FILED

January 19, 2026
IMAGE ID N260200WLNSC, FILING ID 0000043455

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

Case No. A-25-607

IN THE NEBRASKA COURT OF APPEALS

K2 REAL ESTATE DEVELOPMENT, LLC, Appellant,
v.
NEMAHA COUNTY, NEBRASKA, Appellee,

Appeal from the District Court of Nemaha County, Nebraska
Judge Julie D. Smith

Reply Brief and Answer to Cross-Appeal of Appellant and Cross-Appellee K2 Real Estate Development, LLC

Respectfully Submitted:
Austin L. McKillip, #23212
CLINE WILLIAMS WRIGHT
JOHNSON & OLDFATHER, L.L.P.
Attorneys at Law
1900 U.S. Bank Building
233 South 13th Street
Lincoln, Nebraska 68508-2095
(402) 474-6900
amckillip@clinewilliams.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

I. STATEMENT OF JURISDICTION

Appellant stands on its original statement of jurisdiction.

II. STATEMENT OF THE CASE

Appellant stands on its original statement of the case.

III. PROPOSITIONS OF LAW

1. An injured party has a right to damages based on his reliance interest, including expenditures made in preparation for performance or in performance, less any loss that the party in breach can prove with reasonable certainty the injured party would have suffered had the contract been performed. *Anderson Excavating & Wrecking Co. v. Sanitary Imp. Dis. No. 177*, 265 Neb. 61, 67 (2002). *see also* Restatement (Second) of Contracts § 349; Restatement (Third) of Restitution and Unjust Enrichment § 38.

2. Where a contractor is not allowed to complete the performance of a contract, he is entitled to recover the value of the work performed, plus the profit he would have received if he had been allowed to complete the job as provided in the contract. *Omaha Public Power Dist. v. Darin & Armstrong, Inc.*, 205 Neb. 484, 502-03 (1980).

3. Where a construction contract has been terminated prior to substantial performance by an owner and without fault on behalf of the contractor, the contractor is entitled to assert a construction lien. *Tilt-Up Concrete, Inc. v. Star City/Federal, Inc.*, 255 Neb. 138, 151 (1998).

IV. STATEMENT OF FACTS

Appellant relies on the facts stated in its opening brief and also submits the following additional facts.

The County asked K2 to meet with a County representative, Larry Holtzman, and a County-retained engineer, Dan Alexander, to discuss a potential bridge repair. (E2, p. 1; 453:11-13). Mr. Alexander specified the scope of work for which K2 was to submit a proposal. (146:19-147:8; 248:22-249:20).

K2 sent the proposal requested by the County. (147:9-11). The proposal was for a limited scope of work. K2 was to: (1) mobilize to the project site; (2) remove and salvage existing timber decking; (3) install four 60 foot pilings at the north abutment of the bridge, per the engineer's request; and (4) weld existing substructure steel to the new substructure steel and piling. (E12, p. 1). K2 was not required under the proposal to reinstall bridge decking, make changes to the south abutment, or finalize the bridge for useability. (142:5-13). The Contract specifically excluded engineering as a K2 responsibility. (E12, p. 1).

Mr. Alexander testified that after receiving the proposal from K2, he contacted the County to make a recommendation to the Board of Commissioners not to move forward with the Contract. (450:9-24). Despite that apparent recommendation, the County approved the Contract with K2—which identified the scope of work as "per engineer's request" and specifically excluded engineering—and signed the Contract. (E12, p. 1; E2, p. 9). The Contract authorized K2 to mobilize to the site. (E12, p. 1).

The County had not notified its highway superintendent, Mark Mainelli, who is also an engineer, about the bridge repair Contract, and he terminated the Contract the same day he found out about it. (597:5-22). He told K2 that there were missing items from the proposal, such as no engineering plans, no traffic control was in place, utilities, and right-of-way staking and "the project wasn't going to move forward because it couldn't and *the county* didn't have time to get all of those items in place." (577:10-22 (emphasis added)). Mr. Mainelli thought "from a public standpoint of public funds, this was a complete disaster." (578:12-17).

V. ARGUMENT

The parties are before this Court because of the County's internal failures. The County did not do what it needed to do before contracting with K2, and K2 acted in reliance on its Contract with the County and the County's actions. The County itself refers to its actions as "improvident," (App'ee Br. at 21, 25), and the County highway superintendent who found out about the Contract only after K2 had already mobilized to the site thought the situation was "a complete disaster." (578:12-17). K2 was harmed by the County's improvidence, and the County seeks to force K2 to bear the burden of the County's actions.

A. Nebraska Law Permits K2 to Recover Damages without First Proving Substantial Performance.

Under Nebraska law, one measure of contract damages for an injured party is based on the party's reliance interest, including expenditures made in preparation for performance or in performance. *Anderson Excavating & Wrecking Co. v. Sanitary Imp. Dist. No. 177*, 265 Neb. 61, 67 (2002) (adopting Restatement (Second) of Contracts § 349); *see also* Restatement (Third) of Restitution and Unjust Enrichment § 38. The County did not address this law in its opposition brief, and nothing about this measure of damages requires proof of substantial performance.

K2 also cited the rule that "[w]here a contractor is not allowed to complete the performance of a contract, he is entitled to recover the value of the work performed, plus the profit he would have received if he had been allowed to complete the job as provided in the contract." *Omaha Public Power Dist. v. Darin & Armstrong, Inc.*, 205 Neb. 484, 502-03 (1980). The County attempts to counter that rule by stating that substantial performance wasn't at issue in that case and a lot of work had been done, so "it appears that the contractor . . . performed significant beneficial work for the owner; such that the issue of substantial performance never arose." (App'ee Br. at 19). The rule K2 cites is in the portion of the opinion dealing with the cross-appeal, which arose out of the unilateral deletion of a scope of work from the contract, for which no work had been done. 205 Neb. at 501-03. The court in that case denied recovery because of a lack of evidence of work performed or costs attributable to the deleted portion of the work. Here, though, K2 offered unrebutted evidence of the work it performed in mobilizing to the site and of the related costs it incurred in preparing to perform the work the County unilaterally cancelled.

K2 also cited a construction lien case in support of its right to recover without first proving substantial performance. In *Tilt-Up Concrete, Inc. v. Star City/Federal, Inc.*, 255 Neb. 138, 151 (1998), the court permitted the assertion of a construction lien where a contract was terminated before completion without the contractor's fault, stating: "To rule otherwise would allow an owner to terminate a construction contract prior to substantial performance by the contractor, whether in good faith or not, and escape construction lien liability." *Id.* The County's sole response was to state that construction liens do not attach to real estate owned by a county. The County has missed the point. Nebraska law recognizes that when a construction contract has been terminated prior to substantial performance by the owner and without fault on behalf of the contractor, the contractor is entitled to recover its damages.

As stated in its opening brief, K2 does not dispute that certain Nebraska cases include an assertion that a plaintiff cannot maintain an action for breach of contract if the plaintiff has not substantially performed. The doctrine, though, is intended to *protect a plaintiff who has breached* a contract in minor or technical ways but who has otherwise substantially performed, from non-payment by *an otherwise non-breaching defendant*. "The doctrine of substantial performance is intended to protect a party's right to be compensated when it has performed in all material and substantive respects and to avoid the possibility of a forfeiture due to technical, minor, inadvertent, or unimportant deficiencies." 15 Williston on Contracts § 44:52 (4th ed.). That is not the case here.

Here, the County breached the Contract. It terminated the Contract with K2 after K2 incurred the cost of mobilizing to the site as authorized by the Contract and after K2 purchased materials using the tax exempt form sent to it by the County. The County is the reason K2 did not fully perform. By terminating the Contract, which the trial court correctly held was a breach of the Contract, the County repudiated the Contract and relieved K2 of any obligation to further perform. *Anderson Excavating & Wrecking Co. v. Sanitary Imp. Dist. No. 177*, 265 Neb. 61, 68 (2002); Restatement (Second) of Contracts § 253(2). The cases K2 relies upon address the right of recovery *where a non-breaching plaintiff* seeks to recover against a *breaching defendant*.

The County argues extensively that K2 did not substantially perform the Contract because K2 did not complete the bridge repair that was the subject of the Contract. The County makes no response to the argument that K2 had performed until the County terminated the Contract. K2 acknowledges that it did not perform the bridge repair after it mobilized under the Contract; the County highway superintendent found out about the County's Contract and terminated the Contract because necessary tasks had not been performed by the County. The Contract was not terminated because K2 insisted on engineering plans, but because the highway superintendent found out about the project and thought it was a disaster. The County is seeking to avoid responsibility for its own "improvident" actions.

B. The County Has Not Established any Requirement to Prove a Benefit to the County.

The County likewise made no response to K2's argument that it was not required to prove a benefit to the County. Instead, the County argued that it received no benefit. K2 is not required to establish a benefit to the County under Nebraska law. Where a plaintiff contracting party has acted in reliance on the breaching party and has incurred costs in preparing to perform, the plaintiff is entitled to recover the costs of that preparation to perform. *Anderson Excavating*, 265 Neb. at 67. And, where the breaching party has prevented a plaintiff contracting party from performing, the plaintiff contracting party is "entitled to recover the value of the work performed, plus the profit he would have received if he had been allowed to complete the job as provided in the contract." *Omaha Public Power Dist.*, 205 Neb. at 502-03. The Court erred in requiring K2 to prove a benefit or value to the breaching party, and the County has not provided any law to the contrary.

C. The County's Argument headed "I. Contract Interpretation" Does Not Respond to K2's Arguments.

For approximately three pages, the County argues that the Contract did not require the County to provide stamped plans and specifications for K2's scope of work. First, the Contract specifically excludes "Engineering" from K2's responsibilities and states that K2 will install piling "per engineer's request." (E12, p. 1). Second, the County's own witness testified that an engineer has to certify the bridge to be reopened, and doing so is the responsibility of the engineer who does the plans. (567:13-568:10). Third, the County's argument does not respond to any issue raised in K2's brief. K2 has not asserted any error related to whether the County agreed or promised to provide K2 with stamped plans or specifications.

At best, the County's argument could relate to K2's assertion that the trial court erred in imposing a contract condition not included in the Contract. The trial court found that K2 "mobilized without any request to do so and without securing the stamped engineering plans Plaintiff required before beginning work." (T250-251). As stated in K2's opening brief, the Contract does not require K2 to wait to mobilize until after engineering plans are obtained. And, a County-retained engineer had specified K2's limited scope of work in the first instance. (146:25-147:5; 248:22-249:20).

The County stated: "In hindsight, it would have been much different had the commissioners relied upon [highway superintendent and engineer] Mr. Mainelli rather than K2. Nevertheless, the County commissioners who accepted K2's proposal for repairing the County bridge were entitled to rely on K2's knowledge and experience in the construction and repair of bridges." (App'ee Br. at 17). Dan Alexander, the County engineer at the site visit with K2 prior to the issuance of K2's proposal, identified the scope of K2's work. (146:25-147:5; 248:22-249:20). Mr. Alexander testified that after K2 issued its proposal, he recommended the County Board of Commissioners reject K2's proposal. (450:9-24). The County Board had Mr. Alexander's input before signing the Contract and apparently rejected that recommendation, voting to proceed with the Contract without the knowledge or input of the County highway superintendent Mark Mainelli. (E12, p. 1; E2, p. 9; 597:5-22). The County wanted to move ahead, and K2 relied on the County's actions and decisions.

The County's argument does not refute any of K2's assertions.

D. The County's Argument headed "III. Reasonably Fit/Intended Purpose" Does Not Respond to K2's Arguments.

The County also argues that K2 had the obligation to repair the bridge in a reasonably good and workmanlike manner and reasonably fit for its intended purpose. Like the contract interpretation argument, the County's argument does not respond to any issue raised in K2's brief. K2 has not asserted any error related to whether K2's work was reasonably good or workmanlike and reasonably fit for the intended purpose.

Again, K2 submitted its proposal to the County after the first meeting with a County representative and a County engineer at the project site. That County engineer defined the scope of K2's work, which was not a complete bridge repair. *See* p. 5, *supra*. K2 was not required under the proposal to reinstall bridge decking, make changes to the south abutment, or finalize the bridge for useability. (142:5-13). And, it is the responsibility of the engineer who prepares the plans to certify the bridge for reopening. (567:13-568:10).

The County's argument does not refute any of K2's assertions.

E. The County Never Asserted Any Claim Against K2 for Breach of Contract.

The County's arguments suggest that it wants the Court to conclude K2 breached the Contract. The County never alleged that K2 breached the Contract, and the County never asserted a claim against K2 for breach of contract. The only party against whom a claim for breach of contract was asserted was the County, and the trial court entered a summary judgment order finding that the County had breached the Contract.

The County attempts to argue that K2 was responsible for providing engineering plans and that K2 had a duty to provide a bridge repair fit for an intended purpose. The County ignores that K2's proposal was not, and was never intended to be, a proposal for wholesale repair of the entire bridge. The County's engineer, Dan Alexander, requested a proposal for a limited scope of work. K2 did not propose or agree to do anything more than what was specified in the Contract, and K2 specifically excluded various items, including "Engineering" and "replacement of salvaged decking." (E12, p. 1). The notion that the County would have a completely repaired bridge upon the conclusion of K2's scope of work is fiction.

K2 was ready to perform until the County terminated the Contract when the County highway superintendent discovered that the County had entered into the Contract without first undertaking necessary steps. The County cannot shift responsibility for its failures to K2.

F. The County Has Not Established any Basis to Deny the Damages Requested.

Citing *Meyer Nat. Foods LLC v. Greater Omaha Packing Co.*, 302 Neb. 509, (2019), the County asserts that K2 cannot recover because it could have avoided all of its claimed losses without undue risk, burden, or humiliation. (App'ee Br. at 26). The *Meyer* case relies on the Restatement (Second) of Contracts § 350 for the rule argued by the County. The comment to § 350 includes the following factually similar illustration:

> A contracts to build a bridge for B for $100,000. B repudiates the contract shortly after A has begun work on the bridge, telling A that he no longer has need for it. A nevertheless spends an additional $10,000 in continuing to perform. A's damages for breach of contract do not include the $10,000.

Restatement (Second) of Contracts § 350 comm. 1. The rule the County relies on is about mitigation of damages and does not support a bar on damages for the period prior to knowledge of the County's termination. There's no evidence that K2 took any action to increase its damages once the County highway superintendent called K2 and terminated the Contract.

As stated in K2's opening brief, the evidence of K2's damages is unrebutted. That the County wants to avoid paying for its own poor decisions is clear, but K2 acted in reliance on the Contract and communications from the County in mobilizing to the site and in purchasing materials for the project using the County's tax exempt authorization. K2 is entitled to payment for the costs it incurred in reliance on the County's actions, along with a markup for overhead and profit, including for the materials it procured for the County. As K2 was entitled to payment for the work it performed, K2 is also entitled to recover its attorney fees and interest under the Nebraska Construction Prompt Pay Act.

VI. CONCLUSION

The County concludes its argument by quoting testimony of the highway superintendent that there was no way the project was going to be able to move forward and the proposal project "was a complete disaster." (App'ee Br. at 27). That may be true, but it was a complete disaster because of the County's decisions. K2 should not be required to bear the cost of the County's improvidence.

For the reasons stated above and in K2's opening brief, K2 respectfully requests this Court reverse and remand for further proceedings on the issue of the amount of K2's attorney fees.

Case No. A-25-607

IN THE NEBRASKA COURT OF APPEALS

K2 REAL ESTATE DEVELOPMENT, LLC, Appellant,
v.
NEMAHA COUNTY, NEBRASKA, Appellee,

Appeal from the District Court of Nemaha County, Nebraska
Judge Julie D. Smith

Answer to Cross-Appeal of Appellant and Cross-Appellee K2 Real Estate Development, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

I. STATEMENT OF JURISDICTION

Appellee's statement of the basis of jurisdiction is accepted.

II. STATEMENT OF THE CASE

Appellant incorporates its Statement of the Case from Appellant's opening brief and supplements as follows:

A. How the Issues were Decided Below

The trial court denied the County's arguments that the Contract was invalid or illegal and ruled that the County had breached the Contract when it wrongfully terminated it. (T116). The trial court explained that interpreting NEB. REV. STAT. § 39-810(1)(c) to apply to "any contract that had a component involving materials, even though the contract was also for labor" violates the statutory interpretation doctrine against surplusage because it "would render § 39-810(1)(a) and (b) meaningless." (T114). The trial court did not resolve a conflict between subsections (1)(a), (1)(b), and (1)(c) because no conflict exists. (T114). Rather, it gave meaning to the whole statute by explaining that subsections (1)(a) and (1)(b) apply to contracts for repair and subsection (1)(c) applies to contracts for materials. (T114). Thus, because this was a contract for repair, subsection (1)(a) applied.

B. Scope of Appellate Review

An action for breach of contract is an action at law. *Stauffer v. Benson*, 288 Neb. 683, 690 (2014). Factual findings made in a bench trial should not be disturbed unless clearly wrong. *Id.*; *City of Scottsbluff v. Waste Connections of Nebraska, Inc.*, 282 Neb. 848, 859 (2011). Questions of law are reviewed de novo. *City of Scottsbluff,* 282 Neb. at 859–60. Statutory interpretation presents a question of law. *State v. Mann*, 302 Neb. 804, 809 (2019).

III. PROPOSITIONS OF LAW

1. Contracts for the erection or repair of bridges are not required to be let by the county board to the lowest responsible bidder unless the cost and expense of the contract exceed one hundred thousand dollars. NEB. REV. STAT. § 39-810(1)(a), (1)(b).

2. Contracts for the provision of materials to repair, erect, and construct a bridge are not required to be let by the county board to the lowest responsible bidder unless the cost and expense of the contract exceed twenty thousand dollars. NEB. REV. STAT. § 39-810(1)(c).

3. Courts "must place on a statute a reasonable construction which best achieves the statute's purpose." *Salts v. Lancaster County*, 269 Neb. 948, 955 (2005).

4. "Although courts can consider the purpose of a statute when deciding between multiple textually permissible readings of a statute, courts are merely to give effect to the text when the meaning of the text is plain, direct, and unambiguous." *State v. Clausen*, 318 Neb. 375, 385 (2025).

5. The "cardinal rule of statutory interpretation" is the canon against surplusage, under which "every word and every provision is to be given effect [and that n]one should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence." *Nielsen v. Preap*, 586 U.S. 392, 414 (2019); *State v. Thalken*, 299 Neb. 857, 882 (2018) ("We will, if possible, give effect to every word, clause, and sentence of a statute, since the Legislature is presumed to have intended every provision of a statute to have a meaning.").

6. "When possible, an appellate court will try to avoid a statutory construction that would lead to an absurd result." *Heist v. Nebraska Dep't of Corr. Servs.*, 312 Neb. 480, 498 (2022).

7. When statutory provisions conflict, courts must interpret them in a way that gives effect to both, if possible. *Johnson v. Vill. of Polk*, 319 Neb. 352 (2025).

8. "Where general and special provisions of statutes are in conflict, the general law yields to the special provision or more specific statute." *Schaffer v. Cass County*, 290 Neb. 892, 898 (2015).

9. "Statements in affidavits as to opinion, belief, or conclusions of law are of no effect. As such, they are not evidence for the purposes of a summary judgment motion and are not considered when determining whether the summary judgment was appropriate." *Whalen v. U S West Communications, Inc.*, 253 Neb. 334, 344 (1997) (internal citations omitted).

10. "Where a contract has been entered into in good faith by a county, which contract was within the power of the county to make but was void for failure to comply with statutory requirements, an action in quantum meruit for the service performed or the material furnished may be maintained." *Capital Bridge Co. v. Saunders Cnty.*, 164 Neb. 304, 310 (1957).

11. "If a city acts within its power to enter into a contract for a construction project, as soon as a contractor expends efforts on behalf of the city, the contractor becomes entitled to compensation for those efforts, even if the contract is eventually declared null and void for failure to follow the applicable bidding statutes. *Rath v. Sutton*, 267 Neb. 265, 280 (2004).

IV. STATEMENT OF FACTS

Appellant incorporates its Statement of Facts from Appellant's opening brief and its Reply Brief, *supra*, and supplements as follows:

Under the Contract between K2 and the County, K2 agreed to conduct certain specified repairs to the Piper Creek Bridge ("the Bridge") in Nemaha County, Nebraska, and the County agreed to pay K2 $85,580. (E2, p.1, 9; E12, p. 1). The Contract allocates $28,800 to H-Pile 10x42 steel, and this figure includes both the cost of the steel and its installation. (E12, p. 1; 134:2-6). The Contract allocates $14,700 to Substructure Steel, and this figure also includes both the cost of the steel and its installation. (E12; 134:22-135:14). K2 provided the County with an invoice for the steel delivered on-site in the amount of $9,146.40. (209:10–211:5; E16, E17, E18, E19, E20). The Contract also has a $50,000 liquidated damages provision that was never triggered. (E12). The County did not conduct any competitive bidding process before entering the Contract. (E3, p.3-4; E6, p.1; E7, p.2; E8, p.2; E9, p.2).

The limited repairs K2 agreed to provide would not have completely repaired the Bridge to full functionality. (142:5–13). The County has its own road crew that performs maintenance of roads and bridges and repair work. (476:11-477:9).

V. ARGUMENT

NEB. REV. STAT. § 39-810 governs the County's authority to enter into contracts for bridge projects. Under § 39-810, only bridge repair projects exceeding $100,000 are required to be let for bidding by the County. The Contract was for bridge repairs in the amount of $85,580.00, which is less than the $100,000.00 threshold. (E2, p. 1, 9; E12, p. 1). The County was not required to advertise or solicit bids for this Project.

The County argues that it did not have authority to enter into the Contract because it did not follow the proper bidding procedures and that § 39-810(1)(c) applies. Section 39-810(1)(c) governs contracts for *materials* and does not apply because the Contract was for *repair*.

The County's arguments overcomplicate what is, at bottom, a straightforward interpretation. Inapplicable statutory interpretation doctrines, the purpose of competitive bidding statutes, and efforts to aggregate other costs not contemplated at the time of the Contract cannot overcome the plain language of § 39-810.

The Contract was not illegal. And, even if it were, *Capital Bridge Co. v. Saunders Cnty.*, 164 Neb. 304 (1957), establishes K2's right to payment in quantum meruit. The end result is the same—the grant of K2's Motion for Summary Judgment must be affirmed.

A. A straightforward interpretation of NEB. REV. STAT. § 39-810 supports the legality of the Contract.

Under a straightforward interpretation of NEB. REV. STAT. § 39-810, contracts for the ***repair*** of a bridge are addressed in subsections (1)(a) and (1)(b), while contracts for the provision of ***materials*** are addressed in subsection (1)(c).

Here, the Contract was for the repair of a bridge, so (1)(a) and (1)(b) govern. NEB. REV. STAT. § 39-810(1)(a) provides:

> The county board of each county may erect and repair all bridges and approaches thereto and build all culverts and make improvements on roads, including the purchase of gravel for roads, and stockpile any materials to be used for such purposes, the cost and expense of which shall for no project exceed one hundred thousand dollars.

Id. Under § 39-810(1)(b), bridge projects exceeding $100,000 require the County to let such projects for public bidding. NEB. REV. STAT. § 39-810(1)(b).

The Contract between the County and K2 was for the repair of a bridge at a cost of $85,580. (E2, p.1, 9; E12). Because $85,580 is less than $100,000, subsection (1)(a) applied and the County was not required to let the Project for bidding.

The County argues subsection (1)(c) applied and required public bidding, but subsection (1)(c) unambiguously only applies to contracts in excess of $20,000 for the purchase of materials for bridge and road projects. *See* NEB. REV. STAT. § 39-810(1)(c) ("All contracts for materials . . .").

Because the Contract between the County and K2 was for the ***repair*** of a bridge and not for the provision of materials, subsection (1)(c) does not apply. Rather, this Contract falls squarely within the County's authority to contract without public bidding under subsection (1)(a).

B. The County's attempts to complicate this straightforward interpretation are unpersuasive.

1. A statute's purpose does not trump its text.

It is undisputed that competitive bidding statutes, such as NEB. REV. STAT. § 39-810, have the purpose of protecting the taxpayer's interests. Moreover, it is uncontested that courts "must place on a statute a reasonable construction which best achieves the statute's purpose." *Salts v. Lancaster County*, 269 Neb. 948, 955, 697 N.W.2d 289, 295 (2005).

That said, the purpose of the statute cannot override the text. "Although courts can consider the purpose of a statute when deciding between multiple textually permissible readings of a statute, courts are merely to give effect to the text when the meaning of the text is plain, direct, and unambiguous." *State v. Clausen*, 318 Neb. 375, 385, 15 N.W.3d 858, 866 (2025).

The plain, direct, and unambiguous meaning of the text is that the contracts for ***repair*** are only required to go through the competitive bidding process when the price exceeds $100,000, while contracts for ***materials*** are required to go through the process when the contract price exceeds $20,000. *See* NEB. REV. STAT. § 39-810(1)(a), (b), (c). Because the Contract was for an $85,580 ***repair*** of the Bridge, the $100,000 threshold applied and no competitive bidding process was required.

Fundamental principles of statutory interpretation support this understanding. The "cardinal rule of statutory interpretation" is the canon against surplusage, under which "every word and every provision is to be given effect [and that n]one should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence." *Nielsen v. Preap*, 586 U.S. 392, 414 (2019) (citing *Kungys v. United States*, 485 U.S. 759, 778 (1988) (plurality opinion of Scalia, J.)); *State v. Thalken*, 299 Neb. 857, 882 (2018) ("We will, if possible, give effect to every word, clause, and sentence of a statute, since the Legislature is presumed to have intended every provision of a statute to have a meaning.").

The County's proposed interpretation would render subsections (1)(a) and (1)(b) meaningless. Under the County's interpretation, any contract involving materials exceeding $20,000 would be subject to subsection (1)(c), even if the contract was also for repair. This effectively makes subsections (1)(a) and (1)(b) useless, and as the district court stated, this "does not make any practical sense." (T114).

Similarly, adoption of the County's interpretation would violate the absurdity doctrine under which an interpretation is to be avoided if failing to do so would result in a disposition that no reasonable person could approve. *See Heist v. Nebraska Dep't of Corr. Servs.*, 312 Neb. 480, 498 (2022) ("When possible, an appellate court will try to avoid a statutory construction that would lead to an absurd result."). Interpreting subsection (1)(c) to include any contract that had a component involving materials even though the contract was also for repair would lead to an illogical result, as it would prevent a county from entering into any such contract exceeding $20,000 without the requirement of public bidding.

The rational interpretation is that the $100,000 threshold applies to contracts for ***repair***, while the $20,000 threshold applies to contracts for ***materials***. This interpretation gives meaningful effect to the entirety of § 39-810 and avoids absurd results.

2. Subsection (1)(c) applies only to contracts for the provision of materials.

The County asserts several more unpersuasive arguments contending that subsection (1)(c) applies. It first provides the following statement: "The cost of labor is not the focus of Neb. Rev. Stat. § 39-810(1)(c)." This is absolutely correct. The focus of subsection (1)(c) is contracts for the provision of materials, not labor.

The County argues that there is a conflict between subsections (1)(b) and (1)(c), and that because of the conflict, (1)(c) must prevail as the last expression of the legislative will. However, no conflict exists. Subsection (1)(b) applies to contracts for ***repairs***, while subsection (1)(c) applies to contracts for ***materials***. Additionally, there is no evidence that the legislature adopted subsection (1)(b) later than it adopted subsection (1)(c).

To the extent there is a conflict, which there is not, courts must interpret the subsections in a way that gives effect to both, if possible. *See Johnson v. Vill. of Polk*, 319 Neb. 352, 372 (2025). The only reading of the statute that does so is that the $100,000 threshold applies to contracts for repair, while the $20,000 threshold applies to contracts for materials. As discussed, this reading ensures that both subsections (1)(b) and (1)(c) have meaning.

Next, the County incorrectly argues that the district court improperly replaced the term "all" with the term "only" in subsection (1)(c). In reality, the District Court simply used the term "only" to explain that subsection (1)(c) applies to all contracts for the provision of ***materials***, and that it does not apply to ***repair*** contracts. (T114). Again, this interpretation is supported by the statute's plain, direct, and unambiguous meaning.

The County also argues that the plain meaning of the statute creates an absurd result because it allows counties to avoid the $20,000 threshold in subsection (1)(c) by "simply adding $50 of labor to a contract for materials for repairing a bridge having material costs of

$99,580." (App'ee Br. at 42). First, the County cites *Gage County Bd. of Equalization v. Nebraska Tax Equalization & Review Comm'n*, 260 Neb. 750 (2000), but that case has nothing to do with the cited proposition.

Moreover, a "contract for materials" falls within the scope of subsection (1)(c), so the $20,000 threshold would not be avoided in this circumstance. To the extent the County contends that an absurd result arises because counties could evade subsection (1)(c)'s threshold in ***repair*** contracts by allocating a disproportionately high cost to materials relative to labor, that argument also fails.

"In construing a statute, it is presumed that the Legislature intended a sensible, rather than an absurd result [and] an appellate court will try to avoid a statutory construction that would lead to an absurd result." *Heist*, 312 Neb. at 498. The County has not demonstrated that application of the plain language of § 39-810 results in an absurd result, and it certainly does not in this case. The Contract was for bridge repair in an amount less than $100,000 and thus falls within the plain language of subsection (1)(a), which on its face contemplates the acquisition of materials, such as gravel, within its terms. To suggest that any contract that includes any amount of materials must be governed by subsection 1(c) is inconsistent with the face of the statute.

In *Anderson v. Peterson*, 221 Neb. 149 (1985), which the County relied on (App'ee Br. at 45), the Supreme Court considered whether a replacement of a courthouse HVAC system fell within the scope of "supplies, materials, equipment and contractual services" such that public bidding was required. Ultimately, the court determined that the replacement of the HVAC system was a capital improvement for which no public bidding was required. The court noted that "Nebraska statutes covering county expenditures and competitive bidding comprise a crazy quilt of legislation" and that it was incongruous that public bidding was required for the purchase of books and stationery but not for a $200,000 courthouse capital improvement project. *Id.* at 155-56. The court declined to disregard ordinary meanings of "supplies, materials, and equipment" or to read words into the statute being construed, stating: "We decline to rewrite the statute. Competitive bids and public letting are unquestionably a matter of legislative prerogative." *Id*. at 156.

Section 39-810 is clear and unambiguous. Whether the rules it establishes are the right ones is a legislative matter and not a question for this Court to decide. No public bidding was required for the Contract between the County and K2.

3. Under NEB. REV. STAT. § 39-810, the test for the competitive bidding threshold is the costs of an individual contract, not the estimated costs of the total project.

Next, the County argues that even if subsection (1)(c) does not apply, the Contract is still illegal because, according to Mr. Mainelli's estimate, the total cost to repair exceeds $100,000, thus triggering subsection (1)(b). This estimate of the total cost to repair the Bridge is entirely hypothetical and was generated by someone who had no involvement in or knowledge of the project before the Contract was signed. (597:5-22). (Indeed, he terminated the Contract as soon as he found out about it because the County had mishandled it so badly. (577:10-22; 578:12-17)) There is no evidence that at the time the County entered the $85,580 limited scope of work Contract with K2, the County sought other contracts to complete other aspects of the repair of the bridge. In fact, the County has its own road crew that performs maintenance and repairs of roads and bridges. (476:11-477:9). It was not K2's responsibility under the Contract to reinstall bridge decking, to make changes to the south side abutment for the bridge, or to finalize the bridge for usability. (142:5-13). There is no evidence in the record regarding who was to complete additional work, and the County's road crew performed the removal of original decking that K2 had been contracted to perform. Nothing in the record establishes that County personnel wages are to be allocated in some fashion that impacts public bidding requirements for bridge repairs. Nothing in the record demonstrates any known added cost to complete the bridge repair at the time the K2 contract was executed. This alone makes this argument moot.

Moreover, the statute's text is what matters. Subsection (1)(b) provides: "All ***contracts*** for the erection or repair of bridges and approaches thereto or for the building of culverts and improvements on roads, the cost and expense of which shall exceed one hundred thousand dollars, shall be let by the county board to the lowest responsible bidder." NEB. REV. STAT. § 39-810(1)(b) (emphasis added). Based on the text, the competitive bidding process is only required when the ***contract*** for repair exceeds $100,000. The statute does not specify the estimated total cost of repair as a factor to be considered, instead stating competitive bidding is required when a contract for repair exceeds $100,000. Here, the Contract is for the repair of a bridge, and it is for less than $100,000. (E12). Accordingly, competitive bidding is not required.

The cases the County cites do not aid its argument. *City of Akron v. Akron-Westfield Cmty. Sch. Dist.*, 659 N.W.2d 223 (Iowa 2003), does not involve public bidding or aggregating the value of project contracts. The remaining cases involve statutes that are materially different from subsection (1)(b). *See Master Builders of Iowa v. Polk County*, 653 N.W.2d 382 (Iowa 2002) (statute provided that competitive bidding was required "[w]hen the estimated cost of a public improvement ... exceeds [$50,000]."); *Kunkle Water & Electric, Inc. v. Prescott,* 347 N.W.2d 648 (Iowa 1984) (statute provided that competitive bidding was required "[w]hen the estimated total cost of a public improvement exceeds the sum of ten thousand dollars."); *Everds Brothers v. Gillespie*, 126 N.W.2d 274 (Iowa 1964) (statute provided that competitive bidding was required for "all contracts for the construction or repair of street improvements" regardless of the total cost).

Section 39-810 does not require public bidding for all contracts regardless of total cost or when the total estimated cost of an entire project exceeds the threshold amount. Rather, the statute focuses on whether the contract itself exceeds $100,000. *See* NEB. REV. STAT. § 39-810.

4. The Contract does not exceed $100,000.

The County argues that the Contract is illegal because it exceeded $100,000. This is untrue. The County Commissioners publicly passed a motion to "sign an agreement with K2 Construction for Bridge #C006410950 repair work total of $85,580.00." (E2, p. 9). Second, on its face, the proposal clearly indicates the contract price as a sum of "Eighty Five thousand, Five hundred Eighty DOLLARS & 00/100 CENTS… ($85,580.00)." (E12).

The liquidated damage provision for $50,000.00 based on a late start cannot be construed to be part of the contract price because the provision was never guaranteed to be triggered, and it never was. On its face, that provision would not be implicated unless the County delayed the start of K2's work on the Project beyond March 22, 2022. (E12). K2 mobilized to the site on March 8, 2022, and the County terminated the Contract on March 15, 2022. (E2, p. 3). The liquidated damages provision was never triggered. Additionally, K2 did not assert a claim for damages pursuant to the liquidated damage provision. (T1-3). The Contract does not exceed $100,000.

5. The County Purchasing Act does not apply.

The County contends that if competitive bidding is not required by subsection (1)(a), a statute that specifically deals with repairing bridges, then the competitive bidding process is required under the County Purchasing Act. (App'ee Br. at 45). The County Purchasing Act (NEB. REV. STAT. §§ 23-3101 to 3115) is inapplicable because given the choice between a broad or specific statute, the more specific one applies. "Where general and special provisions of statutes are in conflict, the general law yields to the special provision or more specific statute."

Schaffer v. Cass County, 290 Neb. 892, 898 (2015). The County Purchasing Act applies generally to "purchases of personal property or services by the county board," while NEB. REV. STAT. § 39-810(1)(a) specifically addresses the County's authority to "erect and repair all bridges… the cost and expense of which shall for no project exceed one hundred thousand dollars." *Compare* NEB. REV. STAT. § 23-3108 *with* NEB. REV. STAT. § 39-810(a). The latter, more specific, statute controls here.

6. The District Court did not err in excluding the County's evidence.

The County argues that there was no basis for the District Court to sustain K2's objections to the admissibility of paragraphs 18 and 19 of Mark Mainelli's affidavit for purposes of K2's summary judgment motion. This is incorrect. It also makes no difference to the outcome of this case.

K2 asserted a number of appropriate objections to the admissibility of Mr. Mainelli's affidavit. (11:3-13:18). The entire affidavit was inadmissible for lack of proper authentication, as it was undated and therefore not a properly notarized sworn statement. NEB. REV. STAT. § 64-119 ("The Secretary of State may adopt and promulgate rules and regulations" with regard to Notaries Public); 433 NEB. ADMIN. CODE, Ch, 6 § 002.01 ("The Notarial certificate or acknowledgement must be completed in its entirety including dates, state and county of notarial act").

Mr. Mainelli's affidavit purported to offer expert testimony notwithstanding the fact that he had not been disclosed as an expert by the County even though K2 had requested such information in discovery. (11:17-23; E1 p.6-7).

Paragraphs 18-19 must be read in context of the surrounding paragraphs of the affidavit and the objections made specifically with respect thereto. K2 objected to paragraphs 15-20, 27, 28, 30, and 32 as they were inadmissible expert opinions under NEB. REV. STAT. § 27-702 and the principles of *Schafersman*. (11:23-12:12). Read in their entirety, Mr. Mainelli attempts to render a legal opinion that the Contract was illegal for lack of competitive sealed bidding. (E3, p.4-7). Specifically, at paragraph 16, Mainelli opines that "based upon my professional knowledge, experience, training, and education, including services I have rendered as a county highway superintendent, the competitive sealed bidding process was required for the project referenced within K2 Construction's proposal…" (E3, p.4). The following paragraphs, including paragraphs 18-19, purport to provide Mr. Mainelli's basis for that opinion. Mr. Mainelli is not lawyer. Yet, he purports to render a legal opinion.

"Statements in affidavits as to opinion, belief, or conclusions of law are of no effect. As such, they are not evidence for the purposes of a summary judgment motion and are not considered when determining whether the summary judgment was appropriate." *Whalen v. U S West Communications, Inc.*, 253 Neb. 334, 344 (1997) (internal citations omitted).

To the extent portions of paragraphs 18-19 were not expressing a legal opinion, they indicate that there were not stamped engineering plans and that such plans were needed. (E3, p.4). Those facts were not, and are not, in dispute and were not material to the Court's determination of legality of the Contract, which was the issue decided by the Court on summary judgment. The Court did not err in excluding paragraphs 18-19 of the Mainelli affidavit, and even if it did, any such error was harmless.

C. Even if NEB. REV. STAT. § 39-810(1)(c) applies, competitive bidding was not required because the cost of the materials did not exceed $20,000.

The cost of the materials did not exceed $20,000. The County contends that the Contract allocated $43,500 to materials, specifically H-Pile 10x42 and Substructure Steel. (E12). This is incorrect. In reality, the $43,500 figure represents ***both*** the cost of materials ***and*** the cost of installation. (E12; 134:2-6; 134:22-135:14). Thus, $43,500 does not accurately represent the cost of materials.

The cost of materials for this project is only $9,146.40. (209:10–211:5; E16, E17, E18, E19, E20). This is the amount that K2 invoiced the County after it delivered the materials. That $9,146.40 does not include the labor costs associated with installation. As such, even under § 39-810(1)(c), the County was not required to let the Project for public bidding.

D. Even if the County should have advertised and publicly let the Project, the County is still required to pay for the work performed and materials provided.

Even if the County could prove the Contract was invalid for failure to comply with statutory bidding requirements (which it cannot), K2 would still be entitled to recover for work performed and materials furnished in quantum meruit. The Nebraska Supreme Court has held:

> Where a contract has been entered into in good faith by a county, which contract was within the power of the county to make but was void for failure to comply with statutory requirements, an action in quantum meruit for the service performed or the material furnished may be maintained.

Capital Bridge Co. v. Saunders Cnty., 164 Neb. 304, 310 (1957).

The County had the power to enter into a contract for bridge repairs. NEB. REV. STAT. § 39-810; *Capital Bridge*, 164 Neb. at 308-09 (determining that the county had general authority to repair bridges and purchase materials to do so). The County has not alleged, and there are no facts that would even suggest, that the Contract was made in bad faith.

More recently, in *Rath v. Sutton*, the Court stated:

> [I]f a city acts within its power to enter into a contract for a construction project, as soon as a contractor expends efforts on behalf of the city, the contractor becomes entitled to compensation

> for those efforts, even if the contract is eventually declared null and void for failure to follow the applicable bidding statutes.

Rath v. Sutton, 267 Neb. 265, 280 (2004); *see also Myers v. Nebraska Inv. Council*, 272 Neb. 669 (2006).

Even if the Contract was required to be let for public bidding, Nebraska law establishes that K2 is entitled to be paid for the work it performed. (150:4-234:15; E15, 16, 17, 18, 19, 20, 21, 22).

VI. CONCLUSION

For the foregoing reasons, the Court should deny the Appellees' cross appeal.

Dated this 19th day of January, 2026.

K2 REAL ESTATE DEVELOPMENT,
LLC, Plaintiff

s/ Austin L. McKillip
Austin L. McKillip, #23212
CLINE WILLIAMS WRIGHT
JOHNSON & OLDFATHER, L.L.P.
Attorneys at Law
1900 U.S. Bank Building
233 South 13th Street
Lincoln, Nebraska 68508-2095
(402) 474-6900
amckillip@clinewilliams.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief complies with the word count and typeface requirements of NEB. CT. R. § 2-103. This Brief contains 8,499 words excluding this Certificate of Compliance. This Brief was prepared using Microsoft® Word for Microsoft 365 MSO (Version 2510). The electronic version of this Brief was generated by converting to PDF from the original word processing file.

s/ Austin McKillip

4928-0968-5641, v. 1

Certificate of Service

I hereby certify that on Monday, January 19, 2026 I provided a true and correct copy of this *Reply Brief & Answer on Cross Appeal* to the following:

Nemaha County represented by Louie M Ligouri (16708) service method: Electronic Service to **ligourilaw@hotmail.com**

Signature: /s/ McKillip,Austin Lamoine (23212)