

CONTRACT FOR APPRAISAL SERVICES

THIS AGREEMENT, entered into by LANCASTER COUNTY, NEBRASKA, hereinafter called the **COUNTY**, and **KUBERT APPRAISAL GROUP**, hereinafter called "**APPRAISER**", agrees that:

In return for the lump sum of **Two Thousand Eight Hundred and 00/100-----(\$ 2,800.00) DOLLARS**, it is agreed that the "**APPRAISER**" will furnish to the **COUNTY** an appraisal consisting of 2 copies of the individual Parcel Reports in connection with the appraisal of right-of-way for the project known as:

**County Culvert: B-187
No. 56th & Branched Oak Rd.
Lancaster County, NE.**

all in accordance with the Lancaster County Engineering Department Appraisal Specifications, a copy of which is hereto attached as Appendix "C" and made a part of this Contract incorporated by this reference (see Appendix C). Such reports shall also be in compliance with any provisions that cover minimum standards of the State of Nebraska and The Appraisal Institute.

An additional appraisal fee will be negotiated with the **APPRAISER** for each additional parcel added to this Contract.

The fee for supplemental or revised appraisals will be negotiated with the APPRAISER when corrections to the original appraisal require a review of and re-writing of the report as a result of changes in the taking caused by the Lancaster County Engineering Department.

At the time of delivery of the individual parcel reports, one original of the billing statement for the appraisals will be submitted to the COUNTY. In the event the APPRAISER is unable to complete some of the appraisals due to a pending design change or other circumstance beyond the APPRAISER'S control, payment for the undelivered appraisals will be withheld until delivered. In the event the appraisal report is found unacceptable by reason of non-compliance with the terms of the Contract or by reason of improper appraisal technique, the final payment shall be withheld until such appraisals have been revised or supplemented without additional cost to the COUNTY and found acceptable. Notwithstanding, the above, the County agrees to pay for the appraisals within thirty (30) calendar days from acceptance of the appraisals.

In the event a dispute arises concerning a question of fact in connection with the work not specifically covered or referenced by any other terms of this Contract, the County Engineer shall set forth the COUNTY'S final position. Where no agreement can be reached, this Contract shall be terminated. The Contract may also be terminated when, in the opinion of the COUNTY, the APPRAISER'S services are unsatisfactory or because of the APPRAISER'S failure to prosecute the work with due diligence, or because of the APPRAISER'S disability or death. In such an event, any work, which has been completed when the COUNTY gives the notice of termination, becomes the property of the COUNTY.

The Chief Appraiser of the Right-of-Way Division, Nebraska Department of Roads shall arbitrate settlement for the completed work, excepting that the County Engineer shall make final approval of the COUNTY'S final offer of settlement where an agreement cannot be reached.

The amount stated above shall represent the total compensation for the services provided under the terms of this Contract; it being understood and agreed that the APPRAISER shall not be an employee of the COUNTY or The County Engineering Department, and that the COUNTY or The County Engineering Department shall not be responsible for fringe benefits or expenses of any kind. The APPRAISER, as a condition of the above lump sum fee, agrees to attend necessary meeting and conferences with representatives of the COUNTY, the State, and the United States Federal Highway Administration to discuss the various aspects and phases of the appraisal action.

The parties agree that the APPRAISER shall be available for any in-court testimony as requested by the Lancaster County Attorney's Office. The APPRAISER also agrees to make himself available to attend any necessary meetings or conferences in preparation of testimony as requested by the Lancaster County Attorney's Office. Should the County Attorney's Office require conferences, meetings or in court testimony of the APPRAISER, the APPRAISER shall be compensated at a rate of **\$ 180.00/Hr.** for services after delivery of the Original Appraisal Report.

All expenses incurred by the Appraiser are considered to be his liability and are not to become an expense to the COUNTY except as provided for in this Contract.

The APPRAISER agrees to furnish the completed appraisal assignment to the COUNTY on or before Four (4) Weeks after signed execution by Lancaster County Commissioners and receipt of all data requested from the client. Supplemental or revised appraisals caused by The Lancaster County Engineering Department's actions will be cause to change this to a later date only by mutual written agreement between the parties to this Contract.

It is mutually agreed and understood by the parties that time is of the essence of the contract. Liquidated damages in the amount of **\$ 30.00 per normal working day** may be assessed against and deducted from the agreed upon lump sum fee for each normal working day that the completed assignment is overdue. Such amount is not to be considered punitive, but rather to defray expenses incurred by the County due to the delay in the completion of the assignment. A normal working day is defined as Monday through Friday, excluding legal holidays. Any extension beyond the agreed upon completion date will be only by mutual written agreement between the parties of this Contract.

The APPRAISER warrants that he has not employed or retained any company or person other than a bona fide employee working solely for the APPRAISER to solicit or secure this Contract and he has not paid or agreed to pay any company or person other than a bona fide employee working solely for the APPRAISER any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the COUNTY shall have the right to annul this Contract without liability.

The APPRAISER agrees that he will prepare his appraisal of the property involved independent of any other appraiser employed by the COUNTY in the same work and he will not furnish to any other person or persons, except on proper order of a court, a copy of the appraisal or the information contained therein. This restriction, however, does not imply that the APPRAISER may not use information obtained in the appraisal in the course of his usual profession as a real estate agent.

The appraisal reports to the COUNTY are agreed to be confidential between the parties hereto, and a breach of such confidence shall be considered material breach of this Contract unless the disclosure of the contents of the report shall be in response to a subpoena or other lawful court order.

It is understood and agreed the appraised value fixed by the APPRAISER in his report may subsequently be affected by law, regulations, or economic conditions and that same is valid only for a reasonable time after submission.

It is agreed that each party hereto will furnish any available information in its possession to the other upon request, if any such information were necessary to the terms of this Contract.

Hold Harmless Each party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other party and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of their principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, each party shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require either party to indemnify or hold harmless the other party from liability for the negligent or wrongful acts or omissions of said other party or its principals, officers, or employees.

Independent Contractor It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. The APPRAISER, or any employee or other person acting on behalf of the APPRAISER, shall be deemed to be an independent Contractor(s) during the entire term of this Agreement or any renewals thereof. The APPRAISER and the COUNTY shall be responsible to their respective employees for all salary and benefits. The APPRAISER shall be responsible for all salary and benefits payable under this Agreement and APPRAISER'S employees shall not be entitled to any salary from the COUNTY or to any benefits made to their employees, including, but not limited to, overtime, vacation, retirement benefits, worker's compensation, sick leave or injury leave. The APPRAISER shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.

It is the intention of the parties that the appraisals and services contracted for are to be the personal services of the APPRAISER as named. Subletting or transferring the appraisal work contracted for in this Contract is expressly prohibited and failure to comply shall be deemed a material breach of the Contract.

It is acknowledged by all parties that it may be necessary to retain the services of various contractors to provide estimates for "cost-to-cure" items in connection with the appraisals. Such "cost-to-cure" items may include, but are not limited to tree valuation, landscaping, fence damages, etc. It is agreed that in the event fees for "cost-to-cure" estimates are incurred, payment of such fees is the sole responsibility of the APPRAISER. However, no services will be retained without full knowledge and consent of the Lancaster County Engineer's Office.

The APPRAISER is prohibited from engaging in discriminatory employment practices as forbidden by the Nebraska Fair Employment Practices Law. Any breach of the Nebraska Fair Employment Practices Law shall be regarded as material breach of the Contract. The APPRAISER also agrees to the nondiscrimination provisions in Appendix "A" hereto and incorporated by this reference.

The APPRAISER will contact each owner in compliance with "the offer to accompany the Appraiser" procedure. The COUNTY will supply the list of owners and addresses if available. The APPRAISER will provide a list of dates and times of owner contact. Absentee owners will be contacted via certified or registered mail.

Both parties understand and agree that APPENDIXES A, B, and C attached to are hereby incorporated into the Contract by this reference.

IN WITNESS THEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated:

EXECUTED by the APPRAISER this 22nd day of October, 20 19

[Signature]
Witness

[Signature]
Appraiser
Thomas W. Kubert

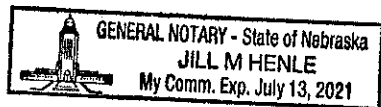
State of Nebraska

County of Lancaster

Before me, a notary public qualified for said county, personally came Sue Graff and
Thomas Kubert

known to me to be the identical person or persons who signed the foregoing instrument and acknowledged the execution thereof to be his, her or their voluntary act and deed.

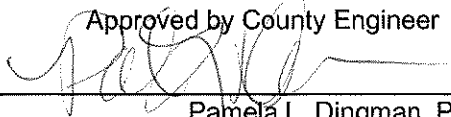
Witness my hand and notarial seal on this 22 day of October, 20 19



[Signature]
Notary Public
July 13, 2021
My Commission Expires

Executed by Lancaster County this ____ day of _____, 20 ____

LANCASTER COUNTY
ENGINEERING DEPARTMENT
Approved by County Engineer



Pamela L. Dingman, P.E.

LANCASTER COUNTY
BOARD OF COMMISSIONERS

APPROVED AS TO FORM

This ____ day of _____, 20 ____

Deputy County Attorney

State of _____ County of _____

Before me, a notary public qualified for said county, personally came _____

_____ known to me to be the identical person or persons who signed the foregoing instrument and acknowledged the execution thereof to be his, her or their voluntary act and deed.

Witness my hand and notarial seal on this ____ day of _____, 20 ____

Notary Public

My Commission Expires

APPENDIX "A"

During the performance of this Contract, the APPRAISER, for itself, its assignees and successors in interest, agrees as follows:

- (1) Compliance with Regulations: The APPRAISER shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference made a part of this Contract.
- (2) Nondiscrimination: The APPRAISER, with regard to work performed by it during the Contract, shall not discriminate on the grounds of race, color, religion, national origin, age, or marital status in the selection and retention of APPRAISERS including procurements of materials and leases of equipment. The APPRAISER further agrees that in providing services pursuant to this agreement, it shall not discriminate against any employee, applicant for employment, or any other person on the basis of race, color, religion, sex, disability, national origin, age, marital status, receipt of public assistance, or any other basis prohibited by applicable state or federal law. The APPRAISER shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Federal Regulations including employment practices when the Contract covers a program set forth in Appendix "B" of the Federal Regulations.
- (3) Solicitations of Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the APPRAISER for work to be performed under a subcontract including procurements of materials or leases of equipment, each potential APPRAISER or supplier shall be notified by the APPRAISER of the APPRAISER'S obligations under this Contract and the REGULATIONS relative to nondiscrimination on the grounds of race, color or national origin.
- (4) Information and Reports: The APPRAISER shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the County Engineering Department, the State Highway Department, or the Federal Highway Administration to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of a APPRAISER is in the exclusive possession of another who fails or refuses to furnish this information, the APPRAISER shall so certify to the County Engineering Department, the State Highway Department, or the Federal Highway Administration as appropriate and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the APPRAISER'S noncompliance with the nondiscrimination provisions of this Contract, the County Engineering Department or the State Highway Department shall impose such Contract sanctions as they or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - (a) Withholding of payments to the APPRAISER under the Contract until the APPRAISER complies, and/or
 - (b) Cancellation, termination or suspension of the Contract in whole or in part.
- (6) Incorporation of Provisions: Appraiser shall include the provisions of Paragraphs (1) through (6) in every subcontract including procurements of materials and leases of equipment, unless exempt by the REGULATIONS or directives issued pursuant thereto. The APPRAISER shall take such action with respect to any subcontract or procurement as the County Engineering Department, the State Highway Department, or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: provided, however, that in the event APPRAISER becomes involved in, or is threatened with, litigation as a result of such direction, the APPRAISER may request the County Engineering Department and the State Highway Department to enter into such litigation to protect the interest of the County and the State and, in addition, the APPRAISER may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX "B"

CERTIFICATE OF APPRAISER

I hereby certify:

That I have personally inspected the property herein appraised and that I have afforded the property owner the opportunity to accompany me at the time of the inspection. I have also made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented by the photographs contained in said appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true and the information upon which the opinions expressed therein are based is correct subject to the limiting conditions therein set forth.

That I understand that such appraisal is to be used in connection with the acquisition of right-of-way for a highway to be constructed by the Lancaster County, Nebraska with the assistance of Federal-Aid highway funds or other Federal funds.

That such appraisal has been made in conformity with the appropriate State laws, regulations and policies and procedures applicable to appraisal of right-of-way for such purposes and that to the best of my knowledge no portion of the value assigned to such property consists of items which are non-compensatory under the established law.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the value reported herein.

That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of Lancaster County or officials of the Federal Highway Administration and I will not do so until so authorized by these officials or until I am required to do so by due process of law or until I am released from this obligation by having publicly testified as to such finds.

That my opinion of the fair market value of the acquisition is based upon my independent appraisal and the exercise of my professional judgment.

10/22/19

DATE



SIGNATURE

APPENDIX "C"
APPRAISAL SPECIFICAITONS

- A. The following general information pertaining to contractual assignment will be furnished by the Appraiser to the County Engineer:
- (1) Two copies of the Project Report
 - (2) Two copies of each individual parcel Appraisal Report
- B. The Project Report shall include the following information:
- (1) Title page
 - (2) Table of Contents
 - (3) City data on urban projects, county or regional data or rural projects
 - (4) Neighborhood data
 - (5) Location map
 - (6) Zoning map and ordinance, if applicable
 - (7) Comparable sales map
 - (8) Comparable rental map, if applicable
 - (9) Index of comparable sales and rentals
 - (10) Comparable sales and rentals
 - (11) References
 - (12) Limiting conditions
 - (13) Appraiser's qualifications
- C. The following is a list of non-compensatory items which the Appraiser agrees to review and also the Appraiser agrees that damages will not be estimated based upon these non-compensatory items as listed in the tracts appraised under this Contract:
- (1) Loss of profits or business.
 - (2) An option does not constitute an interest in land requiring compensation where it has not been exercised.
 - (3) Circuitry of travel by reason of the blocking of existing County roads is not compensatory where it is a damage suffered in common with the public generally.
 - (4) The placing of medians in the center of a street or thoroughfare does not entitle the owner to damages inasmuch as this is in accordance with the police power even though right-of-way is acquired at the same time.
 - (5) In computing damages or assessing damages for property taken containing valuable deposits of minerals, sand, gravel, or other types of materials, the land must be valued considering the potentialities that it has and the minerals it contains as land and cannot be valued on a yards time price basis of the quantity of minerals contained.
 - (6) Damages arising by reason of the police power or exercise thereof are not compensatory.
 - (7) Damages during the period of construction such as noise, dust, inability of customers to conveniently get to the owner's property, the closing off of street and detour of traffic are not compensatory.
- D. When the Appraiser employs or obtains estimates of cost to be used as a part of his appraisal, the Appraiser agrees that the party making the estimate will sign the cost estimate and the estimate will be detailed to include the unit measurement of equipment and the unit cost of each component unit. Damages created by easements will be estimated on a tract-to-tract basis according to use, time, and extent of the damage.

APPENDIX "D"
Letter of Engagement/Bid

Jim,

I have reviewed the proposed easement. This looks pretty straight forward with only land rights impacted and the improvements located well away from the acquisition area. Thus, the improvements can be excluded from the analysis and the appraisal will focus on the land rights impacted along the with the identified cost to cure items.

An appraisal report will run \$2,800 and we are about 4 weeks out from formal engagement to delivery.

Please let me know if you need a formal written proposal.

Thanks, -Tom

Thomas (Tom) Kubert, MAI, CCIM, President
Kubert Appraisal Group, P.C.
(531) 500-0890 (Lincoln)
www.kubertappraisal.com

From: James J. Shotkoski <jshotkoski@lancaster.ne.gov>

Sent: Monday, October 21, 2019 9:40 AM

To: Tom Kubert <tkubert@kubertappraisal.com>

Cc: Larry L. Legg <LLegg@lancaster.ne.gov>; Pamela L. Dingman <PDingman@lancaster.ne.gov>;
Jenifer T. Holloway <JHolloway@lancaster.ne.gov>

Subject: Appraisal Bid Request: County Culvert B-187 (N 56th & Branched Oak Rd), Tract 2

Tom,

Good talking with you this morning.

The County is interested in getting an appraisal bid on the above referenced tract.

The project is already in progress, and the right-of-way has yet to be acquired. I have attached a brief list of the chronology of the project history and a right-of-way plan sheet for your use.

Negotiations are at an impasse and we are moving toward acquiring the tract through eminent domain.

Thanks.

James J. Shotkoski
Right-of-Way Manager
Lancaster County, NE
(402) 441-8330