
|---|---|
| _____ | _____ |
| Randy Dunster<br>City Clerk – Treasurer | Bryan Bequette<br>Mayor |
| _____ | _____ |
| Evan Wickersham, JEO Consulting Group, Inc.<br>Street Superintendent | Date |

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

# STANDARD FORM OF MASTER AGREEMENT BETWEEN CITY AND ENGINEER FOR PROFESSIONAL SERVICES

*Prepared by*

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
*a practice division of the*
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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AMERICAN CONSULTING ENGINEERS COUNCIL

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AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

EJCDC No. E-505

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# STANDARD FORM OF MASTER AGREEMENT BETWEEN CITY AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT between City of Nebraska City ("Owner"/"City") and JEO Consulting Group, Inc. ("Engineer").

From time to time City intends to engage Engineer to provide professional services pursuant to Nebraska City Code Sections 2-195 to 2-201 and as otherwise needed. This Agreement sets forth the general terms and conditions which shall govern the relationships and performance of City and Engineer, if and only if one or more Task Orders are agreed to under this Agreement. Each engagement will be documented by a Task Order.

City and Engineer in consideration of their mutual covenants as set forth herein agree as follows:

## ARTICLE 1 - SERVICES OF ENGINEER

### 1.01 Scope

A. Engineer's services shall include such of the Basic and Additional Services set forth in Exhibit A, "Schedule of Engineer's Services," as authorized by City as provided herein. Services for each Specific Project will be detailed in a duly executed Task Order. Each Task Order will indicate the specific tasks and functions to be performed and deliverables to be provided. The services provided by Engineer will include making a record of the minutes of his surveys and of all work done for the City. Engineer shall accurately make all such plats, sections, profiles and maps as may be necessary in any work for the City. Engineer shall inspect all works or public improvement, and, if found to be properly done, shall accept the same and forthwith report his acceptance to the City Council. The City may employ a special engineer to make or assist in making any particular estimate or survey. Engineer shall, upon request of the City, make estimate of the costs of labor and material which may be done or furnished by contract with the city, and make all surveys, estimates and calculations necessary for the establishment of grades, bridges or culverts and for the building, constructing or repairing of any public improvement of the City, and file the same with the City Clerk-Treasurer. Engineer upon request shall estimate the cost of proposed municipal utilities and public improvements, together with any extensions thereof, which the City proposes to construct or improve. When required by City, Engineer shall make cost estimates for general improvements, such as water extensions, sewers, public heating system, bridges, or works on streets, any motor or other mechanical equipment, including parking meters, street machinery, or any other work or improvement, where the cost of such improvement shall be assessed to property owners.

B. The general format of a Task Order is shown in Exhibit 1.

C. This Agreement is not a commitment by City to Engineer to issue any Task Orders.

D. Engineer shall not be obligated to perform any prospective Task Order unless and until City and Engineer agree as to the particulars of the Specific Project, Engineer's services, Engineer's compensation, and all other appropriate matters.

### 1.02 Task Order Procedure

A. City and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order.

B. Engineer will commence performance as set forth in the Task Order.

## ARTICLE 2 - CITY'S RESPONSIBILITIES

### 2.01 General

A. City shall have the responsibilities set forth herein, in Exhibit B, "Schedule of City's Responsibilities," and in each Task Order.

## ARTICLE 3 - TERM; TIMES FOR RENDERING SERVICES; SUSPENSION

### 3.01 Term

A. This Agreement shall be effective and applicable to Task Orders issued from the Effective Date of the Agreement, and is subject to a vote of appointment by the City Council at the first meeting of each new Council (every two years).

### 3.02 Times for Rendering Services

A. The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, Engineer will perform services and provide deliverables within a reasonable time.

B. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

C. The time for a party's performance will be extended to the extent performance was delayed by causes beyond the control and without the fault of the party seeking the extension. That party shall promptly notify the other party in writing when it is being delayed.

### 3.03 Suspension

A. If City fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase under a Task Order, or if Engineer's services are delayed through no fault of Engineer, Engineer may, after giving seven days written notice to City, suspend services under the Task Order.

B. If Engineer's services under a Task Order are delayed or suspended in whole or in part by City, or if Engineer's services under a Task Order are extended by a Contractor's actions or inactions for more than 90 days through no fault of Engineer, Engineer shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect incremental costs incurred by Engineer in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under the Task Order has been revised.

## ARTICLE 4 - PAYMENTS TO ENGINEER

### 4.01 Payment for Services and Reimbursable Expenses of Engineer

A. City shall pay Engineer for services in accordance with one or more of the following methods as identified in each Task Order:

1. Method A: Lump Sum

a. City shall pay Engineer a Lump Sum amount. The Task Order shall state the assumed distribution of the lump sum by phases.

b. The distribution of Engineer's compensation between phases may be altered with City's approval, which shall

not be unreasonably withheld. Engineer's total compensation shall not exceed the total lump sum amount unless approved in writing by City.

c. The Lump Sum will include compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

d. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

2. Method B: Standard Hourly Rates

a. City shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.

b. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

c. Engineer's Standard Hourly Rates are attached to this Exhibit as Appendix 1.

d. The total estimated compensation for Engineer's services for the Task Order and the assumed distribution of compensation by phases shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses and Engineer's Consultants' charges, if any.

e. The amounts billed for Engineer's services under each Task Order will be based on the cumulative hours charged to the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.

f. The Standard Hourly Rates Schedule shall be adjusted annually (as of approximately January 1st) to reflect equitable changes in the compensation payable to Engineer.

**4.02 Other Payment Provisions**

A. *Preparation of Invoices.* Invoices for each Task Order will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to City by Engineer monthly, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C, "Payments to Engineer for Services and Reimbursable Expenses," and each Task Order.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If City fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0 percent per month (or the maximum rate of interest permitted by law, if less) from said 30th day. In addition, Engineer may, after giving seven days written notice to City, suspend services under any Task Order issued under this Agreement until Engineer

has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.06, Engineer will be entitled to invoice City and will be paid in accordance with each Task Order for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.

2. In the event of termination by City for convenience or by Engineer for cause, Engineer, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice City and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in each Task Order.

E. *Records of Engineer's Costs.* Records of Engineer's costs pertinent to Engineer's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify Engineer's charges and upon City's timely request, copies of such records will be made available to City at cost.

F. *Legislative Actions.* In the event of legislative actions after the effective date of a Task Order by any level of government that impose taxes, fees, or costs on Engineer's services or other costs in connection with that Task Order or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by City as a Reimbursable Expense. Should such taxes, fees, or costs be imposed, they shall be in addition to Engineer's estimated total compensation.

G. *Extended Contract Times*. Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.

1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give City written notice thereof. Promptly thereafter City and Engineer shall review the matter of services remaining to be performed and compensation for such services. City shall either agree to such compensation exceeding said estimated amount or City and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before City and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof

to City and shall be paid for all services rendered thereafter.

**4.03** ***Reimbursable Expenses***

A. Costs incurred by Engineer in the performance of the Task Order in the following categories constitute Reimbursable Expenses:

1. Only those specifically identified in a Task Order, if any.

2. The amounts payable to Engineer for Reimbursable Expenses will be the project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to a Specific Project, the latter multiplied by a Factor of 1.1.

**4.04** ***Serving as a Witness***

A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under paragraph A2.01.A.20, at the rate of ($ to be negotiated) per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration or proceeding will be on the basis provided in paragraph (to be negotiated)). Compensation for Engineer's Consultants for such services will be on the basis provided in paragraph C4.05.

## ARTICLE 5 - OPINIONS OF COST

### 5.01 Opinions of Probable Construction Cost

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

### 5.02 Opinions of Total Project Costs

A. Engineer assumes no responsibility for the accuracy of opinions of Total Project Costs.

## ARTICLE 6 - GENERAL CONSIDERATIONS

### 6.01 Standards and Parameters of Performance

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of Engineer's profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

B. Engineer shall be responsible for the technical accuracy of its services and documents resulting therefrom, and City shall not be responsible for discovering deficiencies therein. Engineer shall correct such deficiencies without additional compensation except to the extent such

action is directly attributable to deficiencies in City-furnished information.

C. Engineer shall serve as City's prime professional under each Task Order. Engineer may employ such Engineer's Consultants as Engineer deems necessary to assist in the performance or furnishing of the services with written approval of the City. Engineer shall not be required to employ any Engineer's Consultant unacceptable to Engineer.

D. Engineer and City shall comply with applicable Laws or Regulations and City-mandated standards. This Agreement is based on these requirements as of the Effective Date of each Task Order. Changes to these requirements after the Effective Date of each Task Order may be the basis for modifications to City's responsibilities or to Engineer's scope of services, times of performance, or compensation.

E. City shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by City to Engineer pursuant to this Agreement. Engineer may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.

F. City shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of Engineer.

G. Prior to the commencement of the Construction Phase on a Specific Project, City shall notify Engineer of any variations from the language indicated in Exhibit E, "Recommendation of Acceptance," or of any other notice or certification that Engineer will be requested to provide to City or third parties in connection with a Specific Project. City and Engineer shall reach agreement on the terms of any such requested notice or certification, and City shall authorize such Additional Services as are necessary to enable Engineer to provide the notices or certifications requested.

H. If a Construction Cost limit for a Specific Project is established between City and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specific as set forth in the Task Order.

I. Engineer shall not be required to sign any documents, no matter by who requested, that would result in Engineer having to certify, guarantee or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. City agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.

J. If Engineer provides services during the Construction Phase of a Specific Project, Engineer shall not supervise, direct, or have control over a Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by a Contractor, for safety precautions and programs incident to a Contractor's work in progress, nor for any failure of a Contractor to comply with Laws and Regulations applicable to a Contractor's furnishing and performing the Work, but shall notify City of such observations and failures.

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

L. Engineer shall not be responsible for the acts or omissions of any Contractor(s),

subcontractor or supplier, or of any of a Contractor's agents or employees or any other persons (except Engineer's own employees) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by City without consultation and advice of Engineer.

M. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit J, "Special Provisions."

**6.02 Authorized Project Representatives**

A. Contemporaneous with the execution of each Task Order, Engineer and City shall designate specific individuals to act as Engineer's and City's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of City under the Task Order. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to a Specific Project on behalf of each respective party.

**6.03 Design without Construction Phase Services**

A. It is understood and agreed that if Engineer's Basic Services under a Task Order do not include project observation, or review of a Contractor's performance, or any other Construction Phase services, and that such services will be provided by City or others, then City assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the Engineer that may be in any way connected thereto. In such a case, Engineer's Basic Services under the applicable Task Order will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A and the Task Order.

**6.04 Use of Documents**

A. All records of the Engineer shall be public records, shall belong to the City, and shall be turned over to Engineer's successor. City shall retain ownership and property interest therein whether or not a Specific Project is completed.

B. Copies of City-furnished data that may be relied upon by Engineer are limited to the printed copies (also known as hard copies) that are delivered to Engineer pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by City to Engineer are only for convenience of Engineer. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by City are limited to the printed copies (also known as hard copies) that are signed or sealed by Engineer. Files in electronic media format of text, data, graphics, or of other types that are furnished by Engineer to City are only for convenience of City. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 30 days, after which the receiving party shall be deemed to have accepted the data

thus transferred. Any errors detected within the 30-day acceptance period will be corrected by the party delivering the electronic files. Engineer shall not be responsible to maintain documents stored in electronic media format after acceptance by City.

E. When transferring documents in electronic media format, Engineer makes no representations as to compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Engineer at the beginning of a Specific Project.

F. City may make and retain copies of Documents for information and reference in connection with use on a Specific Project by City. Such Documents are not intended or represented to be suitable for reuse by City or others on extensions of the Specific Project for which they were prepared or on any other project. Any such reuse or modification without written verification or adaptation by Engineer, as appropriate for the specific purpose intended, will be at City's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants. City shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification or adaptation of the Documents for extensions of the Specific Project for which they were prepared or for any other project will entitle Engineer to further compensation at rates to be agreed upon by City and Engineer.

**6.05 Insurance**

A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

B. City shall require Contractors to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for a Specific Project.

D. Engineer shall deliver to the City a certificate of insurance evidencing the coverages indicated in Exhibit G. Such certificate shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of this Agreement.

E. All policies of property insurance shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

F. At any time, City may request that Engineer, at City's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by City, with the concurrence of Engineer, and if commercially available, Engineer shall obtain and shall require Engineer's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by City, and Exhibit G will be amended to incorporate these requirements.

**6.06 Termination**

A. The obligation to provide further services under this Agreement or any Task Order may be terminated:

1. *For cause*,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement or any Task Order hereunder through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Engineer believes that Engineer is being requested by City to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
2) upon seven days written notice if Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
3) Engineer shall have no liability to City on account of such termination.

c. Notwithstanding the foregoing, neither this Agreement nor any Task Order will terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience*,

a. By City effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination of this Agreement or any Task Order at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble materials in orderly files.

**6.07 Controlling Law**

A. This Agreement is to be governed by the law of the state of Nebraska.

**6.08 Successors, Assigns, and Beneficiaries**

A. City and Engineer each is hereby bound and the partners, successors, executors, administrators and legal representatives of City and Engineer (and to the extent permitted by paragraph 6.08.B the assigns of City and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither City nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any

written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of City and Engineer and not for the benefit of any other party.

**6.09 Dispute Resolution**

A. City and Engineer agree to negotiate all disputes between them in good faith for a period not to exceed 30 days from the date of notice prior to exercising their rights under this Agreement, or under law.

**6.10 Hazardous Environmental Condition**

A. City represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist on a Site for a Specific Project, unless set forth in the Task Order.

B. City shall disclose to the best of its knowledge to Engineer the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site of any Specific Project, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, Engineer shall have the obligation to notify City and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that Engineer's scope of services in any Task Order shall not include any services related to a Hazardous Environmental Condition unless specifically agreed to in a Task Order. In the event Engineer or any other party encounters a Hazardous Environmental Condition not specifically identified in the Task Order, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until City: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site of a Specific Project is in full compliance with applicable Laws and Regulations.

E. City acknowledges that Engineer is performing professional services for City and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site of a Specific Project in connection with Engineer's activities under this Agreement.

F. If Engineer's services under any Task Order cannot be performed because of a Hazardous Environmental Condition not specifically identified in the Task Order, the existence of the condition shall justify Engineer's terminating that Task Order for cause on 30 days notice.

**6.11 Allocation of Risks**

A. Indemnification

1. To the fullest extent permitted by law, Engineer shall indemnify and hold

harmless City, City's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Engineer or Engineer's officers, directors, partners, employees, and Engineer's Consultants in the performance and furnishing of Engineer's services under this Agreement.

2. To the fullest extent permitted by law, City shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, employees, and Engineer's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of City or City's officers, directors, partners, employees, and City's consultants with respect to this Agreement.

3. To the fullest extent permitted by law, City shall indemnify and hold harmless Engineer and its officers, directors, partners, employees, and Engineer's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.11.A.3. shall obligate City to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

5. The indemnification provision of paragraph 6.11.A.1 is subject to and limited by the provisions agreed to by City and Engineer in Exhibit I, "Allocation of Risks," if any.

**6.12 Notices**

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

**6.13 Applicability of Master Agreement to Task Orders**

A. The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written amendment. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.

**6.14 Survival**

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

**6.15 Severability**

A. Any provision or part of this Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Engineer, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**6.16 Waiver**

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**6.17 Headings**

A. The headings used in this Agreement are for general reference only and do not have special significance.

**6.18 Non-Exclusive and Non-Limiting Agreement**

A. Nothing herein shall establish an exclusive relationship between City and Engineer. City may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with others for the same or different services as contemplated hereunder.

B. The cumulative scope of Engineer's services and Engineer's compensation as agreed to in Task Orders hereunder shall not be limited by this Agreement.

**6.19 E-Verify**

A. Engineer shall register with and use 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 pursuant to the Immigration Reform and Control Act of 1986, to determine the work eligibility status of new employees physically performing services within the State of Nebraska. Engineer shall require the same of each subcontractor

## ARTICLE 7 - DEFINITIONS

**7.01 Defined Terms**

A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services*--Services to be performed for or furnished to City by Engineer in accordance with a Task Order which are not included in Basic Services for that Task Order.

3. *Agreement*--This "Standard Form of Master Agreement between City and Engineer for Professional Services," including those Exhibits listed in Article 8 hereof.

4. *Application for Payment*--The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services*--Specified services to be performed for or furnished to City by Engineer in accordance with a Task Order.

7. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid Bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order*--A document recommended by Engineer, which is signed by a Contractor and City to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between City and a Contractor covering the Work.

11. *Construction Contract*--The entire and integrated written agreement between City and a Contractor concerning the Work.

12. *Construction Cost*--The cost to City of those portions of an entire Specific Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or City's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to City pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

13. *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between City and a Contractor, Addenda (which pertain to the Contract Documents), a contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The moneys payable by City to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times*--The number of days or the dates stated in a Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so

that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

16. *Contractor*--An individual or entity with whom City enters into a Construction Agreement for a Specific Project.

17. *Correction Period*--The time after Substantial Completion during which a Contractor must correct, at no cost to City, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective*--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.

19. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to City pursuant to this Agreement.

20. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by a Contractor. Shop Drawings are not Drawings as so defined.

21. *Effective Date of the Construction Agreement*--The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *Effective Date of the Agreement*--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *Effective Date of the Task Order*--The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.

24. *Engineer's Consultants*--Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Consultants.

25. *Field Order*--A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

26. *General Conditions*--That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.

27. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property

exposed thereto in connection with a Specific Project.

28. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

29. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

30. *PCB's*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

33. *Record Drawings*--The Drawings as issued for construction on which Engineer, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Engineer considers significant based on record documents furnished by Contractor to Engineer and which were annotated by Contractor to show changes made during construction.

34. *Reimbursable Expenses*--The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for a Specific Project for which City shall pay Engineer as indicated in Exhibit C.

35. *Resident Project Representative*--The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by City. The duties and responsibilities of the Resident Project Representative will be as set forth in each Task Order.

36. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

37. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work.

38. *Site*--Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by City upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by City which are designated for use of a Contractor.

39. *Specifications*--That part of the Contract Documents prepared by Engineer consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor

and certain administrative details applicable thereto.

40. *Specific Project* -- An undertaking of City as set forth in a Task Order.

41. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

42. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements the General Conditions.

43. *Task Order* -- A document executed by City and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.

44. *Total Project Costs*--The sum of the Construction Cost, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or City's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to City pursuant to Exhibit B of this Agreement.

45. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided by a Contractor under Contract Documents for a Specific Project. Work includes and is the result of a Contractor performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the applicable Contract Documents.

46. *Work Change Directive*--A written directive to a Contractor signed by City upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

47. *Written Amendment*--A written amendment of the Contract Documents signed by City and a Contractor on or after the Effective Date of a Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

## ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

### 8.01 Exhibits

Exhibit 1 -- Sample Task Order

Exhibit A – Schedule of Engineer's Services

Exhibit B – Schedule of City's Responsibilities

Exhibit C – Payments to Engineer for Services and Reimbursable Expenses

Exhibit D – Duties, Responsibilities, and Limitation of Authority of Resident Project Representative

Exhibit E – Recommendation of Acceptance

Exhibit G -- Insurance

**8.02 Total Agreement**

A. This Agreement (consisting of pages 1 to 12 inclusive, together with the Exhibits identified as included above) constitutes the entire agreement between City and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

| City: City of Nebraska City, NE | Engineer: JEO Consulting Group, Inc. |
|---|---|
| _____ | _____ |
| By: Bryan Bequette | By: Evan Wickersham |
| Title: Mayor | Title: Engineer |
| Date Signed:_____ | Date Signed:_____ |
| Address for giving notices: | Address for giving notices: |
| City of Nebraska City | JEO Consulting Group, Inc. |
| 1409 Central Ave. | _____ |
| _____ | _____ |
| Nebraska City, NE 68410 | Nebraska City, NE 68410 |

This is Task Order No. _____,
Consisting of _____ pages

**Task Order**

In accordance with paragraph 1.01 of the Master Agreement Between City and Engineer for Professional Services dated _____ ("Agreement"), City and Engineer agree as follows:

**Specific Project Data**

A. Title:

B. Description:

1. **Services of Engineer**

See Attached Exhibit "A"

2. **City's Responsibilities**

Exhibit "B" from the Master Agreement Between City and Engineer for Professional Services as referenced above is modified as follows:

3. **Times for Rendering Services**

| Phase | Completion Date |
|---|---|
| Study and Report | |
| Preliminary Design | |
| Final Design | |
| Bidding or Negotiating | |
| Construction | |
| Post-Construction | |
| TOTAL | |

4. **Payments to Engineer**

A. **For Method of Payment A, Lump Sum**

The total compensation for services identified under paragraph 1 of the Task Order is estimated to be $_____ based on the following assumed distribution:

| Phase | Estimated Compensation |
|---|---|
| Study and Report | |
| Preliminary Design | |
| Final Design | |

| | |
|---|---|
| Bidding or Negotiating | |
| Construction | |
| Post-Construction | |
| TOTAL | |

**B. For Method of Payment B, Standard Hourly Rates:**

1. The Standard Hourly Rates shall be as shown on Appendix 1 of Exhibit C of the Master Agreement.
2. Current hourly rate schedule is attached and subject to adjustment approximately January 1st of each year.
3. The total compensation for services identified under paragraph 1 of the Task Order is estimated to be $_____ based on the following assumed distribution:

| Phase | Estimated Compensation |
|---|---|
| Study and Report | |
| Preliminary Design | |
| Final Design | |
| Bidding or Negotiating | |
| Construction | |
| Post-Construction | |
| TOTAL | |

5. **Other Modifications to Master Agreement:**

Approval and Acceptance: Approval and Acceptance of this Task Order, including the attachments listed above, shall incorporate this document as part of the Agreement. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by City.

The Effective Date of this Task Order is _____, _____.

| Engineer | City |
|---|---|
| _____ | _____ |
| Signature | Date |
| Signature | Date |
| _____ | _____ |
| Name | Name |
| _____ | _____ |
| Title | Title |
| DESIGNATED REPRESENTATIVE FOR TASK ORDER: ORDER: | DESIGNATED REPRESENTATIVE FOR TASK |
| _____ | _____ |
| Name | Name |
| _____ | _____ |
| Title | Title |
| _____ | _____ |
| Address | Address |
| _____ | _____ |
| E-Mail Address | E-Mail Address |
| _____ | _____ |
| Phone | Phone |
| _____ | _____ |
| Fax | Fax |

This is **EXHIBIT A**, consisting of _9_ pages, referred to in and part of the **Master Agreement between City and Engineer for Professional Services** dated **December 5, 2016**.

**ENGINEER's Services**

Services to be provided under a Task Order may include the following:

**PART 1 – BASIC SERVICES**

**A1.01 Study and Report Phase**

A. ENGINEER shall:

1. Consult with CITY to define and clarify CITY's requirements for the Project and available data.
2. Advise CITY as to the necessity of CITY's providing data or services of the types described in Exhibit B which are not part of ENGINEER's Basic Services, and assist CITY in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate alternate solutions available to CITY and, after consultation with CITY, recommend to CITY those solutions which in ENGINEER's judgment meet CITY's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to CITY which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project with each component including the following, which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by ENGINEER and, on the basis of information furnished by CITY, allowances for other items and services included within the definition of Total Project Costs.
6. Perform or provide the following additional Study and Report Phase tasks or deliverables: See Attachment "1" to Exhibit A.

7. Furnish three review copies of the Report to CITY within ten days of authorization to begin services and review it with CITY.
8. Revise the Report in response to CITY's and other parties' comments, as appropriate, and furnish six final copies of the revised Report to the CITY within seven days after completion of reviewing it with CITY.

B. ENGINEER's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to CITY.

**A1.02 Preliminary Design Phase**

A. Based upon CITY's selection of a recommended solution and indication by CITY of scope, extent, or design requirements, and upon authorization from CITY, ENGINEER shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project desired by the CITY.
2. Advise CITY if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist CITY in obtaining such reports, data, information or services.
3. Furnish the Preliminary Design Phase documents to and review them with CITY.
4. Provide Opinion of Probable Construction Cost.
5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: See Attachment "1" to Exhibit A.

B. ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when the Preliminary Design Phase documents have been reviewed with the CITY.

**A1.03 Final Design Phase**

A. After acceptance by CITY of the Preliminary Design Phase documents and revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, but subject to any CITY-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon authorization from CITY, ENGINEER shall:

1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the JEO standard format of Construction Specifications.
2. Provide technical criteria, written descriptions, and design data for CITY'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 CITY in consultations with appropriate authorities.

3. Advise CITY of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER.
4. Perform or provide the following additional Final Design Phase tasks or deliverables: See Attachment "1" to Exhibit A.
5. Prepare and furnish Bidding Documents for review and approval by CITY, its legal counsel, and other advisors, as appropriate, and assist CITY in the preparation of other documents.

B. In the event that the Work designed or specified by the ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), CITY and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

C. ENGINEER's services under the Final Design Phase will be considered complete on the date when the Final Plans and Specifications have been reviewed with the CITY.

**A1.04 Bidding or Negotiating Phase**

A. After acceptance by CITY of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon authorization by CITY to proceed, ENGINEER shall:

1. Assist CITY in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, and receive and process Contractor deposits or charges for the Bidding Documents.
2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
3. Consult with CITY as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
4. Perform or provide the following Bidding and Negotiating Phase tasks or deliverables: See Attachment "1" to Exhibit A.

5. Attend the Bid opening, prepare Bid tabulation sheets, and assist CITY in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

**A1.05 Construction Phase**

A. Upon successful completion of the Bidding and Negotiating Phase, and upon authorization from CITY, ENGINEER shall:

1. *General Administration of Construction Contract.* Consult with CITY and act as CITY's representative as provided in the General Conditions. The extent and limitation of the duties, responsibilities and authority of ENGINEER as assigned in said General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of CITY's instructions to Contractor will be issued through ENGINEER, who shall have authority to act on behalf of CITY in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.

2. *Resident Project Representative (RPR).* If included in Attachment "1" of Exhibit A provide the services of an RPR at the Site to assist the ENGINEER and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of RPR's services will not exceed ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.

3. *Selecting Independent Testing Laboratory.* Assist CITY in the selection of an independent testing laboratory to perform the services identified in paragraph B2.01.0.

4. *Visits to Site by Project Engineer/Manager and Observation of Construction by Project Engineer/Manager.* In connection with observations of Contractor's work in progress while it is in progress:

   a. Make visits to the Site at intervals appropriate to the various stages of construction, as Project Engineer/Manager deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the work.

      Such visits and observations by Project Engineer/Manager, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to Project Engineer/Manager in this Agreement and the Contract

Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Project Engineer/Manager's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, Project Engineer/Manager will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and Project Engineer/Manager shall keep CITY informed of the progress of the work.

b. The purpose of Project Engineer/Manager's visits to, and representation by the Resident Project Representative, in any, at the Site, will be to enable Project Engineer/Manager to better carry out the duties and responsibilities assigned to and undertaken By Project Engineer/Manager during the Construction Phase, and, in addition, by the exercise of Project Engineer's/Manager efforts as an experienced and qualified design professional, to provide for CITY a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. Project Engineer/Manager shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Project Engineer/Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Project Engineer/Manager neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

5. *Defective Work.* Recommend to CITY that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

6. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

7. *Change Orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to CITY, as appropriate, and prepare Change Orders and Work Change Directives as required.

8. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.

9. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute of "or equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.

10. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, test, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER'S review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

11. *Disagreements between CITY and Contractor.* Render formal written decisions on all claims of CITY and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, ENGINEER shall be fair and not show partiality to CITY or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

12. *Applications for Payment.* Based on ENGINEER'S observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER'S representation to CITY, based on such observations and review, that, to the best of ENGINEER'S knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER'S responsibility to observe Contractor's work. In the case of unit price work, ENGINEER'S recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph A1.05.A.12.a are expressly subject to the limitations set forth in paragraph A1.05.A.12.b and other express or general limitations in this Agreement and elsewhere.

b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER'S review of Contractor's work for the purposes of recommending payments nor ENGINEER'S recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for

what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to CITY free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between CITY and Contractor that might affect the amount that should be paid.

13. *Contractor's Completion Documents.*

    *a.* Receive and review maintenances and operating instructions, schedules, and guarantees.

    *b.* Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, test and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A1.05.A.8 and the annotated record documents which are to be assembled by the Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENGINEER'S review will be limited as provided in paragraph A1.05.A.8.

    *c.* ENGINEER shall transmit these documents to CITY.

14. *Additional Tasks.* Perform or provide the following Construction Phase tasks or deliverables: See Attachment "1" to Exhibit A.

15. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a Recommendation of Acceptance that the Work is acceptable to the best of ENGINEER'S knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.

B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts.

C. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

**A1.06 Post-Construction Phase**

A. Upon authorization from CITY, ENGINEER, during the Post-Construction Phase, shall:

1. In company with CITY or CITY'S representative, provide an inspection of the Project within two (2) months before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.
2. Provide Engineering services necessary during the correction period.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Correction Period.

## Part 2—ADDITIONAL SERVICES

### A2.01 Additional Services Requiring CITY'S Authorization in ADVANCE

A. If not specifically included in Exhibit A Part 1 basic services and if authorized by CITY, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by CITY as indicated in Article 4 of the Agreement.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by CITY.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, CITY'S schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER'S control.
4. Services resulting from CITY'S request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A1.01.A.4, if any.

5. Services required as a result of CITY'S providing incomplete or incorrect Project information with respect to Exhibit B.
6. Providing renderings or models for CITY'S use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting CITY in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by CITY.
8. Furnishing services of ENGINEER'S Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in paragraph A1.03.C.
10. Services during out-of-town travel required of ENGINEER other than for visits to the Site or CITY'S office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by CITY; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by CITY for the Work or a portion thereof.
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as defined in basic services and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the Contract Times set forth in the Project Specifications, including services not specifically listed or provided beyond the hours and dollars in Post-Construction Phase during correction period.

17. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
18. Preparing and furnishing to CITY Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.
19. Preparation of operation and maintenance manuals.
20. Provide assistance in connection with the testing and adjusting of Project equipment or system.
21. Assist CITY in training CITY'S staff to operate and maintain Project, equipment, and systems.
22. Assist CITY in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
23. Preparing to serve or serving as a consultant or witness for CITY in any litigation, arbitration or other dispute resolution process related to the Project.
24. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by CITY under paragraph 6.01.G of the Agreement.
25. Other services performed or furnish by ENGINEER not otherwise provided for in this Agreement.

**A2.02 Required Additional Services**

A. ENGINEER shall perform or furnish, without requesting or receiving specific advance authorization from CITY, the Additional Services of the types listed below. ENGINEER shall advise CITY in writing promptly after starting any such Additional Services.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by CITY so as to make the compensation commensurate with the extent of the Additional Services rendered.
2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition,

(3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, (6) default by Contractor or (7) weather.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by CITY prior to Substantial Completion.

6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the **Master Agreement between City and Engineer for Professional Services** dated **December 5, 2016**

## CITY's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities except as stated in a Task Order.

**B2.01 Unless specifically set forth in Part 1 of Exhibit "A" of any Task Order, and in addition to other responsibilities of CITY as set forth in this Agreement, CITY shall:**

A. Provide ENGINEER with all criteria and full information as to CITY'S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which CITY will require to be included in the Drawings and Specifications; and furnish copies of CITY'S standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.

B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following ENGINEER'S assessment of initially-available Project information and data and upon ENGINEER'S request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretations thereof.
5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to ENGINEER whenever CITY observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER'S

services, or any defect or nonconformance in ENIGNEER'S services or in the work of any Contractor.

E. Authorize ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as CITY deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services as CITY requires.
2. Such auditing services as CITY requires to ascertain how or for what purpose Contractor has used the monies paid.
3. Placement and payment for advertisement for Bids in appropriate publications when legally necessary.

J. Advise ENGINEER of the identity and scope of services of any independent consultants employed by CITY to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

K. Furnish to ENGINEER data as to CITY'S anticipated costs for services to be provided by others for CITY so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER'S opinion of Total Project Costs.

L. If CITY designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent CITY at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.

M. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

O. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as CITY determines necessary to verify:

1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.
2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

P. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs B2.01.O.

Q. Perform or provide the following additional services:

This is **Appendix 1 to Article 4**, consisting of 1 page, referred to in and part of the **Master Agreement between City and Engineer for Professional Services** dated **December 5, 2016**.

**Standard Hourly Rates Schedule**

Standard hourly rates are subject to review and adjustment per Exhibit C.

**ATTACHMENT "1"**
**TO ARTICLE 4**

**HOURLY RATE SCHEDULE**
**JEO CONSULTING GROUP, INC**

**CURRENT BILLING**
**MASTER SCHEDULE**

**ACTUAL HOURS BASIS**

**JANUARY 1, 2016**

| | | | |
|---|---|---|---|
| Project Managers: | $130.00 | - | $175.00 |
| Project Engineers/Architects: | $118.00 | - | $169.00 |

| | | | |
|---|---|---|---|
| Project Engineers (E.I.T.): | $97.00 | - | $108.00 |
| Engineering/Surveying/ Architectural/Planning Technicians: | $80.00 | - | $135.00 |
| Office/Administrative: | $82.00 | - | $104.00 |
| Principals: | $175.00 | - | $214.00 |
| GIS Mapping: | | - | |

NOTE: Cost of telephone calls, copying, postage, travel expenses, mileage, meals, lodging, etc. are overhead expenses that are included in our hourly rates and fee.

This is **EXHIBIT C**, consisting of 1 page, referred to in and part of the **Master Agreement between CITY and ENGINEER for Professional Services** dated **December 5, 2016**.

**Duties, Responsibilities, and Limitation of Authority of Resident Project Representative**

Paragraph 6.02 of the Agreement is amended and supplemented to include the following agreement of the parties:

**C6.02 Resident Project Representative**

A. ENGINEER shall furnish a Resident Project Representative ("RPR"), to assist the ENGINEER in observing progress and quality of the Work. The RPR under this Exhibit C will provide part-time representation during the Construction Phase of this project.

B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR, the ENGINEER shall endeavor to provide further protection for CITY against defects and deficiencies in the Work. However, the ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in section A.1.05 of Exhibit A of the Agreement are applicable.

C. The duties and responsibilities of the RPR are limited and described as follows:

1. During the Construction Phase, the Engineer shall furnish a part-time Resident Project Representative whose duties shall include, but are not limited to:

    a. Review of Contractor's work for general compliance with the plans and specifications.

    b. Complete Construction Observation Reports when on site.

    c. Coordinate pay quantities with Contractor and Engineer.

    d. Review of materials delivered to the site for specification compliance.

    e. Assist the Engineer in interpretation of the Plans and Specifications to the Contractor.

f. Review and coordinate materials testing by assigned testing firm.

g. Attend progress meetings.

h. Compile records for use in preparing Record Drawings.

i. Assist Engineer, as needed, to perform services to be provided by ENGINEER under A.1.05.

**EXHIBIT "D"**
**RECOMMENDATION OF ACCEPTANCE**

---

DATE OF ISSUANCE _____

---

CITY _____
CONTRACTOR _____
Contract: _____
Project: _____

CITY's Contract No. _____ ENGINEER's Project No. _____

---

This Recommendation of Acceptance applies to all Work under the Contract Documents or to the following specified parts thereof:

To_____
CITY
And To _____
_____
CONTRACTOR

---

The Work to which this Recommendation of Acceptance applies has been inspected by authorized representatives of CITY, CONTRACTOR and ENGINEER, and that Work is hereby declared to be complete in accordance with the Contract Documents on (date), expressly subject to the provisions of the related Agreement documents and the terms and conditions set forth herein.

## CONDITIONS OF RECOMMENDATION OF ACCEPTABILITY OF WORK

The Recommendation of Acceptability of Work ("Recommendation") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Recommendation and rely thereon agree:

1. Said Recommendation is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Recommendation reflects and is an expression of the professional judgment of ENGINEER.
3. Said Recommendation is given as to the best of ENGINEER's knowledge, information, and belief as of the date hereof.
4. Said Recommendation is based entirely on and expressly limited by the scope of services ENGINEER has been employed by CITY to perform or furnish during construction of the Project (including observation of the CONTRACTOR's work) under ENGINEER's Agreement with CITY and under the Construction Contract referenced herein, and applies only to

facts that are within ENGINEER's knowledge or could reasonably have been ascertained by ENGINEER as a result of carrying out the responsibilities specifically assigned to ENGINEER under ENGINEER's Agreement with CITY and the Construction Contract referenced herein.

5. Said Recommendation is not a guarantee or warranty of CONTRACTOR's performance under the Construction Contract referenced herein nor an assumption of responsibility for any failure of CONTRACTOR to furnish and perform the Work thereunder in accordance with the Contract Documents.

The responsibilities between CITY and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees shall be as follows:

CITY:_____

CONTRACTOR:_____

---

The following documents are attached to and made a part of this Recommendation of Acceptance: Payment Application No. ___ and Final

---

This Recommendation of Acceptance does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

---

Executed by ENGINEER on _____
Date

_____
ENGINEER

By: _____
(Authorized Signature)

CONTRACTOR accepts this Recommendation of Acceptance on _____
Date

_____
CONTRACTOR

By: _____
(Authorized Signature)

CITY accepts this Recommendation of Acceptance on _____
Date

_____
CITY

By: _____
(Authorized Signature)

EJCDC No. 1910-8-D (1996 Edition)
Prepared by the Engineers' Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

Nebraska City

This is **EXHIBIT E**, consisting of __1__ page, referred to in and part of the **Master Agreement between CITY and ENGINEER for Professional Services,** dated **December 5, 2016**.

## Insurance

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.05 *Insurance*

A. The limits of liability for the insurance required by paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By ENGINEER:

   a. Workers' Compensation: Statutory

   b. Employer's Liability --
      1) Each Accident: $500,000
      2) Disease, Policy Limit: $500,000
      3) Disease, Each Employee: $500,000

   c. General Liability --
      1) Each Occurrence (Bodily Injury and Property Damage): $1,000,000
      2) General Aggregate: $2,000,000

   d. Auto Liability--
      1) Combined Single: $1,000,000

   e. Excess or Umbrella Liability --
      1) Each Occurrence: $1,000,000
      2) General Aggregate: $1,000,000

   f. Other (specify): $1,000,000 per occur.
      Professional Liability $2,000,000 aggregate

2. By CITY:
   a. none

**City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.**

Nebraska City

# CITY OF NEBRASKA CITY

**1409 Central Avenue**
**Nebraska City, NE 68410-2223**
**Phone: 402-873-5515**
**Fax: 402-873-5685**

## Agenda Information Support Sheet

**To:** **Mayor and Commissioners**

**Council Meeting:** December 5, 2016
**Agenda Item:** #8
**Submitted By:** Grayson Path, City Administrator

**F. Synopsis of Issue:**

a. City Staff and members of the Nebraska City Community Foundation Fund (NCCFF) have partnered together to develop a plan to hold a City Council retreat in late January for the Council and key staff members.
b. As part of any retreat, it is necessary to hire the services of an experienced facilitator.
c. Looking at all the options available but honing in on those with municipal experience, the group has obtained a proposal from Dr. Christian Janousek of the University of Nebraska-Omaha. See the background information for a biography of Dr. Janousek.
d. Working along with Dr. Janousek is Dr. Robert Blair who will act as a Senior Advisor to Dr. Janousek. Together, they have performed several municipal and non-municipal retreats. Both provide consulting services to the Nebraska City Managers Association (NCMA) of which I am a member of as the City Administrator.
e. At this time, we are planning to have the retreat in late January, we are also considering having the retreat at the Library due to technology requirements, room accommodations, and cost. This is a City building, but still provides a sense of being away from the normal City operations which is a usual feature of a retreat.
f. The retreat will of course be an open meeting as required with a quorum present.
g. Key staff members will be attending this retreat as well.
h. Please see the attached proposal.
i. This agenda item is to request permission to accept the proposal from Dr. Janousek as well as the expected expenditures to hold the retreat.
j. Please also provide the City Administrator with a list of known days in January that do not work for an all-day retreat. We are aiming for the latter half of January.
k. The total cost for the proposal is estimated at no more than $2,500.00, of which the NCCFF will be providing $1,000.00 in grant funding to pay for this.

**G. Options:**

a. Accept the proposal and authorize the City Administrator to make the necessary arrangements and expenses to hold the council retreat in late January.
b. Reject the proposal and provide the City Administrator with guidance on whether to hold a council retreat, to find a different facilitator, etc.

**H. Fiscal Note:**

a. Estimated cost of the retreat will be no more than $2,500.00 depending upon refreshments and working meal.
b. NCCFF will be providing $1,000.00 in funding via a grant that was submitted by the City Administrator and approved by the NCCFF.
c. This will come from line item 10-36-5250 – Training/Registration. According to the Budget Policy #4, this item is below $5,000.00 in expense but nevertheless it was not foreseen during the budget formation process. The Administration budget will work to keep the total expenditure within budget by fiscal year end. Even though this does

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not fully require budget policy #4, the City Administrator still wanted to disclose this for the council to be aware of when they consider approving this proposal and expense. The City Administrator, Mayor and City Attorney have all agreed that this is a worthwhile project and the price for the facilitator is fair. The City Administrator will of course work to make sure the retreat is held as financially reasonable as possible (nothing extravagant).

**I. Recommendation:**

a. Accept the proposal and authorize the City Administrator to make the necessary arrangements and expenses to hold the council retreat in late January.

**J.**

**K. Background:**

**Bio**

Christian Janousek is a recent graduate of the doctoral program in the School of Public Administration (specializations: Public Policy, Urban Management). His dissertation research examined the impact of MPA programs on professional city management in U.S. states. He has presented research at both regional and international conferences, has published articles in *State and Local Government Review* and *International Journal of Public Administration*, and is a coauthor of a forthcoming book on Nebraska government and politics. Christian worked as a graduate assistant and adjunct instructor while in the doctoral program and assisted with the Nebraska Municipal Clerks Institute and Academy. Currently, Christian is working as a postdoctoral research associate with the UNO Center for Public Affairs Research and teaches courses in public administration, public policy, and urban studies. He intends to pursue an academic position as a professor in public administration.

**Education**

PhD, Public Administration
University of Nebraska Omaha

MPA
University of Nebraska Omaha

BS, Political Science
Wayne State College

**Research Interests**

Professional Local Government Management

Public Policy

Political Culture

a. The Proposal uses the SWOT (Strength, Weaknesses, Opportunities, and Threats) method to determine internal and external factors that will affect any proposed objectives and goals. Once the SWOT factors are identified, the method states that objectives and goals can be analyzed to see if they are doable or not given the factors at play.
b. This is a standard method for facilitating a meeting and was used for the Lancaster County officials recently with success.

Nebraska City

**Proposal to City of Nebraska City**

Dr. Christian Janousek and Dr. Robert Blair of the School of Public Administration at the University of Nebraska at Omaha (UNO) are pleased to propose the following services to assist the City of Nebraska City as they move forward with a comprehensive strategic planning effort.

The purpose of these services is to initiate the strategic planning process and:

1. Assist the City of Nebraska City council, administration, and staff to identify broad, overarching strategic planning goals with a focus on team building and organizational and community values.
2. Enable the City of Nebraska City to develop a foundation to continue strategic planning activities in the future toward a long-term vision.

The proposed project dates are December 1, 2016 through January 31, 2017. The amount of this request is $2,000. The proposed services include the first step of a strategic planning process: the SWOT analysis-a focused examination of the internal and external environmental strengths, weakness, opportunities, and threats facing the City of Nebraska City.

Goals of SWOT Analysis:

- External Factors—Examine relevant economic, demographic, and other external information for Nebraska City; pinpoint key policy and planning issues; and identify specific strengths, weaknesses, opportunities, and threats from environmental scan data.
- Internal Factors—Examine relevant internal data including surveys and relevant city documents; examine key policy and planning issues; and identify specific strengths, weaknesses, opportunities, and threats from internal scan data.

Methods of SWOT analysis:

- Collect and review Census information, and relevant studies that include external environmental information.
- Conduct a brief internet-based survey of city commissioners and key staff members to identify preliminary key issues and concerns.
- Compile survey results and other internal information.
- Meet with city officials to discuss internal and external factors and SWOT analysis.

Activities: Conduct a six-hour session meeting in January 2017 facilitated by Dr. Christian Janousek with city commissioners and key staff using small group processes to review, identify, and summarize critical aspects of external and internal data. This will also include a follow-up presentation session of the SWOT analysis and summary report following the January 2017 session meeting.*

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 Deliverables: A summary report that lists key internal and external environmental factors and identifies key strengths, weaknesses, opportunities and threats that form a framework for the development of overarching strategic action plan goals for the City of Nebraska City.

 Research Staff: Dr. Christian Janousek of the UNO School of Public Administration will act as the Lead Facilitator and Primary Investigator for the proposed services. Dr. Robert Blair of the UNO School of Public Administration will serve as Senior Advisor for the project.

 Budget

| | Approximate hours | Rate | City of Nebraska City | Total |
|---|---|---|---|---|
| Preparation of background information, survey, and meeting materials | 11.5 hours | $65/hr | $750 | $750 |
| | | | | |
| Meeting facilitation | 6 hours | $65/hr | $390 | $390 |
| | | | | |
| Preparation of final report and presentation | 13.25 hours | $65/hr | $860 | $860 |
| | | | | |
| Travel (2 trips to Nebraska City) | 4 hours | included | --- | --- |
| | | | | |
| Total | | | $2,000 | $2,000 |

*The City of Nebraska City will provide the facilities for the session meetings, including any refreshments and necessary teaching tools (i.e. flip chart, projector, etc.).

Proposal submitted on November 14, 2016, by:

Christian Janousek, PhD, cjanousek@unomaha.edu 402-202-2543

Robert Blair, PhD, rblair@unomaha.edu 402-554-3865

Nebraska City

# CITY OF NEBRASKA CITY

**1409 Central Avenue**
**Nebraska City, NE 68410-2223**
**Phone: 402-873-5515**
**Fax: 402-873-5685**

## Agenda Information Support Sheet

**To:** **Mayor and Commissioners**

**Council Meeting:** December 5, 2016
**Agenda Item:** #9_____
**Submitted By:** Grayson Path, City Administrator

**L. Synopsis of Issue:**

a. As part of the Hanna:Keelan agreement (Step 1 of proposal attached), the CDA requested that the City work to remove the blight and substandard designation from the North Industrial Site.
b. The City has contracted with Cline Williams to prepare the necessary legal work to make this happen.
c. The CDA has reviewed a map that takes in to account the removal of the North Industrial Site (earlier tonight). Assuming they approved the map as drafted, it is now up to the City Council and Planning Commission to pass Resolutions removing this site (attached).
d. As seen in Section E of both recitals, it is most appropriate that the City Council request that the Planning Commission consider the question of removing the North Industrial Site, if they agree and pass the resolution, the City Council will then review and approve their respective resolution.
**e. At this time, we need a motion asking the City of Nebraska City Planning Commission to consider the question of removing the blight and substandard designation from the north industrial site.**
**f. <u>Note: There is NO resolution to be passed tonight. The attached resolutions are for future meetings and are listed here to provide you with more information as to what is coming.</u>**

**M. Options:**

a. Request that the City of Nebraska City Planning Commission consider the question of removing the blight and substandard designation from the north industrial site.
b. Do not request that the Planning Commission consider this question – provide City Staff with guidance as to how to proceed with the Blight and Standard Map and Hanna:Keelan proposal.

**N. Fiscal Note:**

a. No cost to remove the site other than legal fees reviewing the original plan, state statutes, and developing the attached resolutions (all are done).

**O. Recommendation:**

a. Request that the City of Nebraska City Planning Commission consider the question of removing the blight and substandard designation from the north industrial site.

**P. Background:**

a. The City entered in to an agreement with Hanna:Keelan to update the City's Blight and Substandard Map with Redevelopment Plan on 10/18/16.
b. As part of the agreed proposal, the City would work with Cline Williams to remove the North Industrial Site from the map in order to save this percentage of area for future blight and substandard growth – future TIF projects.
c. Most of the north industrial site has either been sold off or under agreements with the option to sell.
d. The process is as follows:

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Nebraska City

i. December 5, 2016 – City Council request that the Planning Commission considers the question.
ii. December 7, 2016 – Planning Commission meets to consider the question and pass the attached Resolution recommending it to the City Council.
iii. December 19, 2016 – City Council passes the attached resolution completing the removal of the blight and substandard designation from the north industrial site.

**********

**Department Heads:** **Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.**

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## Nebraska City Redevelopment Planning Steps to Follow.
## Presented by Hanna:Keelan, 10.3.16.

1. **Existing Redevelopment Area, far North.**
   Deobligate entire Area, recapture 52.6 acres.
   Process: Consult with Tom Huston. Most likely a simple Resolution stating such to be passed by the Planning Commission, CDA and City Commission will suffice.
   Hanna:Keelan Cost: None.

2. **Existing East Central Redevelopment Area.**
   Review Area for possible deobligation of specific sites. Write an amendment to the existing Blight and Substandard Determination Study. Hanna:Keelan Cost: $4,000.
   Note: Tom Huston would need to prepare appropriate legal documents for the official amendment of the existing Study to be approved by the Planning Commission, CDA and City Commission.

3. **Hospital Neighborhood Redevelopment Area.**
   Hanna:Keelan would prepare a Blight and Substandard Determination Study for the Area.
   Hanna:Keelan Cost: $4,000.
   Note: Tom Huston would need to prepare appropriate legal documents for the official declaration of blight and substandard for the Area to be approved by the Planning Commission, CDA and City Commission.

4. **South Central Redevelopment Area.**
   Hanna:Keelan would prepare a Blight and Substandard Determination Study for the Area.
   Hanna:Keelan Cost: $4,000.
   Note: Tom Huston would need to prepare appropriate legal documents for the official declaration of blight and substandard for the Area to be approved by the Planning Commission, CDA and City Commission.

5. **Hanna:Keelan would prepare a General Redevelopment Plan for the combined existing East Central (as amended), Hospital Neighborhood and South Central Redevelopment Areas.**
   Hanna:Keelan Cost: $7,500. ($2,500 per Area.)
   Note: Tom Huston would need to prepare appropriate legal documents for the official adoption of the new General Redevelopment Plan to be approved by the Planning Commission, CDA and City Commission. Huston would also include the necessary legal documents to combine all three Areas as a single Redevelopment Area for official approval by the CDA, Planning Commission and City Commission.

6. **Advertise for Redevelopment/Development Projects.**
   Tom Huston would provide assistance with this Step.
   Hanna:Keelan Cost: $19,500. Time Line: 100 Days.

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Nebraska City

**PLANNING AND ZONING COMMISSION OF**
**THE CITY OF NEBRASKA CITY**
**[THIS RESOLUTION IS FOR DECEMBER 7, 2016]**
**RESOLUTION NO. _____**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF NEBRASKA CITY, MAKING RECOMMENDATIONS WITH RESPECT TO THE REMOVAL OF THE BLIGHTED AND SUBSTANDARD DESIGANTION FROM AN AREA OF THE CITY PREVIOUSLY DECLARED BLIGHTED AND SUBSTANDARD PURSUANT TO THE NEBRASKA COMMUNITY DEVELOPMENT LAW.

**RECITALS**

A. On March 5, 2012, the City Council of the City of Nebraska City (the "City Council"), by Resolution No. 2558-12, declared an area of the City of Nebraska City (the "City") to be blighted and substandard, as defined by the Nebraska Community Development Law, Sections 18-2101 through 18-2154, as amended (the "Act"). Such area is generally located at the northwest corner of N. 19th Street and County Road G, as legally described on the attached and incorporated Exhibit "A" ("Redevelopment Area II").

B. There are no outstanding redevelopment projects, as defined in the Act, in Redevelopment Area II.

C. The City, a city of the first class, may not designate more than 35% of the City as blighted and substandard.

D. The City Council desires to remove the blighted and substandard designation from all of Redevelopment Area II.

E. The City Council has submitted the question to the Planning Commission as to whether the blighted and substandard designation should be removed from Redevelopment Area II.

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF NEBRASKA CITY, AS FOLLOWS:

1. The Planning and Zoning Commission of the City of Nebraska City recommends to the City Council that the blighted and substandard designation should be removed from all of Redevelopment Area II.

2. The Planning and Zoning Commission of the City of Nebraska City further recommends to the City Council that the Redevelopment Plan for the City of Nebraska City be amended to remove Redevelopment Area II from the Redevelopment Plan.

3. Any resolution passed and approved prior to the passage, approval and publication of this resolution which is in conflict with the terms and provisions of this resolution is/are hereby repealed. This resolution shall take effect and be in full force and effect from and after its passage, approval and publication required by law. The provisions of this resolution are separable, and invalidity of any phrase, clause or part of this resolution shall not affect the validity or effectiveness of the remainder of this resolution.

PASSED AND APPROVED by the Planning and Zoning Commission of the City of Nebraska City this 7th day of December, 2016.

PLANNING AND ZONING COMMISSION
OF THE CITY OF NEBRASKA CITY,
NEBRASKA

By: _____
Chairman

**Exhibit "A"**

The Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirty-Two (32), Township Nine (9), Range Fourteen (14) East of the 6th P.M., Otoe County, Nebraska; and A tract of land located in the Northwest Quarter of the Southwest Quarter (NW¼ SW¼) of Section Thirty-Two (32), Township (9), Range Fourteen (14) East of the 6th P.M., all in Otoe County, Nebraska, being more particularly described as follows: Commencing at the Southeast Corner of the Northwest Quarter of the Southwest Quarter; thence N00°01'20"W (assumed bearing) on the East line of said Northwest Quarter, 302.34 feet; thence S89°43'40"W parallel with the South Line of said Northwest Quarter, 414.57 feet; thence S00°01'20"E parallel with said East line, 302.34 feet to a point on the said South line; thence N89°43'40"E on said South line 414.57 feet to the point of beginning.

**CITY COUNCIL OF**
**THE CITY OF NEBRASKA CITY**
**[THIS RESOLUTION IS FOR DECEMBER 19, 2016]**
**RESOLUTION NO. _____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEBRASKA CITY, REMOVING THE BLIGHTED AND SUBSTANDARD DESIGNATION FROM AN AREA OF THE CITY PREVIOUSLY DECLARED BLIGHTED AND SUBSTANDARD PURSUANT TO THE NEBRASKA COMMUNITY DEVELOPMENT LAW.

**RECITALS**

A. On March 5, 2012, the City Council of the City of Nebraska City (the "City Council"), by Resolution No. 2558-12, declared an area of the City of Nebraska City (the "City") to be blighted and substandard, as defined by the Nebraska Community Development Law, Sections 18-2101 through 18-2154, as amended (the "Act"). Such area is generally located at the northwest corner of N. 19th Street and County Road G, as legally described on the attached and incorporated Exhibit "A" ("Redevelopment Area II").

**City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.**

B. There are no outstanding redevelopment projects, as defined in the Act, in Redevelopment Area II.

C. The City, a city of the first class, may not designate more than 35% of the City as blighted and substandard.

D. The City Council desires to remove the blighted and substandard designation from all of Redevelopment Area II.

E. The City Council has previously submitted the question to the Planning and Zoning Commission of the City of Nebraska City for its review and recommendation on whether the blighted and substandard designation should be removed from Redevelopment Area II.

F. By Resolution No. _____, the Planning and Zoning Commission of the City of Nebraska City recommended that the blighted and substandard designation be removed from all of Redevelopment Area II and further recommended that Redevelopment Area II be removed from the City's Redevelopment Plan.

G. The City Council has reviewed and discussed the recommendations received from the Planning Commission.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEBRASKA CITY, AS FOLLOWS:

1. The blighted and substandard designation is hereby removed from all of Redevelopment Area II and Redevelopment Area II is no longer declared blighted and substandard.

2. The Redevelopment Plan for the City of Nebraska City is hereby amended to remove Redevelopment Area II from the Redevelopment Plan.

3. Any resolution passed and approved prior to the passage, approval and publication of this resolution which is in conflict with the terms and provisions of this resolution is/are hereby repealed. This resolution shall take effect and be in full force and effect from and after its passage, approval and publication required by law. The provisions of this resolution are separable, and invalidity of any phrase, clause or part of this resolution shall not affect the validity or effectiveness of the remainder of this resolution.

PASSED AND APPROVED by the City Council of the City of Nebraska City this 19th day of December, 2016.

_____
Bryan Bequette, Mayor

ATTEST:

_____
Randy Dunster, City Clerk – Treasurer

**Exhibit "A"**

The Southwest Quarter of the Southwest Quarter (SW¼ SW¼) of Section Thirty-Two (32), Township Nine (9), Range Fourteen (14) East of the 6th P.M., Otoe County, Nebraska; and A tract of land located in the Northwest Quarter of the Southwest Quarter (NW¼ SW¼) of Section Thirty-Two (32), Township (9), Range Fourteen (14) East of the 6th P.M., all in Otoe County, Nebraska, being more particularly described as follows: Commencing at the Southeast Corner of the Northwest Quarter of the Southwest Quarter; thence N00°01'20"W (assumed bearing) on the East line of said Northwest Quarter, 302.34 feet; thence S89°43'40"W parallel with the South Line of said Northwest Quarter, 414.57 feet; thence S00°01'20"E parallel with said East line, 302.34 feet to a point on the said South line; thence N89°43'40"E on said South line 414.57 feet to the point of beginning.

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Nebraska City

**ORDINANCE 2982-16**

**AN ORDINANCE ESTABLISHING THE NEBRASKA CITY ECONOMIC DEVELOPMENT PROGRAM; MAKING DETERMINATIONS OF FACT; APPROVING AND ADOPTING THE NEBRASKA CITY ECONOMIC DEVELOPMENT PLAN; PROVIDING FOR THE CONTINUANCE OF A CITIZEN ADVISORY REVIEW COMMITTEE; CONTINUING THE SEPARATE ECONOMIC DEVELOMENT FUND; PROVIDING FOR THE ALLOCATION OF FUNDS AND ALLOWING THE ISSUANCE OF BONDS; AND PROVIDING AN EFFECTIVE DATE.**

BE IT ORDAINED BY THE MAYOR AND CITY COMMISSIONERS OF THE CITY OF NEBRASKA CITY, NEBRASKA, as follows:

Section 1: The Mayor and City Commissioners of the City of Nebraska City, Nebraska, hereby find and determine as follows:

(a) That there has previously been prepared a proposed plan for an economic development program for the City of Nebraska City, Nebraska ("City"), continuing as amended the City's previous economic development program. The program is entitled "Nebraska City Economic Development Plan" ("Plan") which Plan provides for a formula use of local option sales tax receipts.

(b) That a public hearing was held on the Plan, which hearing occurred on August 15, 2016, with notice of such hearing being published in the *Nebraska City News-Press* on August 5, 2016.

(c) That by Resolution 2712-16 duly adopted by the City on August 25, 2016, the Plan was presented to the voters of the City at the general election held on November 8, 2016 following notice of such election and Plan questions published in the *Nebraska City News-Press* on September 27, 2016.

(d) That at such election, according to the report of the Otoe County Election Commissioner conducting such election, 1969 voters voted in favor of the question of continuing the economic development program as amended and described in the Plan and 746 voters voted against such question.

(e) That at such election, according to the same report, 1737 voters voted in favor of the question of funding the Plan through the use of local option sales taxes as described in the Plan, and 971 voters voted against such question.

(f) That more than a majority of the voters voting on the aforementioned questions voted in favor of the same and the City is authorized to establish an economic development program and give final approval to and adopt the Plan in all of its particulars including the funding.

Section 2: The Plan, in its final form, is hereby approved and adopted. A copy of the Plan is attached to this Ordinance as Exhibit "A", and hereby incorporated in its entirety by reference as if set forth fully herein. The Mayor and City Commissioners hereby establish, as amended by the Plan, the Economic Development Program of the City of Nebraska City which shall operate under and be governed by the terms of the Plan and this Ordinance.

Section 3: The Citizen Advisory Review Committee consisting of persons who are registered voters of the City to be appointed by the Mayor and approved by the City Commissioners is hereby continued as stated in the

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Plan. The City is authorized to enter into a contract with the Nebraska City Area Economic Development Corporation (NCAEDC) and to authorize the Executive Director to act as Program Administrator. The Program Administrator is designated to have responsibility for administration of the Program hereby established and shall serve as an *ex-officio* member of such committee with responsibility to assist the committee and provide it with necessary information and advice regarding the Economic Development Program. Such committee shall be governed by the terms of Neb. Rev. Stat. § 18-2715, as may be amended from time to time.

Section 4: The City of Nebraska City Economic Development Fund is hereby continued as amended and shall now be designated as the "City of Nebraska City Growth Fund". Into such fund there shall be deposited all funds derived from local sources for the Economic Development Program hereby established.

Section 5: In accordance with the Plan and subject to applicable law, the City may issue bonds from time to time to provide funds for the Economic Development Program. Such bonds may be payable from any monies in the City of Nebraska City Growth Fund, and the Mayor and City Commissioners in issuing such bonds may provide for conditions and terms relating to the priority of payment and payment from specific sources.

Section 6: In accordance with the Plan and with applicable law, the City will collect funds from a portion of the local option sales tax to provide for the Economic Development Program hereby established.

Section 7: The Program hereby established shall be in accordance with and subject to the terms of the Nebraska Local Option Municipal Economic Development Act ("Act"), as it may be amended from time to time, and in accordance with the Plan. Any provisions of this Ordinance determined to be in conflict with either the Act or the Plan are void to the extent inconsistent with the Act or Plan, but shall not invalidate other terms of this Ordinance.

Section 8: This Ordinance shall be published in the *Nebraska City News-Press* (without Exhibit A but with reference to such Exhibit which shall be placed on file with the City Clerk-Treasurer at City Hall) and shall be in full force and effect from and after its passage, approval and publication as provided by law.

PASSED AND APPROVED this 5th day of December, 2016.

_____
Bryan Bequette, Mayor

ATTEST:

_____
Randy Dunster, Clerk-Treasurer

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Nebraska City

# CITY OF NEBRASKA CITY ECONOMIC DEVELOPMENT PLAN

*"Renewing the*
*Nebraska City Local Option Economic Development Plan (LB-840)"*

2017 – 2027

Resolution 2712-16
Ordinance 2982-16

| | |
|---|---|
| **City Council:** | Mr. Bryan Bequette, Mayor<br>Mr. Jeff Crunk<br>Mr. Vic Johns<br>Mrs. Gloria Glover |
| **City Administrator:** | Mr. Grayson Path |
| **City Attorney:** | Mr. David Partsch |

**CITY OF NEBRASKA CITY, NEBRASKA**

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**CITY OF NEBRASKA CITY, NEBRASKA**

**COMMUNITY ECONOMIC DEVELOPMENT PLAN**

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Nebraska's voters enacted a constitutional amendment in 1990 granting cities and villages the power to use local sources of revenue for economic or industrial projects and programs. In 1991, the Unicameral implemented this amendment with the passage of Legislative Bill 840, the Local Option Municipal Economic Development Act. In 2006, Nebraska City voters approved a local plan for a period of ten years. This 2016 plan is an amendment and extension of the 2006 plan.

The Local Option Municipal Economic Development Act ("LB840") is based on the premise that communities should use their own tax dollars in ways that best meet local needs. While ongoing planning processes in many towns have identified development, job creation, and increased economic opportunity as their highest priority for the future, a variety of constitutional and legislative prohibitions kept them from investing local public funds in development programs. The removal of these limitations, gives municipalities greater latitude in determining and acting upon local needs.

As many rural communities have witnessed population declines and a loss of younger people, they have thought about their futures and the types of actions and investments needed to reverse these trends. At the same time, smaller towns and cities are beginning to realize a period of significant opportunity. In a period of uncertainty, complexity, and growing concern about the problems and quality of urban life, including cost and relative safety, the advantages offered by the smaller cities have become uniquely attractive. At the same time, the revolution in information and communication technology as well as goods distribution has reduced the isolation of small towns. As a result, it is increasingly possible and desirable to operate a significant business in growth areas outside of major urban centers.

**GENERAL COMMUNITY AND ECONOMIC DEVELOPMENT STRATEGY**

Nebraska City's community and economic development strategy involves building on our strengths to promote existing businesses and industries, capturing the influx of outside monies through tourism, retaining jobs, and recruiting new businesses and industries providing additional jobs to the community. The principal strategy is directed at maintaining an excellent quality of life for our citizens, building a strong workforce, developing community resources, attracting new capital investment, encouraging tourism and commerce, preserving the historic nature of the downtown business district while encouraging new and innovative business development, broadening the community's tax base and ensuring economic stability and viability for Nebraska City.

Economic diversification will continue to be a critical priority for Nebraska City's economic development program. Diversification will be strengthened by the recruitment of new businesses and industries from outside the city as well as development of new and existing businesses and industries inside the city, particularly small business. A small business development program establishes a nurturing environment for entrepreneurs and small business and identifies Nebraska City as a center for economic opportunity. This atmosphere, in turn, can

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encourage people with exceptional skills and novel ideas to move or return to Nebraska City to develop unique businesses which develop community resources and attract new capital investment.

In addition to new business and industry recruitment, the City seeks to retain and create job opportunities by promoting and helping existing businesses and industries in the city to expand their markets and compete more successfully. The successful marketing of Nebraska City as a center for opportunity is important to the city's effort to expand its workforce, attract new residents and further enhance quality of life for all citizens.

Similar to business and industry strengths, the City's well-developed brand promotes tourism and commerce and must be constantly strengthened and encouraged. This element of our community creates an influx of monies that prove vital to many of our small businesses and service entities. The successful marketing of Nebraska City as a center for tourism and commerce is important to the City's development efforts.

Improving and protecting the appearance, value, and function of downtown properties is crucial to making Nebraska City attractive to tourists, small business owners, and even large industry professionals. Therefore, in pursuing economic development the City's efforts will seek to enhance the downtown's appeal and character by preserving the unique character of downtown Nebraska City, complementing the existing historic architecture and art, enhancing residential living opportunities and the pedestrian orientation of downtown Nebraska City, and communicating the community's vision for the downtown area as one that draws visitors and residents for unique shopping and entertainment experiences.

The City of Nebraska City recognizes that the attraction of new businesses and industries, as well as the retention and expansion of existing businesses and industries, takes place in a very competitive market place. In order to keep Nebraska City as competitive as possible in that market place, thus ensuring its economic stability and viability, the community must strive to use all financial and human resources available in partnerships using federal, state, municipal and private resources.

**STATEMENT OF PURPOSE - PROGRAM GENERAL INTENT**

Knowing that population growth and economic diversification is key to the continued growth and prosperity of Nebraska City, the intent of the City of Nebraska City is to implement an aggressive Economic Development Program. This Economic Development Program shall include the creation of the Nebraska City Growth Fund to finance this program. The primary purpose and goals of the Nebraska City Growth Fund shall be:

- To diversify the local economic base;
- To broaden the local tax base;
- To support the retention and expansion of our existing business and industry base;
- To encourage the attraction of new businesses and industries to the region;
- To assist with downtown redevelopment and revitalization;
- To assist further development of our tourism related businesses;
- To expand the workforce by creating new and retaining employment opportunities that offer attractive wage and benefit packages for local residents and our region's young people;
- To foster new capital investment in the region;
- To foster development that maintains and improves the quality of life for area residents;
- To develop community resources.

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Every effort will be made to support projects that will have the greatest long-term economic impact on Nebraska City.

If approved by Nebraska City voters, this renewal and revision of the Economic Development Program and the Nebraska City Growth Fund will be established upon adoption of the ordinance formally adopting the Economic Development Plan and will end ten (10) years later.

**ELIGIBLE ACTIVITIES**

The eligible activities described below are considered priority activities for the use of funds generated under the Local Option Municipal Economic Development Act. The City of Nebraska City recognizes that the attraction of new businesses to a community and the expansion of existing businesses takes place in a very competitive market place. In order to keep Nebraska City as competitive as possible in that market place, and to facilitate the creation of new jobs in the area, the City includes as eligible activities all activities allowable by law.

Eligible Activities:

1. Job credits for full-time positions created, including grants and loans denominated as job credits which are subject to job credit performance requirements and recapture provisions;
2. Investment credits for projects requiring major capital investments, including grants and loans denominated as investment credits which are subject to job credit performance requirements and recapture provisions;
3. Direct loans, including performance-based loans, to qualifying businesses for fixed assets and/or working capital;
4. Loan guarantees for qualifying businesses;
5. Grants or loans for public works improvements essential to the location or expansion of a qualifying business
6. Direct loans, including performance-based loans, for job training
7. The purchase of real estate and personal property, options for such purchases and the renewal or extensions of such options for qualifying businesses, without regard to whether any business is identified at the time;
8. The conveyance of real and personal property to qualifying businesses at reduced or no cost;
9. Relocation incentives for new residents;
10. Construction and equipping of buildings for qualifying businesses, without regard to whether any business is identified at the time;
11. The provision of technical assistance to qualifying businesses;
12. Payments to either public or private entities to support the development of qualifying businesses;
13. Expenses associated with marketing, promotional and recruitment campaigns;
14. Grants or loans for the construction or rehabilitation for sale or lease of housing for market rate workforce housing;
15. Purchase of Community Redevelopment Revenue Bonds issued by any municipality in Otoe County or within thirty (30) miles of Nebraska City;
16. Expenses for locating qualifying businesses into the area;

17. The issuance of bonds used to carry out the activities of the Economic Development Program as outlined in the Local Option Municipal Economic Development Act, including any future amendments or changes to the Act;
18. Contracting with an outside entity to implement and administer the Economic Development Program including the employment of experts to engage in studies, surveys and any other activity that will lead to advice and recommendations to enhance the plan's success;
19. Production of films, including feature, independent and documentary films, commercials and television programs.

**QUALIFYING BUSINESSES**

For the purposes of this Program, qualifying businesses shall include any corporation, partnership, Limited Liability Corporation or sole proprietorship, which derives its principal source of income from:

1. The manufacture of articles of commerce;
2. The conduct of research and development;
3. The processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce;
4. The sale of services in interstate commerce;
5. Headquarters of facilities relating to eligible activities;
6. Telecommunications activities, including services providing advanced telecommunications capability;
7. Tourism-related activities;
8. Production of films, including feature, independent, and documentary films, commercials, and television programs;
9. Retail trade; however, no more than 40 percent (40%) of tax revenues under this program in any 12-month period, nor more than 20 percent (20%) in any five-year period, of program funds shall be used for retail trade businesses;
10. The construction or rehabilitation of housing, either for workforce, market rate housing or for populations with low to moderate incomes as allowed by statute;
11. Any other eligible activities as allowed by the Local Option Municipal Economic Development Act, as may be amended.

Qualifying businesses must certify whether they have filed or intend to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for the same project for which the qualifying business is seeking financial assistance under the Economic Development Program; whether such application includes or will include, as one of the tax incentives, a refund of the City's local option sales tax revenue; and whether such application has been approved under the Nebraska Advantage Act. The City may consider the information provided in determining whether to provide financial assistance to the qualifying business under this Economic Development Program.

If a qualifying business employs people and carries on activities in more than one municipality in Nebraska or will do so at any time during the first year following its application for participation in the Nebraska City Growth Fund, it shall be considered a qualifying business only if, in each such city of operation, it maintains employment for the first two years following the date on which such business begins operations in the City as a participant in

the Nebraska City Growth Fund at a level not less than its average employment in such city over a twelve-month period preceding participation.

Qualifying businesses for the Nebraska City Growth Fund need not be located within the City of Nebraska City or its extra-territorial zoning jurisdiction. Qualifying businesses within Otoe County that provide clear economic benefits to the Nebraska City community may request assistance from the Nebraska City Growth Fund.

Qualifying businesses may apply for, and receive support from, the Nebraska City Growth Fund on more than one occasion.

"Qualifying business" does not include a political subdivision, a state agency, or any other governmental entity.

**BUDGET**

This section describes a preliminary source of funds and budget for Nebraska City's economic development program. It is important to note that this budget must be developed annually and may be modified from time to time by the City Council. It is impossible to anticipate every condition or requirement; the Program Administrator, Citizen Advisory Review Committee and the city council, should maintain the flexibility within the Economic Development Plan to respond to specific requirements and opportunities on a short-term basis.

**Proposed Funds to be Allocated and Length of Time the Plan Will Exist**

The funding for the Nebraska City Growth Fund will be an allocation by the City of a portion of the existing local option sales tax. The portion of the existing local option sales tax to be allocated to the Fund will be calculated as follows:

- Provided that the City collects at least $1,700,000 in such sales tax revenue, then each October, 12% of the prior fiscal year's first 1.5 cent local option sales tax revenue. If the fiscal year revenue collected is less than $1,700,000, the percent allocated to the Nebraska City Growth Fund shall be decreased by $1\frac{1}{3}$% for every $50,000 interval less collected in sales tax.
- Examples:
  - If annual revenue is –
    - 1,299,999 or less, no monies are transferred to the Fund
    - 1,300,000 or greater and less than 1,350,000, 1.36% is transferred to the Fund
    - 1,350,000 or greater and less than 1,400,000, 2.69% is transferred to the Fund
    - 1,400,000 or greater and less than 1,450,000, 4.02% is transferred to the Fund
    - 1,500,000 or greater and less than 1,550,000, 5.35% is transferred to the Fund
    - 1,550,000 or greater and less than 1,600,000, 6.68% is transferred to the Fund
    - 1,600,000 or greater and less than 1,650,000, 9.34% is transferred to the Fund
    - 1,650,000 or greater and less than 1,700,000, 10.67% is transferred to the Fund
    - 1,700,000 or greater, 12% is transferred to the Fund.

Funds from repayment of loans, return on investments, fees for activities such as loan guarantees and proceeds from sales of property may also be used for activities allowed under this Economic Development Program.

The City of Nebraska City shall maintain the Nebraska City Growth Fund. Investment of the Nebraska City Growth Fund shall be made in compliance with all relevant statute and regulations.

Nebraska City

**Preliminary Budget for Ten Year Program:**

Annual Income:
Sales Taxes Allocated to Nebraska City Growth Fund ..... $250,000

Annual Expenses:
Expenses for Eligible Activities..... $250,000

This preliminary budget is subject to revisions from time to time by the Citizens Review Committee depending upon changing community needs and projections.

Upon approval by the voters and enactment by the City, this allocation will remain in force for a period of ten years. The local option sales tax allocation to the Nebraska City Growth Fund pursuant to this Economic Development Program will end after ten (10) years unless renewed by the voters. Uncommitted funds and revenues including but not limited to repayment of loans, return on investments, fees for activities such as loan guarantees, and sales proceeds from properties, may continue to be used for activities contained within the Economic Development Program for an additional ten (10) year period. Upon termination of the program any unused or uncommitted funds will be returned to the City for property tax reduction.

**Funding Expenditures**

All necessary Fund Administration expenses shall be paid from the Nebraska City Growth Fund, but shall be capped at no more than 10% of the prior fiscal year's funding allocation.

**BOND AUTHORITY**

Nebraska City may have business opportunities or other economic development projects that require initial funds exceeding the single year allocation of the local option sales tax. In order to take advantage of such opportunities, Nebraska City will have the ability to issue bonds, the principal and interest thereof being payable out of the Nebraska City Growth Fund. The City Council may authorize the issuance of bonds to carry out the economic development program, following the procedures laid out in state statute for the issuance of bonds under this program.

**ECONOMIC DEVELOPMENT FUND NOW KNOWN AS "NEBRASKA CITY GROWTH FUND"**

The City shall establish a separate economic development fund, the Nebraska City Growth Fund. All funds derived from local sources of revenue allocated or collected for the economic development program and any earnings from the investment of such funds and all repayments from program loans shall be deposited into the Nebraska City Growth Fund. Any proceeds from the issuance and sale of bonds to provide funds to carry out the economic development program shall also be deposited into the Nebraska City Growth Fund.

**City Council may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close.**

The City shall not transfer or remove funds from the Nebraska City Growth Fund other than for the purposes of this plan or, in the event of the program's termination, for property tax reduction. The money in the Nebraska City Growth Fund shall not be commingled with any other funds.

Any money in the Nebraska City Growth Fund not currently required or committed for the purposes of Economic Development shall be invested as provided Neb. Rev. Stat. §77-2341.

## Revolving Loans

A revolving loan program is established from which performance based loans will be made to qualifying businesses and activities on a match basis from the grantee and based on the goals of the element of the plan for which the loan was granted.

1. The amount of the funds available for any single project shall not exceed the amount of the funds available under the Economic Development Program during the project term, nor shall it provide more than fifty percent (50%) of the total project costs. An applicant must provide participation and evidence of participation through private funding as distinguished from equity investment. The right is reserved to negotiate the terms and conditions with each applicant and the terms and conditions may differ substantially from applicant to applicant.
2. The interest rate shall be negotiated on an individual basis. The term shall not exceed fifteen years for real estate and buildings and shall not exceed seven years for other authorized activities. Security for loans may include but is not limited to, Promissory Notes, a Deed of Trust, UCC Filings, and personal and/or corporate guarantees as appropriate and may be in a subordinate position to the primary lender.
3. If the loan is approved as performance based, a qualifying business may be approved to recapture on a grant basis, a portion of the loan amount to be determined by the City Council based on job creation, retention or economic development goals.
4. A loan repayment schedule providing for monthly, quarterly or annual payments will be approved in conjunction with project approval.
5. Repayments will be held in the Nebraska City Growth Fund for future projects as approved and will be invested according to State statute.
6. The Program Administrator or their designee shall keep records of each loan outstanding, program income and current investments of unexpended funds on a monthly basis. The Program Administrator or their designee shall also keep records on accounts and author reports that name the borrower, purpose of the loan, date the loan was made, amount of the loan, basic terms of the loan and payments made to date and the current balance. This information is to be presented to the City Council and Citizens Review Board at least once a year, but also an anytime upon request.
7. The Program Administrator or their designee is responsible for auditing and verifying job creation, retention or economic development goals and determining grant credits toward any loans made. No grant credits are available unless pre-approved in the initial application and project approval and no grant credits are available beyond the level initially approved.
8. A loan will be considered in default if a payment is thirty (30) days in arrears. Action may be taken on any loan in default to protect the interests of the qualifying business, third parties and the municipality.

## Auditing and Verification

The City shall provide for an annual, outside, independent audit of its economic development program by a qualified private auditing business. The auditing business shall not, at the time of the audit or for any period during the term subject to the audit, have any contractual or business relationship with any qualifying business receiving funds or assistance under the economic development program or any financial institution directly involved with a qualifying business receiving funds or assistance under the economic development program. The results of such audit shall be filed with the City Clerk-Treasurer and made available for public review during normal business hours. Said audit can be performed as part of the City's annual financial audit of all its funds provided it includes auditing of the Nebraska City Growth Fund.

## Application Process

Upon voter approval of the Economic Development Program, the Program Administrator shall develop a standardized application form for businesses seeking assistance from the Nebraska City Growth Fund. Application forms shall be available at City Hall.

As part of the application process, a qualifying business will be required to submit business and financial information necessary to determine economic viability of the proposed project. Unless waived by the Program Administrator, the material shall include, but is not limited to:

1. A completed Nebraska City Growth Fund Application Form;
2. A written business plan, including employment and financial projections, current financial statements, project financing arrangements, total project cost and all other relevant project information;
3. Projected economic benefits, such as but not limited to, job creation, increased economic activity both locally and through tourism resulting from the project
4. Current year-to-date profit and loss statements (signed);
5. Recent balance sheets (signed);
6. Three years of complete corporate/individual income tax returns; individual returns required for anyone owning more than 25% of the company (signed);
7. Personal financial statements for any person(s) owning more than 25% of the company;
8. Other information as necessary to determine the eligibility and economic viability of the proposed project.

Sealed applications shall be returned to City Hall for distribution to the Program Administrator. The Program Administrator will review applications in the order received. All reasonable methods may be used to verify application information, including credit checks, credit reports, record examination, oral and written applicant interviews and other investigative methods deemed necessary.

Following an initial review of a complete application and required materials for eligibility and compliance, the Program Administrator shall schedule a meeting of the Citizen Advisory Review Committee (within 10 business days from submission of the application) and shall also complete a final verification of the available materials.

The Citizen Advisory Review Committee (CARC) will meet and review the application from the qualifying business prior to making a final written recommendation to the City Council. The recommendation shall include the CARC's determination of whether the application is in compliance with the plan. Members of the CARC shall

review the application based upon the economic feasibility of the project as well as the overall long-term economic impact to Nebraska City. Potential actions of the CARC include:

- Recommend approval of the application to the City Council
- Recommend denial of the application to the City Council
- Forward the application to the City Council with no recommendation
- Ask for additional information prior to making a recommendation to the City Council

Prior to forwarding the application to the City Council for approval, the CARC will negotiate the type(s) of assistance to be made available to the qualifying business, the appropriate level of funding assistance and the terms and conditions of any assistance. Said negotiation shall be conducted with input from the Program Administrator. The City Council will then consider the CARC's written recommendation including funding levels, terms and conditions. The City Council may then approve or deny the application, based upon the CARC's recommendation, or return the application to CARC for additional considerations.

The Program Administrator is responsible for verification of all information in the applications of those eligible businesses which receive a recommendation for financial assistance before recommendation is made to the City Council.

The Council will consider the overall benefits to the community and its related costs, and will provide the Program Administrator a decision. Once approved, the Program Administrator, in cooperation with the Nebraska City Attorney, will take the necessary legal and technical actions to execute the agreements made.

In the event of termination of the contractual relationship between the City and the Program Administrator, the above-described responsibilities will be carried out by another entity, by existing City staff or by an economic development specialist hired by the City.

**ADMINISTRATION**

As described herein, three separate bodies share the administration and provide oversight of the community economic development program. They are:

A. Program Administrator-Economic Development Board:
   1. The Executive Director of the Nebraska City Area Economic Development Corporation of Nebraska City, shall serve in this capacity;
   2. Responsible for the day-to-day administration of the program;
   3. Solicits potential applicants to the program;
   4. Assists potential applicants in completing the application and in collecting the necessary background materials;
   5. Prepares a recommendation to the CARC, including suggested funding assistance with corresponding terms and conditions;
   6. Makes an annual presentation to the City Council regarding the status of the Program as well as current and outstanding activities;
   7. Serves as an ex-officio member of the CARC;

8. Tracks employment figures for participating businesses for two years if businesses employs persons in other Nebraska communities;
9. Advises the City Attorney of any activities under the plan and provides any documentation or any other information needed to assure that all applicable laws and regulations are met by the municipality, participating businesses and any other activity related to the plan.

B. Citizens Advisory Review Committee:
1. A group of five (5) Nebraska City registered voters appointed by the Mayor, subject to City Council approval, who review the function and progress of the Economic Development Program/Nebraska City Growth Fund and also advise and make recommendations the City Council regarding applications made for funding within the Program.
2. Members of the Committees shall include:
   a. the Program Administrator (ex-officio), who shall serve as committee chairperson, scheduling CARC meetings, keeping meeting minutes, complying with applicable state statutes;
   b. a representative from the Nebraska City Area Economic Development Corporation Board of Directors who is otherwise eligible;
   c. a representative with expertise or experience in the field of business finance or accounting;
   d. three citizens at large with an interest in the continued growth and success of Nebraska City.
3. No member of this Committee shall be an elected or appointed City official, an employee of the City, a participant in a decision-making position regarding expenditures of program funds, or an official or an employee of any qualifying business receiving financial assistance under the Economic Development Program/Nebraska City Economic Growth Fund or any financial institution participating directly in the Economic Development Program.
4. Terms for appointees of the Citizen Advisory Review Committee shall be for four years except that initial terms shall be established on a staggered basis to provide continuity on the committee. Terms are renewable.
5. The Citizens Advisory Review Committee will meet regularly as required to review the program and a representative will report to the City Council at least once every six-month period on its findings and suggestions at a public hearing called for that purpose.

C. City Council:
1. Will have final authority on expenditures of funds in support of the economic development program.
2. May contract with the Nebraska City Area Economic Development Corporation or other appropriate outside agency to provide a Program Administrator.
3. Will have ultimate responsibility for the economic development program.

The City Attorney will be responsible for keeping the City informed of relevant changes in the law that could affect the Economic Development Program and will review Agreements, Deeds, Leases, Deeds of Trust, Promissory Notes, security documents, personal and/or corporate guarantees and other documents relating to the Program as a whole.

Nebraska City

**Process to Insure Confidentiality of Business Information Received**

In the process of gathering information about a qualifying business, the Program Administrator (and his/her staff), the CARC and City staff and elected officials may receive information about the business that is confidential and if released could cause harm to the business or give unfair advantage to its competitors. State law authorizes cities and other public entities to maintain the confidentiality of business records, which come into their possession.

To protect the businesses applying for funds and to encourage them to make full and frank disclosures of business information relevant to their application, the City may take the following steps to ensure the confidentiality of the information it receives:

1) The adoption of an ordinance, which makes such information confidential and punishes disclosure;
2) A restriction on the number of people with access to the files with the Program Administrator primarily responsible for their safe-keeping; and
3) A requirement that personnel involved in the program sign statements of confidentiality regarding all personal and private submittals by qualified businesses.

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## Appendix A

## Identification of Real Estate

Eligible activities may require the acquisition and restoration or demolition of buildings on certain properties, especially properties with buildings that are in an extremely deteriorated condition. It may also require consolidation of certain core business to a centralized location to build Nebraska City as a tourist, commerce, and leisure destination.

It is advisable that the following conditions be considered when deciding to pursue acquisition and restoration or demolition of a property:

- If the existing conditions are detrimental in some key way to the community and economics.
- Deterioration has occurred to the level where it would be more economically feasible for removal than repair.
- Purchased as part of a comprehensive redevelopment plan for future lease or sale to beneficial businesses.

Continued development will exhaust space in the available industrial park well before the end of the Program period. Therefore, the City and the Nebraska City Area Economic Development Corporation should provide for the acquisition of industrial and commercial real estate.

Eligible activities include the purchase directly or indirectly through the Nebraska City Area Economic Development Corporation (or its subsidiary corporation) of commercial or industrial site(s) and obtaining options for the purchase of such real estate. Land to be purchased or optioned may be within or outside the corporate limits of the City of Nebraska City and will be identified through local analysis by the City of Nebraska City and/or Industrial Site Evaluation teams organized by the City of Nebraska City or the administrator of the Economic Development Program. These identified sites may then be considered for option or purchase and further development. The sites may be purchased through and title held by the Nebraska City Economic Development Foundation for the purposes of future development.

It is advisable that these sites encompass the following minimum attributes but the same are not absolutely necessary if the purpose of the land is not affected by the omission of these guidelines:

1.) Contain at least five acres;
2.) Be properly zoned with no excessive easements, covenants, or other encumbrances;
3.) Be compliant with the City of Nebraska City's current Comprehensive Plan as amended;
4.) Have reasonable access to utilities such as gas, water, telecommunications and electricity;
5.) Have reasonable access to lines of transportation such as roads, highways and/or railroads depending on the intended use of the land.

The funds may also be used to construct facilities, structures, and/or appurtenances for new or proposed development or to attract new business or industry. These facilities, structures and appurtenances are not required to be within the corporate limits of Nebraska City, Nebraska.

These sites and facilities will improve the attractiveness of Nebraska City, Nebraska, as a location for new business and industry and may be used as an incentive to aid in the location, relocation or expansion of a business. These sites and facilities may be sold or leased at a price at or below current market value. The proceeds from the sale or lease of land purchased and developed with the Nebraska City Growth Fund may be used for the purchase and development of additional land and may be used for all other eligible activities.

If any application of any provision of this Plan to any business, project or circumstance is found to be invalid, the remaining applications of that provision to all other businesses, projects or circumstances shall be severed and may not be affected. All valid applications of this Plan shall be severed from any applications found to be invalid, leaving the valid applications in force, because it is the intent and priority of the Plan that each portion is important standing alone.

**Appendix B**

## Workforce Housing

This Nebraska City economic development program involves potentially making grants or loans for the construction or rehabilitation for sale or lease of housing as part of a workforce housing plan. The City incorporates herein by reference the City's most recent Housing Study, dated October 2013, as the same may be updated from time to time, and which contains an assessment of current housing stock in the city, including both single-family and market rate multi-family housing. The plan will not include housing for persons of low or moderate income under section 18-2710.01, since the City participates in multiple supporting programs addressing these needs in our community.

Nebraska City

# CITY OF NEBRASKA CITY

**1409 Central Avenue**
**Nebraska City, NE 68410-2223**
**Phone: 402-873-5515**
**Fax: 402-873-5685**

## Agenda Information Support Sheet

**To:** **Mayor and Commissioners**

**Council Meeting:** December 5, 2016
**Agenda Item:** #11
**Submitted By:** Gloria Glover, Finance Commissioner
Grayson Path, City Administrator
Randy Dunster, City Clerk-Treasurer
Patty Moore, Deputy City Clerk-Treasurer

**A. Synopsis of Issue:**

a. Approximately one year ago, the city began meeting with ADP, LLC on the possibility of outsourcing parts of its Payroll and HR functions.
b. Most of what the city is currently doing is not financially feasible to outsource, but there are parts that may create efficiencies as well as free up the Deputy City Clerk-Treasurer's time to focus on other HR and Payroll matters.
c. ADP is a "comprehensive global provider of cloud-based Human Capital Management (HCM) solutions". According to their website, they have over 610,000 clients worldwide.
d. The City has been working with Travis Hall, District Representative, to build functions that suit the City's needs. They have numerous tools/functions that we can choose from, of which our above listed team has done so.
e. ADP has provided a demo portal that the employees have viewed with ADP representatives, but we would now like to view this portal ourselves on our own to test the functions and make a determination as to whether there are indeed both hard and soft cost savings to outsourcing part of our payroll and HR management functions.
f. ADP is willing to provide us with 48 hours of access to this portal, but we must complete the attached non-disclosure agreement to do so.
**g. At this point, we are asking the City Council for permission to sign this free-of-charge non-disclosure agreement so that we can continue our research in to possibly outsourcing part of our HR Management.**

**B. Options:**

a. Approve the non-disclosure agreement, allowing the City to access the 48 hour portal for free to examine the functionality of their solutions.
b. Reject the non-disclosure agreement by either 1) requesting edits to the existing agreement or 2) not proceeding with this demo..

**C. Fiscal Note:**

a. At this time, there are no costs to the City to view this demo and no additional contracts are being considered at this time. If the demo is accessed by the City and if their solutions are found to be worth pursuing, a future contract will be obtained, negotiated and brought before the council that would involve terms, conditions, and cost. A full presentation of what would be occurring would be provided to the City Council at or near that time.

**D. Recommendation:**

a. Approve the non-disclosure agreement, allowing the City to access the 48 hour portal for free to examine the functionality of their solutions.

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**E. Background:**

a. The non-disclosure form is, in summary, an agreement that the City will protect this proprietary information as confidential and not disclose it to others who do not have a business need to know unless ordered to do so by applicable law, regulation, court order or legal process.

b. The City will only have access to this information for up to 48 hours, after which the portal will be closed and the City will no longer be able to access the site. Nevertheless, this agreement prevents the City from copying anything it views to be disclosed to others.

c. It does not limit the City from pursuing similar solutions from other companies.

d. It does not bind us to sign any further agreements.

**********

**Department Heads: Submit this form to Dave Partsch and Grayson Path by 5:00 pm of the day the Agenda meeting is held.**

## CUSTOM MUTUAL NON-DISCLOSURE AGREEMENT

This **Mutual Non-Disclosure Agreement** ("Agreement"), effective on the date set forth below (the "**Effective Date**"), is between the Major Accounts division of ADP, LLC, a Delaware limited liability company with its principal office at One ADP Boulevard, Roseland, New Jersey 07068 ("**ADP**"), and City of Nebraska City (the "**Company**"). This Agreement is made to set forth the basis under which ADP and the Company will furnish and/or disclose to each other certain financial, business, technical and other information.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ADP and the Company agree as follows:

**Section 1. Definitions.** For purposes of this Agreement, the following terms will have the meanings specified below:

**"Affiliate"** means, with respect to either party, any individual, company, corporation, partnership or other entity, directly or indirectly, controlling, controlled by, or under common control with, such party.

**"Confidential Information"** means all financial, business and other information, in whatever form or medium, including, without limitation, any trade secrets, processes, financial data, technical data and documentation, strategic planning, product/service specifications, prototypes, computer programs, databases, drawings, models, marketing data and client information, that is furnished or disclosed by a Disclosing Party or any of its Affiliates to the Receiving Party solely in connection with the purpose set forth in Section 15 herein, *except that* such term will not include (*i*) information already known by the Receiving Party at the time of disclosure without an obligation of confidentiality, (*ii*) information that is or becomes publicly known other than through a breach by the Receiving Party of any of its obligations under this Agreement, (*iii*) information received by the Receiving Party from a third party who is not known by the Receiving Party to be under an obligation of confidence to the Disclosing Party, (*iv*) information which is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information, and (*v*) information that the Disclosing Party has disclosed to other parties without similar obligations of confidentiality.

**"Disclosing Party"** means a party or an Affiliate of a party hereto that furnishes Confidential Information to the Receiving Party or its Affiliate.

**"Receiving Party"** means a party or an Affiliate of a party hereto that receives Confidential Information from the Disclosing Party or its Affiliate.

**Section 2. Ownership of Confidential Information.** The Receiving Party agrees that the Confidential Information of the Disclosing Party is and will remain the property and asset of the Disclosing Party.

**Section 3. Confidentiality Obligation.** Except as required by applicable law, regulation, court order or legal process to disclose any Confidential Information, the Receiving Party will treat as confidential and will not use (other than to the extent necessary to accomplish the purpose set forth in Section 15 below), disclose or otherwise make available any Confidential



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Information of the Disclosing Party to any person other than employees, directors, representatives and consultants of the Receiving Party and its Affiliates who have a business need to know. Notwithstanding the foregoing, in no case may the Receiving Party post the Disclosing Party's Confidential Information on any Internet web site accessible by the public. The Receiving Party will instruct its employees, directors, representatives and consultants (and those of its Affiliates) who have access to the Confidential Information to keep such Confidential Information confidential by using the same care and discretion that the Receiving Party uses with respect to its own confidential property and trade secrets, but in any event not less than reasonable care and discretion. The Receiving Party will be responsible for the compliance of such employees, directors, representatives and consultants (and those of its Affiliates) with the terms of this Agreement. If a Receiving Party is required by applicable law, regulation, court order or legal process to disclose any Confidential Information of the Disclosing Party, prior to disclosing such information the Receiving Party shall (i) give the Disclosing Party notice sufficiently in advance of every disclosure to enable the Disclosing Party to take action to protect such information if it deems necessary, (ii) provide the Disclosing Party with the name of any person or entity seeking such Confidential Information, (iii) disclose no more of the Disclosing Party's Confidential Information than is required by the applicable law, rule, regulation or ruling and request that the Confidential Information so disclosed is treated confidentially, and (iv) prior to disclosure, allow the Disclosing Party the opportunity to redact confidential and proprietary information on the documents to be disclosed which constitutes a trade secret or which is otherwise exempt from disclosure. Disclosure of Confidential Information in accordance with the foregoing sentence will not violate the terms of this Agreement.

**Section 4. Compliance by Affiliates**. Each of ADP and the Company will be responsible for compliance by its respective Affiliates with the terms of this Agreement.

**Section 5. Non-Disclosure of Agreement.** Neither party, without the prior written consent of the other party to this Agreement, will disclose to any third person (other than its employees, directors, representatives and consultants with a need to know) the existence or purpose of this Agreement, the terms and conditions hereof, or the fact that discussions are taking place and that Confidential Information is being shared, except as may be required by law and then only after first notifying the other party of such required disclosure.

**Section 6. Limitation on Obligation; No warranties, etc.** Except for the obligation of confidentiality and the restrictions on use of Confidential Information imposed by this Agreement upon the Receiving Party, each party acknowledges that no obligation of any kind is assumed or implied against the other party by virtue of any meetings or discussions regarding the purpose of this Agreement or the exchange of information hereunder. Further, this Agreement and any meetings and communications of the parties relating to the subject matter of this Agreement will not (*i*) constitute any offer, request, or contract among the parties to engage in any transaction, nor (*ii*) constitute any offer, request or contract involving a buyer-seller relationship, venture, teaming or partnership relationship among the parties. Each party hereto hereby acknowledges that the Disclosing Party makes no representations or warranties, express or implied, as to the accuracy or completeness of the Confidential Information of the Disclosing Party.

**Section 7. Reproduction and Return of Confidential Information.** The Receiving Party will not reproduce the Confidential Information except as reasonably necessary for the purpose set forth in Section 15 below. If the Receiving Party reproduces all or any part of, or further discloses, any Confidential Information, the Receiving Party will not remove or obscure any confidential or proprietary notices or legends, if any, that appear in the originals thereof. At



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the request of the Disclosing Party, the Receiving Party will return to the Disclosing Party or destroy all Confidential Information, reproductions or summaries thereof and extracts therefrom. The Receiving Party's obligations under Section 3 will survive any return or destruction of Confidential Information.

**Section 8. Notice of Unauthorized Use**. The Receiving Party will notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by the Receiving Party, and will reasonably cooperate with the Disclosing Party to regain possession of the Confidential Information and prevent its further unauthorized use or disclosure. If the Receiving Party or any of its employees, directors, representatives or consultants attempt to use or disclose any of the Confidential Information in a manner contrary to the terms of this Agreement, the Disclosing Party will have the right, in addition to such other remedies that may be available to it, to seek an order enjoining such acts or attempts, it being acknowledged that legal remedies may be inadequate.

**Section 9. Independent Product Development Not Affected.** The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products or services of the same type as may be included within any Confidential Information or to enter into any business transaction with any other company which owns or has rights to any such similar products or services, as long as such right is exercised without the use of the other party's Confidential Information in violation of this Agreement.

**Section 10. No Implied License**. Except as otherwise provided herein, nothing in this Agreement shall be deemed to constitute an implied license in favor of either party to any proprietary rights of the other party, including, without limitation, any patents, copyrights, trademarks or trade secret information. Each party agrees not to publicly use any trade name, service mark, or trademark of the other party or publicly refer to the other party in any promotional activity or material without first obtaining the prior written consent of such party.

**Section 11. Attorney-Client Privilege.** To the extent that any Confidential Information may include materials subject to the attorney-client privilege, work product doctrine or any other applicable privilege concerning pending or threatened legal proceedings or governmental investigations, each party agrees that both such parties have a commonality of interest with respect to such matters and it is each party's desire, intention and mutual understanding that the sharing of such material is not intended to, and shall not, waive or diminish in any way the confidentiality of such material or its continued protection under the attorney-client privilege, work product rule and other applicable privilege. All Confidential Information that is entitled to protection under the attorney-client privilege, work product rule and other applicable privilege shall remain entitled to such protection under these privileges, this Agreement and under the joint defense doctrine, notwithstanding the parties' sharing of such Confidential Information.

**Section 12. Notices**. All notices, requests, consents, demands and other communications issued under this Agreement will be in writing and shall be delivered to the address specified under the respective signature lines below, or to such other address as the parties will advise the other in writing from time to time.

**Section 13. Miscellaneous.** This Agreement may not be changed, modified or amended except by a writing signed by each party to this Agreement, and this Agreement may not be discharged except by performance in accordance with its terms. This Agreement shall be



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binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by either party hereto without the prior written consent of the other party. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and supersedes all prior discussions, agreements and understandings of any kind and every nature between them. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 14. Authorization of Signatories**. The individuals executing this Agreement on behalf of the Company and ADP do each hereby represent and warrant that they are duly authorized to execute this Agreement on behalf of their respective principals.

**Section 15. Limited Use of Confidential Information.** The Receiving Party will use the Confidential Information solely for the purpose of evaluating ADP's products and services and the Company's prospective use thereof.

**Section 16. Termination of Agreement.** This Agreement shall terminate upon the earlier of (i) three (3) years from the effective date of this Agreement or (ii) the Parties' execution of any ADP Major Accounts Services agreement and the use/disclosure of Confidential Information will thereafter be governed by the terms of such ADP Major Accounts Services agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the Effective Date specified below.

**Effective Date:** _____

**ADP, LLC**

By: _____

Name: Wesmiddleton

Title: Vp of Sales

**Address for Notices:**
General Counsel-Major Accounts Services
Automatic Data Processing, Inc.
One ADP Boulevard, MS 325
Roseland, New Jersey 07068
Fax: (973) 974-3399

**City of Nebraska City**

By: _____

Name: _____

Title: _____

**Address for Notices:**

_____

_____

_____

_____

Fax: _____



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Nebraska City

# CITY OF NEBRASKA CITY

**1409 Central Avenue**
**Nebraska City, NE 68410-2223**
**Phone: 402-873-5515**
**Fax: 402-873-5685**

## Agenda Information Support Sheet

**To:** **Mayor and Commissioners**

**Council Meeting:** December 5, 2016
**Agenda Item:** #12
**Submitted By:** Dave Partsch, City Attorney
Grayson Path, City Administrator

**A. Synopsis of Issue:**

a. The City currently has the CDBG Owner-Occupied Rehabilitation program that has seen several projects completed in years past.
b. One particular property is currently seeking refinancing of their home loan with Professional Mortgage Services.
c. Jack Hobbie with Professional Mortgage Services has requested that the City consider authorizing the Mayor to sign a letter of subordination for housing rehab lien at Deeds Instrument #201102079.
d. For specific information, please see Dave Partsch, City Attorney.

**B. Options:**

a. Authorize the Mayor to sign a letter of subordination for housing rehab lien at Deeds Instrument #201102079.
b. Do not authorize the letter.

**C. Fiscal Note:**

a. N/A

**D. Recommendation:**

a. Authorize the Mayor to sign a letter of subordination for housing rehab lien at Deeds Instrument #201102079.

**E. Background:**

a. The City would have authorized CDBG grant funding to rehabilitate this home (specific projects within the home). The funding is a grant unless the homeowner breaks the contract (normally if they sell the property within so many years). If this happens, a pro rata portion of the grant is paid back. The program is designed for owner-occupied houses and intended that they will live there to benefit from the improvements.
b. If for some reason collection is required, by subordinating the funding to the loan, we agree to collect after the loaning entity has collected. The funding normally subordinates itself to the bank.

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