

February 7<sup>th</sup>, 2023  
Antelope County Board of Commissioners  
Neligh, Nebraska

The Antelope County Board of Commissioners convened in regular session on Tuesday, February 7<sup>th</sup>, 2023, at 9:05 AM in the County Commissioner's Meeting Room, Antelope County Courthouse Annex, Neligh, Nebraska. Meeting was called to order by Chairman Henery with the following board members responding to roll call: Heithoff, Williby, Jacob, Krebs and Henery. Chairman Henery stated the open meeting laws are posted on the east wall of the Commissioner's Meeting Room with more copies available at the County Clerk's Office.

Notice of the meeting was given in advance thereof by publication in the three (3) county newspapers, legal newspapers printed and in general circulation in Antelope County, Nebraska as shown by proof of publication filed in the County Clerk's office. The agenda for said meeting was sent to all members of the County Board of Commissioners. Meeting was available by Zoom.

**Pledge of Allegiance was recited.**

**Agenda:** Motion by Commissioner Krebs, seconded by Commissioner Jacob to approve agenda as presented. Voting aye: Heithoff, Williby, Krebs, Jacob and Henery. Nays none. Motion carried.

**Minutes of the January 10<sup>th</sup>, 2023, Board of Commissioners Meeting:** Motion by Commissioner Williby, seconded by Commissioner Heithoff to approve minutes as submitted. Voting aye: Heithoff, Williby, Krebs, Jacob. Henery abstains. Nays none. Motion carried.

**Minutes of the January 10<sup>th</sup>, 2023, Board of Equalization Meeting:** Motion by Commissioner Jacob, seconded by Commissioner Heithoff to approve minutes as submitted. Voting aye: Heithoff, Williby, Krebs, Jacob. Henery abstains. Nays none. Motion carried.

**Correspondence was reviewed:** Federal Aviation Administration post card regarding tower in the Battle Creek area possible interference with airport travel; Guidelines for filling County Office vacancies; Pledge Collateral for Treasurer (January & February); Pledge Collateral for Clerk (February); Upper Elkhorn Watershed update; Northeast Nebraska Back Road Tour Information; Ryan Furstenu's letter regarding 525<sup>th</sup> Avenue; Speed Limit study for west Highway 275 by Bomgaars; Treasurer's Semi-Annual Report; Antelope County Commissioners Committee appointments for 2023; John Prouty 'bid proposal' change order for Koinzan Road – FEMA project; Application for payment Dixon Construction - \$64,237.48; copy of proposed Public Defender Contract; Copy of Petition to close an approximate one (1) mile of 858<sup>th</sup> Road; Certificate of Liability John Prouty Construction; Antelope Memorial Hospital Bond fund statement.

**The Clerk of the District Court Report for January was reviewed and put on file.**

**Zoning Permit Report for January was reviewed and put on file.**

**The Treasurer's Fund Balance Report for January was reviewed and put on file.**

**The Treasurer's Miscellaneous Revenue Report for January was reviewed and put on file.**

**Zoning Administrator Report:** Mrs. Wingate has no report today.

**Public Defender Contract:** In follow-up of the January discussion regarding the Public Defender Contract. The current contract expired more than seven (7) years ago. Mr. Pat Carney met with the Board of Commissioners and Deputy County Attorney, Joe Smith, last month during the Commissioner Meeting. Mr. Carney and Mr. Smith have agreed on the Contract. Mr. Smith suggested a 20% increase, which would set it at \$45,600.00. An updated contract/agreement was presented for approval today, at the recommendation of Mr. Smith. Motion by Commissioner Krebs, seconded by Commissioner Jacob to approve contract as presented. Voting aye: Krebs, Heithoff, Williby, Jacob and Henery. Nays none. Motion carried.

profession of law, including, but not limited to, criminal defense for others during the contract period.

I. Public Defender shall employ whatever clerical personnel he wishes to assist Public Defender in the performance of Public Defender's duties. Public Defender is fully responsible for and in full control of such clerical personnel.

J. Public Defender is not an agent or employee of County and is not entitled to the benefits provided by County to its employees, including, but not limited to, health insurance, workers' compensation insurance, unemployment insurance, or retirement plans.

K. Public Defender shall maintain professional liability insurance and indemnify County from such claims.

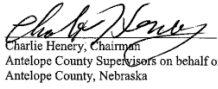
L. The entire agreement between County and Public Defender is contained within this agreement. Any modification of any provision of this agreement by one party shall not be effective on the other party unless in writing and agreed to by the County and Public Defender.

M. Public Defender shall not assign this contract or any of the rights contained within this agreement without the prior written consent of County.

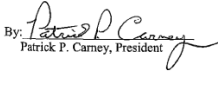
N. Any written notices contemplated by this agreement shall become effective as of the date of the mailing by certified mail. Notice shall be deemed sufficiently given by County if sent to Public Defender at 109 S. 5<sup>th</sup> St., P.O. Box 1776, Norfolk, NE 68702. Notice shall be deemed sufficiently given by Public Defender if sent to County at the Antelope County Clerk's Office, 501 Main Street, Neligh, NE 68756.

O. Regarding the matter of designation of Public Defender, it is agreed that the law office of Carney Law, P.C. shall be designated as the Public Defender's office. Public Defender may nominate and appoint such other deputies and assistants from time to time at its discretion during the term of this Agreement.

COUNTY OF ANTELOPE, NEBRASKA

By:   
Charlie Henery, Chairman  
Antelope County Supervisor on behalf of  
Antelope County, Nebraska

CARNEY LAW, P.C. LLO

By:   
Patrick P. Carney, President

AGREEMENT

THIS CONTRACT AGREEMENT is made on this 7<sup>th</sup> day of February, 2023, between the County of Antelope, Nebraska, a political subdivision, hereinafter referred to as "County", and Carney Law, P.C., LLO, hereinafter referred to as "Public Defender".

RECITALS

I. Public Defender is a professional corporation with its principal shareholder of Patrick P. Carney, a licensed Nebraska attorney, with its principal office at 109 S. 5<sup>th</sup> St., P.O. Box 1776, Norfolk, Nebraska 68702.

II. County is a political subdivision that has the responsibility of providing legal services to the following people:

1. indigent individuals charged with criminal offenses;

2. juveniles alleged to be under the jurisdiction of the juvenile court under Neb. Rev. Stat. §§43-247(1), (2), (3)(a), (3)(b), (4) and (6);

3. indigent parents of juveniles alleged to be under the jurisdiction of the juvenile court under Neb. Rev. Stat. §§43-274(3)(a) and (6); and

4. indigent individuals who are mentally ill and dangerous as defined by Neb. Rev. Stat. §§71-901 et seq. and the least restrictive treatment alternative for the individual is treatment ordered by the Board of Mental Health.

III. County requires legal services on a case by case basis for the individuals described in Section B above, and the Public Defender agrees to perform those legal services on the terms and conditions set forth within this agreement.

IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, AND OF THE MUTUAL BENEFIT TO BE DERIVED HEREUNDER, THE PARTIES AGREE AS FOLLOWS:

A. Public Defender shall provide the following legal services pursuant to the terms and conditions of this agreement:

1. To represent indigent defendants in misdemeanor criminal cases and in felony criminal cases except where the Defendant is charged with any Class I Felony or where Public Defender shall have a conflict of interest;

2. To represent juveniles alleged to be under the jurisdiction of the juvenile court under Neb. Rev. Stat. §§ 43-247 (1), (2), (3)(b), or (4) except where Public Defender shall have a conflict of interest;

3. To represent parents of juveniles alleged to be under the jurisdiction of the juvenile court under Neb. Rev. Stat. §§ 43-247 (3)(a) or (6) except where Public Defender shall have a conflict of interest; and

4. To represent the subject of a mental health petition who is alleged to be mentally ill and dangerous.

B. Public Defender shall render his services primarily in Antelope County, Nebraska. However, Public Defender may have clients contact him at this office located at 109 S. 5<sup>th</sup> St., Norfolk, Nebraska.

C. The term of this contract shall commence on January 1, 2023 and continue through December 31, 2024. County may terminate the agreement and remove Public Defender prior to the end of the two-year period for good cause upon giving Public Defender sixty days written notice. Public Defender may terminate this agreement upon giving County sixty days written notice.

D. County shall pay to Public Defender the sum of \$45,600.00 annually commencing January 1, 2023 by paying monthly installments in the amount of \$3,800.00. County shall pay each monthly installment by check following the Antelope County Board's monthly meeting approving the claims. Public Defender shall be responsible for expenses for photocopies, faxes, long distance, postage, in the normal course of business. In the event there is an abnormal case or expense, the Public Defender shall submit the detailed expense bill for approval by the county. Public Defender will be responsible for mileage for normal court days. Public Defender will not be expected to pay for expenses incurred for discovery such as preparation of transcripts, court reporter fees, Justice searches and the like.

E. The parties agree that the Public Defender shall accept those cases to which the County makes appointments in due course. In the event the Courts should make more appointments than can be adequately, professionally and confidently handled by the Public Defender's office, the Public Defender's office may decline to accept such appointments subject to approval at the discretion of the appointment court.

F. Public Defender shall maintain proficiency in its criminal law practice through annual continuing legal education.

G. Public Defender shall provide legal counsel to all clients in a professional and skilled matter consistent with the minimum standards set forth by the American Bar Association and the Canons of Ethics for Attorneys in the State of Nebraska. Public Defender shall be available to eligible defendants upon their request, or at the request of someone acting on their behalf, at any time the Constitution of the United States or the Constitution of the State of Nebraska requires the appointment of counsel.

H. Public Defender shall control the conduct and the means of performing the duties of Public Defender under this agreement. Public Defender shall be free to practice the

**County Attorney:** With the passing of Elected County Attorney, Joe Abler on January 16<sup>th</sup>, 2023, it created a vacancy in that official capacity. Deputy County Attorney Joe Smith has been officiating the office. The Board feels that appointing Mr. Smith as the official would benefit the County. The County did receive interest from an attorney in Hall County yesterday afternoon. The Commissioners, recognizing the projects that have been initiated by Mr. Abler and continue to be reviewed and worked by Mr. Smith, including new work agree the continuity of the work is important. Regardless of who is appointed, NIRMA is recommending the County put a contract in place

regarding the duties/commitments. Motion by Commissioner Jacob, seconded by Commissioner Heithoff to appoint Mr. Smith as County Attorney and to authorize the Clerk and County Attorney to compose the contract. Voting aye: Krebs, Heithoff, Williby, Jacob and Henery. Nays none. Motion carried.

**AED Unit:** Mr. Boggs requested tabling until more research can be done.

**2023 Depositories:** Antelope County annually receives an agreement with the local banking instruments to show the amount of pledge collateral and makes a motion and resolution regarding the depositories. Motion by Commissioner Williby, seconded by Commissioner Krebs to approve the 2023 depositories. Excluding Heritage Bank – not being returned at this time. Voting aye: Krebs, Heithoff, Williby, Jacob and Henery. Nays none. Motion carried.

**DEPOSITORY RESOLUTION 2023  
ANELOPE COUNTY BOARD OF COMMISSIONERS  
2023-02-00001**

Be it **RESOLVED** that application for designation as County depository by:

NPAIT	\$ Not Pledged
Pinnacle Bank (Neligh)	\$20,000,000.00
Cornerstone Bank (Tilden & Clearwater)	\$25,000,000.00
Bank of Elgin	\$ 1,000,000.00
Brunswick State Bank (Brunswick)	\$ 250,000.00
Bank of Orchard (Orchard)	\$ 250,000.00

as a pledge to secure deposits of the public moneys of this County in said Banks be and the same hereby is approved as to said securities and the deposit thereof with said trustee, on condition that said trustee issue its trust receipt thereof, as provide by the Section 77-2316 R.S. Neb.

**RESOLVED**, further, that said trust receipt when issued by said trustee shall be deposited by said Bank with the County Clerk of this County in lieu of the deposit of said securities with said County Clerk as a pledge to secure the deposit of said moneys in said Bank. **RESOLVED**, further, that such trust receipt shall contain the following provisions which shall constitute the terms and conditions of the escrow.

I. When the interest coupons attached to said bonds become due, the proceeds of collection shall be applied to the credit of said bank.

II. The above securities shall be delivered to said bank only: (1) upon the joint order of the County Clerk and County Board of Supervisors of said county with resolution approving substitution of other securities, or (2) upon receipt of certificate of said County Treasurer that all deposits secured thereby been repaid.

III. On presentation by the bank to the trustee of a certificate from the County Treasurer under seal, stating the amount of the deposits in said bank, together with a certified copy of a resolution of the County Board approving such withdrawal, the trustee may deliver to said bank designated securities in excess of 110 per cent of the deposits based on the then market value of securities deposited.

IV. The above securities shall be delivered to the County Clerk of said county upon his written demand, (without further responsibility on the part of the trustee) supported by certified copy of resolution of the County Board of Supervisors of said county and

- (1) a certificate from the office of the Department of Banking under seal certifying that possession of said bank has been taken by said Department, or
- (2) proof that a receiver of said bank has been applied for, with an affidavit signed by the County Clerk and attested by the County Treasurer under seal, or
- (3) an affidavit of the Treasurer of said county that said bank has been unable to pay any check drawn by him on said bank.

Said county shall have the right to dispose of said securities and reimburse the county to the extent and for the amount of the deposit with interest in said bank.

V. The trustee may at any time act in reliance upon the signature of any public officer, attested by his official seal, without liability to either the county or said bank.

VI. Said securities shall be held by the trustee without cost to the county and the said bank shall pay all costs, expenses and charges for the safekeeping, transportation and handling of said securities. The county shall not be responsible for any loss of said securities or coupons thereon.

VII. The trustee will give to said securities the same care it gives to its own property, but beyond that it will not and does not assume any responsibility.

VIII. **RESOLVED**, further, that a copy of this resolution duly certified by the County Clerk of this County be transmitted to said trustee and shall constitute the escrow agreement.

Resolution passed 7<sup>th</sup> day of February 2023.

\_\_\_\_/s/ Charlie Henery \_\_\_\_\_  
Chairman  
COUNTY BOARD OF COMMISSIONERS

ATTEST: \_\_\_\_/s/ Lisa Payne \_\_\_\_\_  
County Clerk

Motion by Commissioner Williby, seconded by Commissioner Krebs to approve resolution.

Ayes: Williby, Krebs, Heithoff, Jacob and Henery

Nays: none

Absent: none

**Maintenance Position Application/Mowing-Snow Removal Bids:** To date, we received a single application for the Maintenance Position. This application was reviewed last month by the Commissioners. No action was taken.

**Invenergy Bond Release Letter:** No action today – will be on next weeks agenda.

**Mowing & Snow Removal Bids:** Antelope County did receive three (3) bids for mowing of the County Grounds. Sheriff Moore has agreed to continue snow removal and lawn mowing as needed. The bids were opened and shared-reviewed by every Commissioner.

**Carbon Pipeline Property Rights & Ordinances:** Jane Kleeb with Bold Nebraska met with the Commissioners and presented information regarding the carbon capture and storage. She believes this pipeline does propose some threats to the County. She requested the Commissioners to proceed with caution, and to be informed when making decisions. Following her presentation there was a short question and answer period. She had some verbiage for model ordinances and suggested a decommissioning plan would be beneficial, including a volunteer safety training regarding pipelines. At that time, Rick Christiansen and Steve Pellatz also presented. No action today.

**516<sup>th</sup> Avenue:** Multiple landowners on and around 516<sup>th</sup> Avenue met with the Commissioners regarding the condition of 516<sup>th</sup> Avenue. 516th Avenue was grounded up by the County a couple of years ago to help with the maintenance of hard surface roads in the long term. At that time, Sinclair Dirt (a red clay like substance which hardens with use, water and wear) was placed to help establish a base of this road. The plan was this substance was supposed to harden to a more permanent base. However, in the interim it has remained very dusty and seems to wear fast. The landowners in the area have expressed concern multiple times over the last couple of years. Mr. Boggs presented three (3) options:

- a. Nine (9) inches of Concrete 1.55 miles, life span of 25-50 years, approximate cost of \$2.1 million

- b. Four (4) inch asphalt, 1.55 miles of road, life span of 10 years, approximate cost of \$1.5 million
- c. Cold mix overlay (currently-don't have millings), approximate cost of \$150,000.00 a mile.

Curt Thiele, Rustin Fletcher, Joe Thiele, Tim Kester, Paul Kester, Dick Kester, Merlin Bolling, Phyllis Perdeu  
 Antelope County has obtained a bid for concrete between the bridges on 516<sup>th</sup> Avenue – bids were accepted for completion before 2023. However, the contractor did not get the project started or completed – and promised Antelope County would be the first project in the 2023 contracting season. Brian McDonald is confident the project will be completed this spring. Discussion of different fixes. The cementing between the bridges has been bid and it was discussed if the Contractor might be willing to complete that project and continue to cement to the intersection of 853<sup>rd</sup> Road (Fred Thiele's Intersection). Mr. McDonald can profile that area today and contact the contractor to see if they will agree to that Change Order. Motion by Commissioner Williby, seconded by Commissioner Heithoff to authorize Highway Superintendent to profile the road for cementing after the bridges to the intersection and to negotiate with contractor. Voting aye: Krebs, Heithoff, Williby, Jacob and Henery. Nays none. Motion carried. Continuation of discussion. Motion by Commissioner Williby, seconded by Commissioner Heithoff to authorize the Highway Superintendent to profile the whole 1.55 miles of 516<sup>th</sup> Avenue. Voting aye: Krebs, Heithoff, Williby, Jacob and Henery. Nays none. Motion carried. When this is profiled, it will have to meet the 3-R Standards.

**Road Superintendent Report:**

- **Change Order – A & R Construction** – 2021 Pavement Repair: Prouty Construction is the bid contractor for the Koinzan Road – 519<sup>th</sup> Avenue. This is a 2019 flood project and FEMA has agreed to the mitigation of this road. However, the timeline completion date is March 31, 2023. This change order is to alleviate the frost from the ground to expediate the ground readiness for the work. Motion by Commissioner Krebs, seconded by Commissioner Heithoff to approve and authorize Chairman to sign change order for \$27,910.00. Voting aye: Krebs, Heithoff, Williby, Jacob and Henery. Nays none. Motion carried.
- **Pay Application – Dixon Construction** – Ashfalls North Project. Pay application for \$64,237.48.00 was presented. This project will be split with Knox County – so only half was presented for pay \$32,118.74. Motion by Commissioner Jacob, seconded by Commissioner Williby to approve the pay application as presented, and authorize Chairman to sign. Voting aye: Krebs, Heithoff, Williby, Jacob and Henery. Nays none. Motion carried.
- **Petition to close an approximate 1 mile of 858<sup>th</sup> Road** between 521<sup>st</sup>-522<sup>nd</sup> Avenue. Phyllis Perdeu presented a petition to close this road. The Clerk's Office has verified signatures and it presents today for the authorization of the Board of Commissioners to direct the Highway Superintendent to complete a road study on the mile of 858<sup>th</sup> Road. Motion by Commissioner Heithoff, seconded by Commissioner Jacob to authorize the Highway Superintendent to study 858<sup>th</sup> Road. Voting aye: Krebs, Heithoff, Williby, Jacob and Henery. Nays none. Motion carried.
- **Bridge Approach and Railing 525<sup>th</sup> Avenue** – Ryan Furstenu concern. Ryan had submitted a concern to the Commissioners in December regarding a T-intersection at the bottom of a hill on 525<sup>th</sup> Avenue. There is a bridge in the area which could present a hazard to the traffic heading east down the hill. Discussion of possible solutions to the abruptness of the T-intersection. Many options were discussed, however, Mr. McDonald suggested we have to follow guidelines set by NDOR. Discussion from cable guards, grading etc. Mr. McDonald will inspect the area again today. He tossed the idea of crash barrels. Mr. McDonald will follow up.
- **Underground Permit:** permit was submitted by Turnkey Communications to place an underground fiber optic cable under 838<sup>th</sup> Road in the SE¼SE¼, Section 11, Township 23, Range 7 West of the 6<sup>th</sup> P.M., Antelope County, Nebraska. Mr. Boggs requests the boring under the hard surface road. Motion by Commissioner Williby, seconded by Commissioner Jacob to approve and authorize signing. Voting aye: Krebs, Heithoff, Williby, Jacob and Henery. Nays none. Motion carried.
- **Access Permit Fee:** Antelope County access permits are currently at \$20.00. Road Superintendent has reported some of these permits are a true task and the \$20.00 does not necessarily cover the work needed to accept the permit. The Road Superintendent suggested increasing the amount. Motion by Commissioner Williby, seconded by Commissioner Jacob to increase the permit cost to \$75.00 per access, beginning March 1, 2023. Voting aye: Krebs, Heithoff, Williby, Jacob and Henery. Nays none. Motion carried. Resolution to be presented next week.

**Commodity Transfer Cost:** Short discussion today. No action taken.

**Maintenance/Snow Removal & Mowing Bids:** Discussion in follow-up of the bid opening. Three (3) bids for mowing were reviewed. Sheriff Moore was in attendance. He and several inmates have been working on snow removal around the Courthouse and Museum grounds. He is willing to continue this action and volunteered to work with these inmates in mowing of the Courthouse and Museum grounds. Sheriff wishes to have the County find someone to fertilize, aeriate and spray weeds. The sprinklers are currently controlled by the janitor, Marlene Schindler.

- Bid 1) Evergreen Custom Lawn Care LLC – Mowing and weed eating when necessary \$135.00 a time
- Bid 2) TG Lawn Care – Mowing and Trimming \$300.00 time – will fertilize & pre-emergent 5 times \$540.00 each, Aeration \$400.00
- Bid 3) Osborne Lawn Care & Mower – mow and trim \$250.00/time – no fertilizer/aerating

No other issues to discuss.

**Adjourn:** Motion was made by Commissioner Jacob seconded by Commissioner Heithoff to **adjourn**. Voting aye: Krebs, Heithoff, Williby, Jacob and Henery Motion passed.

Meeting adjourned at 11:47 AM.

ANTELOPE COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
 Chairperson of the Board, Charlie Henery

Attest: \_\_\_\_\_  
 County Clerk, Lisa Payne