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LANCASTER COUNTY
CLERK

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

IN THE MATTER OF AUTHORIZING)
THE FILING OF A PETITION, PURSUANT)
TO NEB. REV. STAT §46-1207.01(2),)
WITH THE NEBRASKA DEPARTMENT)
OF HEALTH AND HUMAN SERVICES)
TO RECLASSIFY CLOSED LOOP HEAT PUMP)
WATER WELLS AT S.W. 40TH STREET)
AND WEST "O" STREET USED TO)
PROVIDE THERMAL SERVICES AND)
EMERGENCY POWER TO THE NEW)
LANCASTER COUNTY CORRECTIONAL)
FACILITY)

RESOLUTION NO. R-11-0020

WHEREAS, the County of Lancaster, Nebraska (the "County") is the owner of Lots 73 and 74, Northwest quarter (NW 1/4) Section 29, Township 10 North, Range 6 East of the Sixth Principal Meridian, Lancaster County, Nebraska, and generally located at S.W. 40th and West "O" Streets, Lincoln, Nebraska (the "Site"); and

WHEREAS, the District Energy Corporation (the "DEC") has agreed to provide the New Lancaster County Correctional Facility with thermal services and emergency power and for such purpose the County leased a portion of the Site to the DEC (the "DEC Site"), as provided in a Site Lease Agreement between the County and the DEC found at Lancaster County Contract Number C-09-0530; and

WHEREAS, the DEC entered into a contract with K2 Construction (the "Contractor") pursuant to which the Contractor agreed to perform certain work on the DEC Site, including but not limited to drilling boreholes for closed loop heat pump water wells and constructing such wells; and

WHEREAS, the DEC has received a letter, dated March 2, 2011, from the State of

Nebraska Department of Health and Human Services, Division of Public Health (“the Department”), identifying one hundred and forty-five (145) of the closed loop heat pump water wells on the DEC Site as illegal water wells and stating that the borehole diameter of such wells are not of a sufficient size to be in compliance with Title 178 NAC 12-010.02D; and

WHEREAS, Neb. Rev. Stat. § 46-1207.01(2) provides that whenever the Department classifies a water well as an illegal water well, the landowner may petition the Department to reclassify the water well as an active status water well, an inactive status water well, or an abandoned water well; and

WHEREAS, it is desirable and in the best interest of the County, as landowner of the Site and for the provision of heating, cooling and emergency electric services to the New Lancaster County Correctional Facility, that a petition be filed with the Department pursuant to Neb. Rev. Stat. §46-1207.01(2) requesting the Department issue an order for appropriate relief with respect to the one hundred and forty-five (145) closed loop heat pump water wells in question, specifically with regard to the borehole diameter of such wells; and

WHEREAS, it is desirable that the filing of such petition shall be in cooperation with the DEC and subject to agreement by the Contractor to assist in filing such petition and to pay all related costs, including, without limitation, all filing fees, legal expenses and other costs incurred by the DEC and the County in connection with filing such petition; and

WHEREAS, the filing of such petition shall not be considered a waiver of any rights, claims, demands, causes of action, or damages the County may have against the Contractor or against the DEC arising out of or resulting from the acts or omissions of the DEC or the Contractor, or the principals, officers, employees or contractors of the Contractor or DEC, in the

drilling of the boreholes of closed loop heat pump water wells or the construction of such wells on the Site, or any of the services performed on the Site or provided to the County or the New Lancaster County Correctional Facility by the Contractor or DEC.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Lancaster County, that the Lancaster County Attorney's Office is authorized and directed to take any and all action, and provide such assistance and advice as may be required to:

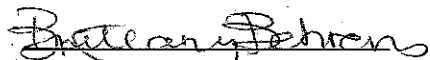
- (a) obtain a written agreement with the Contractor pursuant to which the Contractor will assist the DEC and the County in filing a petition pursuant to Neb. Rev. Stat. §46-1207.01(2) and pay all related costs, including, without limitation, all filing fees, legal expenses and other costs incurred by the DEC or the County in connection with filing such petition; and
- (b) file an appropriate petition with the Department and represent the County in all matters with respect to such petition before the Department.

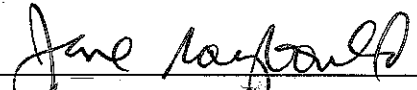

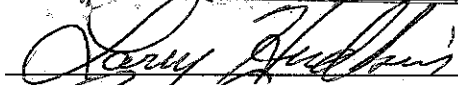
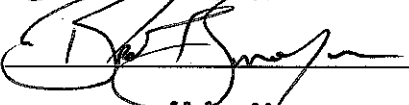
BE, IT FURTHER RESOLVED, that the filing of such petition shall not be considered a waiver of any rights, claims, demands, causes of action, or damages, of any kind, the County may have against the Contractor or against the DEC arising out of or resulting from the acts or omissions of the DEC or the Contractor, or the principals, officers, employees or contractors of the Contractor or DEC, in the drilling of the boreholes of closed loop heat pump water wells or the construction of such wells on the Site, or any of the services performed on the Site or provided to the County or the New Lancaster County Correctional Facility by the Contractor or DEC.

DATED this 22 day of March, 2011, in the County-City Building, Lincoln, Lancaster
County, Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF
LANCASTER COUNTY, NEBRASKA

APPROVED AS TO FORM
this 22 day of
March, 2011.


Deputy County Attorney
JOE KELLY
Lancaster County Attorney





Heier Absent