




LOWER PLATTE SOUTH natural resources district

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Agenda Item #11

Memorandum

Date: August 24, 2021
To: Each Director
From: Paul D. Zillig, General Manager 
RE: Water Resources Subcommittee Meeting Minutes.

The Water Resources Subcommittee met at 5:30 p.m. on Monday, August 23, 2021 in the NRD Office in Lincoln. Subcommittee members participating included Larry Ruth, Chelsea Johnson, Don Jacobson, John Yoakum, Vern Barrett, Ken Vogel, Gary Hellerich, and Ron Nolte. Other Directors participating included Deborah Eagan. And others participating included David Hladik & Andrew Spader (legal counsel), Mike Sotak, Steve Seglin, Corey Wasserburger, David Potter, Tracy Zayac, Steve Herdzina, Craig Matulka, Dick Ehrman, Mike Murren, Maclane Scott, Dan Schulz, and myself.

Chair Ruth opened the meeting and welcomed those in attendance. Ruth reviewed the agenda and reported that David Hladik & Andrew Spader asked to be on the agenda and discuss their irrigation interests in the Dwight-Valparaiso-Brainard Special Management Area (DVB SMA). Spader addressed the Subcommittee, handed out an August 20th letter, and explained that Hladik/Ragusa are not asking permission to exceed the allocation but are interested in having both their irrigation wells be treated as a single unit for the purposes of determining compliance with irrigation allocations for their farm (currently each well irrigates a specific area and has an allocation for that specific area).

Hladik discussed the history of irrigation on the farm and Herdzina reviewed his August 9th memo explaining the situation and past violations. The subcommittee asked questions and discussed the situation. The guidance was that the process would be for Hladik/Ragusa to consider applying for a variance to the rules and regulations to allow the change to combine the use of the two wells to irrigate the entire 123.7 certified irrigated acres.

The Subcommittee then took up the following action items:

Item 11a – Consideration of cost-share assistance with Duane Burd to remove channel obstructions in Middle Creek.

At the May Board Meeting Duane Burd and Eldon Ficke reported on their problem with downed trees in Middle Creek on the Burd property (near Pleasant Dale). Since that time staff has met with Burd on site, discussed the situation with the County (Burd property is in Seward County and bridge is owned by Lancaster County) and didn't receive any

indication that the County was concerned to the point of contributing to remove the trees because of potential damage to the bridge, and staff has discussed options to consider. The NRD currently has over 600 miles of creeks/streams/rivers with lots of downed trees. Most downed trees cause no problems, but some do. Removing trees from creeks that are more likely to cause damage is expensive, depends on access, size of the tree, disposal costs, etc. The NRD currently has funds in the budget to cost-share with counties on removing downed trees that are threatening a County bridge, we've increased the funding in the current budget for this purpose. The Subcommittee will need to consider whether they recommend funding assistance for a private landowner to remove downed trees and if so, what a fair share of the cost would be?

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The Subcommittee discussed the situation, the extent of the problem, the potential cost, and the District's role. The Subcommittee discussed looking into a "pilot" program that would provide some assistance to landowners to remove downed trees from creeks. It was moved by Hellerich, seconded by Youkum, to direct staff to prepare a draft pilot program for Subcommittee review that would provide cost-share assistance to landowners to removed downed trees/log jams from creeks. The motion failed on a vote of 1 –"yes" and 7 – "no" (Hellerich voting "yes"). There is no recommendation to the Board.

Item 11b - Consideration of Amendment #2 to the UNL Vadose Zone Agreement.

This agreement needs to be extended in order to complete the work. See the attached email from Dick Ehrman and the proposed amendment.

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Ehrman updated the Subcommittee on the status. It was moved by Johnson, seconded by Barrett, and unanimously approved by the Subcommittee to **recommend the Board of Directors approve Amendment #2 to the UNL Vadose Zone Agreement.**

Item 11c – Consideration of bids to repair the Wilson Dam. This project was put out for bid and bids opened August 10th to repair the upstream side of the Wilson Dam near Avoca. See the attached cover letter from FYRA Engineering recommending the work be awarded to Husker Engineering. A copy of the bid tabulation sheet is attached.

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Matulka and Sotak (FYRA Engineering) reported on the proposed repairs and bids received. It was moved by Jacobson, seconded by Youkum, and unanimously approved by the Subcommittee to **recommend the Board of Directors to award the contract to repair the Wilson Dam to Husker Grading of Burwell in an amount of \$49,997.**

Item 11d – Consideration of bids to repair Upper Salt 4-A. This project was put out for bid and bids opened also on August 10th. See the attached cover letter from FYRA Engineering recommending the work be awarded to the low and only bidder, Subsurface Inc to rehabilitate the principal spillway pipe at US 4-A. A copy of the bid tabulation sheet is attached.

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Matulka and Sotak reported on the proposed repairs and bids received. It was moved by Nolte, seconded by Hellerich, and unanimously approved by the Subcommittee to **recommend the Board of Directors award the contract to repair Upper Salt 4-A to Subsurface Inc. from Moorhead, MN in an amount of \$56,380.00.**

Item 11e – Consideration of an Engineering Services Agreement for Upper Salt 5-7.
This grade stabilization dam near Hallam has a degraded principal spillway pipe that now needs to be replaced. Attached is a negotiated professional services agreement with FYRA Engineering to provide the required engineering services required for the design, permitting, bidding, and construction observation phases of the work.

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Matulka and Sotak reported that the State video inspected the pipe and found it had severe corrosion and needs to be repaired (built in 1955). The condition of the pipe is so corroded that lining the pipe isn't an option and it will need to be replaced. It was moved by Youkum, seconded by Vogel, and unanimously approved by the Subcommittee to **recommend the Board of Directors approve the professional services agreement in the amount of \$27,480 with FYRA Engineering for engineering services related to the repairs of Upper Salt 5-7.**

Item 11f – Consideration of additional landrights negotiatons for Oak-Middle 82-B.
The contractor has completed the Oak-Middle 82-B rehab project. Staff continues to work with NRCS on the completion of the contract, final payments, and finishing up two remaining landrights issues with Robert and Mona Kunasek. Please find attached a copy of David Potter's memo explaining the situation and the recommended action for the Water Resources Subcommittee to consider. A summary is that we need to acquire an additional 0.05 acres of easement for the dam/spillway and compensate the Kunasek's for an additional year of accessing the site with construction equipment thru their field.

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Potter reviewed the additional landrights needed for this project and that the additional compensation is in accordance with the appraised damages from when the project was initiated. Potter reviewed the content of the letter of request from the Kunasek's. The Subcommittee desired to take up separately each of the requests and didn't feel it needed to be discussed in closed session, unless additional negotiations needed to be considered.

It was moved by Jacobson, seconded by Youkum, and unanimously approved by the Subcommittee to **recommend the Board of Directors approve the acquisition of the additional dam and spillway permanent easement consisting of 0.05 acres from Robert and Mona Kunasek in the amount of \$150.**

It was then moved by Johnson, seconded by Jacobson, and unanimously approved by the Subcommittee to **recommend the Board of Directors approve to compensate Robert**

and Mona Kunasek for the extended use of the temporary construction access easement in the amount of \$1,350.

Staff then reported that the two planned WRS applications for Water Sustainability Funds (WSF) have been submitted for the AEM related work of the District and ENWRA. The Subcommittee directed staff to submit the Measurable Goals and Objectives to the F&P Subcommittee for inclusion in the Long Range Implementation Plan (LRIP). And Ruth discussed with the Subcommittee the need to do some review and discussion concerning groundwater management and the District's Rules and Regulations. This possibly could be included in this winter's Director Retreat or earlier.

There being no additional business the meeting adjourned at 7:00 pm.

PDZ/pz

cc: Steve Seglin & Corey Wasserburger

From: Dick Ehrman
Sent: Thursday, August 5, 2021 7:54 AM
To: Paul Zillig
Cc: Dan Schulz
Subject: Vadose Zone Amendment
Attachments: AMENDMENT #2 LPS NRD.docx

Hi, Paul—attached is Amendment #2 to the current UNL agreement regarding vadose zone work. As we discussed, the original agreement was entered into in February 2020 and was supposed to be done by September 2020. Of course, COVID shut down much of UNL during that time, so a year ago we extended the agreement until September 2021. However, there were still some limitations until this spring, and by that time the UNL field crew was so backlogged that we couldn't get the sampling done (especially on crop ground) before planting, and so we need to perform the sampling this fall after harvest. So, we're proposing to extend the agreement until September 2022—again, with no changes in costs. I've run this amendment by the financial folks at UNL as well as Dan Snow, and they're okay with it. So, take a look and let me know what else you need for WRS and the Board. Thanks!

AMENDMENT #2 TO COST REIMBURSABLE STANDARD RESEARCH AGREEMENT #132270

This Amendment made and entered into this ____ day of August, 2021; by and between the Lower Platte South Natural Resources District and the Board of Regents of the University of Nebraska on behalf of the University of Nebraska-Lincoln;

RECITALS

This amendment is entered into pursuant to the Cost Reimbursable Agreement for the project entitled, "Characterization of Vadose Zone Transport and Groundwater Nitrate Attenuation" (Research Agreement # 132270), entered into by the University of Nebraska-Lincoln and the Lower Platte South Natural Resources District on February 18, 2020, for the purposes outlined in that Agreement.

NOW, THEREFORE, it is agreed by the parties hereto to amend the Agreement as follows:

1. PERIOD OF PERFORMANCE: The Research shall be conducted during the period of 11/01/2019 (the "Effective Date") through 09/30/2020 (the "Completion Date").
The date of completion is hereby extended to September 30, 2022.

Executed by the parties the day and year first written above.

Lower Platte South Natural Resources District

By _____ Date _____

The Board of Regents of the University of Nebraska

By _____ Date _____



11 August 2021

Craig Matulka
Lower Platte South NRD
3125 Portia Street
Lincoln, NE 68521

Re: Wilson Dam Rehabilitation – Engineer's Recommendation

Dear Craig:

The bid opening for the above-referenced project was held at the LPSNRD on 10 August 2021. The low bid of \$49,997.00 was received from Husker Grading from Burwell, NE. This bid was \$4,636.00 above the Engineer's Opinion of Probable Costs that totaled \$45,361.00. All required documents accompanied the bid. The other three bids are shown on the attached bid tabulation.

FYRA recently worked with Husker Grading on a 2019 FEMA-funded Disaster Recovery project for the Lower Loup NRD near Duncan, Nebraska. They did a very good job on the project and I have no reason to doubt that they will also go a good job for you on this project.

I spoke w/ the owner, Wayne White, and he believes that he can get started in late September to early October but can complete the project within the time slated in the project specifications.

For the reasons stated above, my recommendation is to award the project to Husker Grading and begin the contracting process upon Board approval. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Sotak', with a stylized flourish at the end.

Michael K. Sotak, P.E., D.WRE

Project: Wilson Dam Repairs
 Owner: Lower Platte South Natural Resources District
 Date: 10 August 2021
 FYRA Project Number: 002-20-04

				\$ (45,361.00)									
				ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COSTS		Pat Thomas Construction		MC Wells		HR Bookstrom		Husker Engineering	
Item Number	Item Description	Quantity	Unit	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total	Unit Cost	Total
1	MOBILIZATION	1	LS	\$5,000.00	\$ 5,000.00	\$ 12,500.00	\$ 12,500.00	\$ 6,000.00	\$ 6,000.00	\$ 15,000.00	\$ 15,000.00	\$ 7,800.00	\$ 7,800.00
2	SEEDING	1.8	AC	\$2,500.00	\$ 4,500.00	\$ 9,100.00	\$ 16,380.00	\$ 10,000.00	\$ 18,000.00	\$ 3,000.00	\$ 5,400.00	\$ 7,300.00	\$ 13,140.00
3	AGGREGATE ROAD	97	TN	\$65.00	\$ 6,305.00	\$ 66.00	\$ 6,402.00	\$ 69.00	\$ 6,693.00	\$ 55.00	\$ 5,335.00	\$ 43.00	\$ 4,171.00
4	CLASS "B" ROCK RIPRAP	256	TN	\$90.00	\$ 23,040.00	\$ 86.00	\$ 22,016.00	\$ 99.00	\$ 25,344.00	\$ 95.00	\$ 24,320.00	\$ 81.00	\$ 20,736.00
5	CLASS "A" EMBANKMENT	43	CY	\$12.00	\$ 516.00	\$ 24.00	\$ 1,032.00	\$ 59.00	\$ 2,537.00	\$ 25.00	\$ 1,075.00	\$ 50.00	\$ 2,150.00
6	STRIP AND REPLACE TOPSOIL	2000	SY	\$3.00	\$ 6,000.00	\$ 6.00	\$ 12,000.00	\$ 5.00	\$ 10,000.00	\$ 5.00	\$ 10,000.00	\$ 1.00	\$ 2,000.00
				Subtotal	\$ 45,361.00	TOTAL	\$ 70,330.00	TOTAL	\$ 68,574.00	TOTAL	\$ 61,130.00	TOTAL	\$ 49,997.00
				TOTAL	\$ 45,361.00	DIFFERENCE	\$ 24,969.00	DIFFERENCE	\$ 23,213.00	DIFFERENCE	\$ 15,769.00	DIFFERENCE	\$ 4,636.00



11 August 2021

Craig Matulka
Lower Platte South NRD
3125 Portia Street
Lincoln, NE 68521

Re: Upper Salt Creek Watershed Dam 4-A Spillway Rehabilitation – Engineer's Recommendation

Dear Craig:

The bid opening for the above-referenced project was held at the LPSNRD on 10 August 2021. The low bid of \$56,380.00 was received from Subsurface, Inc. from Moorhead, MN. This bid was \$26,520.00 below the Engineer's Opinion of Probable Costs that totaled \$82,900.00. My estimate was based solely on the Plattsmouth Dam 7-C project that had only one bidder and luckily, was not a good representation of the current bidding climate. All required documents accompanied the bid. The other three bids are shown on the attached bid tabulation.

FYRA recently worked with Subsurface, Inc. on a LPSNRD Pipe Rehabilitation project on Antelope Creek. They did a very good job on the project, and I have no reason to doubt that they will also go a good job for you again on this project.

I spoke w/ a representative, Glenn Dobson, and he believes that he can get started sometime in September and can complete the project within the time slated in the project specifications.

For the reasons stated above, my recommendation is to award the project to Subsurface, Inc. and begin the contracting process upon Board approval. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Sotak', with a stylized flourish at the end.

Michael K. Sotak, P.E., D.WRE

Project: Upper Salt Creek 4-A Principal Spillway Rehab
Owner: Lower Platte South Natural Resources District
Date: 10 August 2021
FYRA Project Number: 002-21-02

				ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COSTS		Subsurface Inc.	
Item Number	Item Description	Quantity	Unit	Unit Cost	Total	Unit Cost	Total
1	MOBILIZATION	1	LS	\$ 25,000.00	\$ 25,000.00	\$ 17,000.00	\$ 17,000.00
2	PIPE CLEANING	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 4,000.00	\$ 4,000.00
3	CIPP PIPE REHABILITATION	122	LF	\$ 450.00	\$ 54,900.00	\$ 290.00	\$ 35,380.00
				Subtotal	\$ 82,900.00	TOTAL	\$ 56,380.00
				TOTAL	\$ 82,900.00	DIFFERENCE	\$ 26,520.00

P:\Projects\002-LPSNRD\002-21-02 Upper Salt 4-A PS Rehab\Bid Docs\Bid Tabulation - US 4-A



PROFESSIONAL SERVICES AGREEMENT

PROJECT: Upper Salt Dam 5-7 Spillway Replacement **FYRA Engineering, LLC JOB #:** 002-21-05
CLIENT: Lower Platte South NRD
ADDRESS: 3125 Portia Street, Lincoln, NE 68521
CONTACT: Jared Nelson, P.E. **TEL:** 402.476.2729 **FAX:** 402.476.6454
CONSULTANT: FYRA Engineering, LLC
ADDRESS: 12702 Westport Pkwy, Suite 300, Omaha, NE 68138
CONTACT: Michael K. Sotak, P.E. **TEL:** 402.502.7131 **FAX:** 402.932.6940
PROJECT DESCRIPTION: Design, bid solicitation and Construction Observation services for cut and cover spillway replacement near Hallem, NE.

☒ **SCOPE OF SERVICES** (See Attachment)

☒ **SCHEDULE** (See Attachment)

COMPENSATION:

The total compensation under this Agreement shall not exceed the dollar amount indicated herein or the amount authorized by Amendment(s) and/or Notice(s) to Proceed (NTP), whichever is the lesser.

☐ **LUMP SUM.** Compensation for these services shall be a Lump Sum of \$ _____.

☒ **TIME AND MATERIALS.** Compensation for these services will not exceed **\$27,480** without written authorization and will be based on the following option (per the attached Budget or List of Hourly Rates), and Reimbursable Expenses based on actual costs incurred and approved by FYRA Engineering, LLC and as authorized in writing by Client.

☐ Subconsultant's Direct Job Wages times a factor of _____. ☒ Budget/List of Subconsultant's Hourly Rates.

COST PLUS FIXED FEE. Compensation for these services shall be Subconsultant Cost plus a fixed professional fee, including Reimbursable Expenses.

☐ The estimated compensation for services is \$ _____ plus a fixed fee of \$ _____ for a total of \$ _____.

COMPENSATION DETAIL (See Following Pages)

SCHEDULE OF PAYMENTS (See Following Pages)

SERVICES AUTHORIZED BY: ☒ **Execution of Agreement** or ☐ **Amendment(s) and/or NTP**

EXECUTION: Execution of this document by duly authorized representatives of FYRA Engineering, LLC and CLIENT, including FYRA Engineering LLC's Standard Conditions (reverse side) and any attachments, Additional Provisions as indicated, and addenda, represents the entire Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified by written instrument, but such instrument is valid only upon signature by both parties.

CONSULTANT:	<u>FYRA Engineering, LLC</u>	CLIENT:	<u>Lower Platte South NRD</u>
BY:	<u>Michael K. Sotak, P.E., D.WRE</u>	BY:	<u>Paul Zillig</u>
SIGNATURE:		SIGNATURE:	_____
TITLE:	<u>Owner/Principal Engineer</u>	TITLE:	<u>General Manager</u>
DATE:	<u>10 August 2021</u>	DATE:	_____



Scope of Services
Upper Salt Creek Dam Site 5-7
Lower Platte South NRD

Tasks		Sr Engineer	Prj Engineer	El	Expenses	Total
		Sotak	Kaufman	Varies		
		\$225	\$160	\$110		
Project Management						
Monthly Invoicing		1.5		1.5		
Design Coordination with LPSNRD		2		2		
Project Management Total		\$788	\$0	\$385		\$1,173
Design						
Review As-builts / Bring into CADD		0.5		4		
Site Visit/Inspection		3.5				
Create Base Map		0.5		4		
Conduct Hydrology Check		0.5		3		
Final Hydraulic Analysis		0.5		6		
Prepare Construction Plan Set		1		32		
Prepare Project Specifications		6		2		
Develop Engineer's Opinion on Costs		0.5		4		
Design Total		\$2,925	\$0	\$6,050		\$8,975
Permitting						
Prepare and Submit USACE Section 404 Nationwide Permit ¹			8	6		
Agency Coordination ²			2	2		
Prepare NDNR Permit Application		1		2		
Correspondence with NDNR		1				
Permitting Total		\$450.00	\$1,600	\$1,100		\$3,150
Bid Phase						
Pre-Bid Coordination		4				
Project Bidding/Engineer's Recommendation		6				
Bid Phase Total		\$2,250	\$0	\$0		\$2,250
Construction Phase						
Pre-Construction Coordination		4		4		
Construction Observation		8		60	\$750	
Construction Reporting		2		4		
As-Built Drawings		0.5		4		
Construction Phase Total		\$3,263	\$0	\$7,920	\$750	\$11,933
Subtotal Hours		43	10	141		
Subtotal Costs		\$9,675	\$1,600	\$15,455	\$750	\$27,480

Assumptions:

¹Assumes that the existing structure is a previously authorized structure, that rehabilitation limits are immediately adjacent to the existing structure, and that a Nationwide Permit can be issued that does not require a Pre-Construction Notification (PCN). Does not include wetland delineation or determination of ordinary high water mark. Assumes that potential wetland impacts will be less than 0.1-acre and therefore no mitigation will be required.

²Coordination with NGPC, USFWS, and SHPO.

Schedule:

Draft project plans to be completed within 45 days of contract execution.



FYRA ENGINEERING, LLC STANDARD CONDITIONS

SERVICES. FYRA Engineering will perform services for the Project as set forth in attachment and in accordance with these Terms & Conditions. FYRA Engineering has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by FYRA Engineering in performing their services.

AUTHORIZED REPRESENTATIVES. The officer assigned to the Project by FYRA Engineering is the only authorized representative to make decisions or commitments on behalf of FYRA Engineering. The Client shall designate a representative with similar authority.

PROJECT REQUIREMENTS. The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they shall be furnished to FYRA Engineering at Project inception. FYRA Engineering will review the Client design standards and may recommend alternate standards considering the standard of care provision.

SITE ACCESS. The Client shall obtain all necessary approvals for FYRA Engineering to access the Project site(s).

PERIOD OF SERVICE. FYRA Engineering shall perform the services for the Project in a timely manner consistent with sound professional practice. FYRA Engineering will strive to perform its services according to the Project schedule set forth in attachment. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. FYRA Engineering shall be entitled to an extension of time and compensation adjustment for any delay beyond FYRA Engineering control.

COMPENSATION. In consideration of the services performed by FYRA Engineering, the Client shall pay FYRA Engineering in the manner set forth in attachment. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of FYRA Engineering.

PAYMENT TERMS. FYRA Engineering shall submit monthly invoices for services performed and Client shall pay the full invoice amount within thirty (30) days of the invoice date. Invoices will be considered correct if not questioned in writing within ten (10) days of the invoice date. FYRA Engineering shall be entitled to a 2% per month administrative charge in the event of payment delay. Client payment to FYRA Engineering is not contingent on arrangement of project financing. Invoice payment delayed beyond sixty (60) days shall give FYRA Engineering the right to stop work until payments are current. Non-payment beyond seventy (70) days shall be just cause for termination by FYRA Engineering.

ADDITIONAL SERVICES. The Client and FYRA Engineering acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, FYRA Engineering shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

INDEPENDENT CONSULTANT. FYRA Engineering shall serve as an independent consultant for services provided under this agreement. FYRA Engineering shall retain control over the means and methods used in performing their services and may retain subconsultants to perform certain services as determined by FYRA Engineering.

STANDARD OF CARE. Services provided by FYRA Engineering will be performed with the care and skill ordinarily exercised by members of the same profession practicing under similar circumstances. FYRA Engineering will not be liable for the cost of any omission that adds value to the Project.

COMPLIANCE WITH LAWS. FYRA Engineering shall perform its services consistent with sound professional practice and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, FYRA Engineering shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.



PERMITS AND APPROVALS. FYRA Engineering will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

OWNERSHIP OF DOCUMENTS. Documents prepared by FYRA Engineering for the Project are instruments of service and shall remain the property of FYRA Engineering. Record documents of service shall be based on the printed copy. FYRA Engineering will furnish documents electronically; however, the Client releases FYRA Engineering from any liability that may result from documents used in this form. FYRA Engineering shall not be held liable for reuse of documents for any purpose other than those intended under the Project.

INSURANCE. FYRA Engineering will maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability policies.

<u>Workers' Compensation</u>	As required by applicable state statute.
<u>Commercial General Liability</u>	\$1,000,000 per occurrence (bodily injury including death & property damage) \$2,000,000 aggregate.
<u>Automobile Liability</u>	\$1,000,000 combined single limit for bodily injury and property damage.
<u>Professional Liability</u>	\$1,000,000 each claim and in the aggregate.

The Client shall make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. FYRA Engineering shall be a named insured on those policies where FYRA Engineering may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

WAIVER OF SUBROGATION. FYRA Engineering, LLC affirmatively agrees to obtain waiver of subrogation against the client and name the client as an additional insured on the Commercial General Liability and Automobile policies.

INDEMNIFICATION AND HOLD HARMLESS. FYRA Engineering, LLC shall indemnify and hold harmless the Client and its employees and agents from any and all liability, settlements, loss, defense costs, and expenses in connection with any action, suit, or claim resulting from the negligent acts, errors, or omissions in services provided pursuant to this Agreement by FYRA Engineering, LLC its employees, or Subconsultants and/or subcontractors. Client shall indemnify and hold harmless FYRA Engineering, LLC and its employees and agents from any and all liability, settlements, loss, defense costs, and expenses in connection with any action, suit, or claim resulting from the negligent acts, errors, or omissions in services provided pursuant to this Agreement by the Client, its employees, or subconsultants and/or subcontractors. However, if any such liability, settlements, loss, defense costs or expenses result from the concurrent negligence of FYRA Engineering, LLC, and the Client this indemnification applies only to the extent of the negligence of FYRA Engineering, LLC.



LIMITATION OF LIABILITY. To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, Subconsultant and all other negligent entities and individuals.

LEGAL EXPENSE. In the event that either party takes legal action against the other that is not prosecuted, is dismissed, or if the decision is rendered for the other party, the party taking legal action agrees to pay the other their attorney fees, court costs, and defense expenses that are allowable under Nebraska state law, within thirty (30) days of the court action.

CONSEQUENTIAL DAMAGES. Neither the Client nor FYRA Engineering shall be liable to the other for any consequential damages regardless of the nature or fault.

ENVIRONMENTAL MATTERS. The Client warrants they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, FYRA Engineering shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client shall indemnify FYRA Engineering from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of FYRA Engineering.

COST OPINIONS. If included in the scope of service, FYRA Engineering shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and FYRA Engineering acknowledge that actual costs may vary from the cost opinions prepared and that FYRA Engineering offers no guarantee related to the Project cost.

INDEPENDENT COUNSEL. The Client agrees to obtain independent legal and financial counsel for the Project considering FYRA Engineering does not furnish these services.

CONTRACTOR SELECTION. FYRA Engineering may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is their sole responsibility.

SHOP DRAWING REVIEW. If included in the scope of service, FYRA Engineering shall review shop drawing submittals from the contractor solely for their conformance with the design intent of and performance criteria specified for the Project. FYRA Engineering shall not be liable for the performance of or consequential damages of any equipment furnished by the contractor under the Project.

CONSTRUCTION REVIEW. If included in the scope of service, FYRA Engineering shall observe the progress and content of the work to determine if the work is proceeding in general accordance with the Contract Documents. This construction review is intended to observe, document, and report information concerning the construction process. Observation of work at the Project site shall not make FYRA Engineering responsible for the work performed by another party; the means, methods, techniques, sequences, or procedures selected by another party; nor the safety precautions or programs of another party.

REJECTION OF WORK. FYRA Engineering may recommend that the Client reject work by construction contractors that does not conform to the requirements of the Project.

SAFETY. FYRA Engineering shall be responsible solely for the safety precautions or programs of its employees and no other party.

INFORMATION FROM OTHER PARTIES. The Client and FYRA Engineering acknowledge that FYRA Engineering will rely on information furnished by other parties in performing its services under the Project. FYRA Engineering shall not be liable for any damages that may be incurred by the Client in the use of third party information.



CONSTRUCTION RECORD DRAWINGS. If included in the scope of service, FYRA Engineering will deliver drawings to the Client incorporating information furnished by construction contractors. In that construction record drawings are based on information provided by others, FYRA Engineering cannot and does not warrant their accuracy.

FORCE MAJEURE. Neither party will hold the other responsible for damages or delay caused by Acts of God, acts of war, strikes, accidents, or other events beyond the other's control.

DISPUTE RESOLUTION. The Client and FYRA Engineering agree that they shall diligently pursue resolution of all disagreements within forty-five (45) days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. FYRA Engineering shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work.

SUSPENSION OF WORK. The Client may suspend services performed by FYRA Engineering with cause upon fourteen (14) days written notice. FYRA Engineering shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay FYRA Engineering all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, FYRA Engineering shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

TERMINATION. The Client or FYRA Engineering may terminate services on the Project upon seven (7) days written notice in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. FYRA Engineering shall submit an invoice for services performed up to the effective date of termination and the Client shall pay FYRA Engineering all outstanding invoices within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

GOVERNING LAW. The terms of agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

ASSIGNMENT. Neither party shall assign its rights, interests, or obligations under the Project without the express written consent of the other party.

WAIVER OF RIGHTS. The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

WARRANTY. FYRA Engineering warrants that it will deliver products under the Project within the standard of care. FYRA Engineering provides no other expressed or implied warranty.

SEVERABILITY. Any provision of these terms later held to violate any law shall be deemed void and all remaining provisions shall continue in force. In such event, the Client and FYRA Engineering will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

SURVIVAL. All provisions of these terms that allocate responsibility or liability between the Client and FYRA Engineering shall survive the completion or termination of services for the project.


ANTI DISCRIMINATION. Neither FYRA Engineering or its subcontractors shall discriminate against any of their employees or applicants for employment, to be employed in the performance of this Agreement, with respect to their hire, tenure, terms, conditions, or privileges of employment, because of their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.



LOWER PLATTE SOUTH natural resources district

3125 Portia Street | P.O. Box 83581 • Lincoln, Nebraska 68501-3581
P: 402.476.2729 • F: 402.476.6454 | www.lpsnrd.org

Memorandum

Date: August 16, 2021
To: Water Resources Subcommittee
From: David Potter, Assistant General Manager 
RE: Oak Middle 82-B Easement - Background Information

Oak Middle 82-B Watershed Rehabilitation project is nearing completion. Jason Sall, engineer with NRCS has taken surveys and is determining the final numbers. During final stages of construction, while installing the fence, surveys completed by NRCS indicated quantities were underestimated by the NRCS design engineer. These quantities were brought forward in form of a contract modification to the Water Resources Subcommittee and the Board. The subcommittee met on the modification on June 14, 2021 and the Board took action on June 16th.

At the June 14th subcommittee meeting, the directors discussed many other issues related to the project, including delays in completing the work, NRCS's errors in estimating the work to be done, and the likelihood this item will require future negotiations with the contractor of delays in completing the work. Also mentioned was the need for an additional spillway easement and possible compensation for extended use of a temporary construction access.

The property lines and permanent dam and spillway easements were staked out by a surveyor prior to the fence installation. It was found that a small portion of the new auxiliary spillway was located outside of the dam and spillway permanent easement, however most of small area was still within our temporary construction easement. This change in design of the spillway was done partly to reduce an adjacent low drainage area.

Now that the rehabilitation project is nearly completed, including the prescribed fencing, an additional easement is needed to make sure we have easements over the entire structure for operation and maintenance. The property owners Robert and Mona Kunasek have proposed we purchase the additional easement for \$150 (see attached letter). As with any landrights, a public hearing is needed for the small easement area. With final surveys being calculated by NRCS, the District needs to acquire the easement in a timely manner. Therefore, a public hearing has already been scheduled for Monday, August 23rd at 3:00 p.m. at the LPSNRD office. The subcommittee will then take action at their meeting to purchase the easement. The cost of the easement (\$150) is in line with the original appraisal completed by Great Plains Appraisal and the area needed is 0.05 acres. See attached public notice, landrights map, and easement exhibit with legal description.

In addition to the easement acknowledgement in their letter, the Kunaseks have also requested compensation for the extended use of the temporary construction access easement on their property. The project has been extended for over a year for various reasons and the Kunaseks have missed out on one additional cropping seasons. The extended use and compaction from heavy equipment will likely affect their crop production in that area for a third year. They are requesting \$1,350.00 in compensation, which is comparable to the cost per acre calculated for the original temporary easement.

Staff recommends the Water Resources Subcommittee recommend the Board approve the acquisition of the additional dam and spillway permanent easement consisting of 0.05 acres from Robert and Mona Kunasek in the amount of \$150 and compensate Robert and Mona Kunasek for the extended use of the temporary construction access easement in the amount of \$1,350.

August 11, 2020

Mike Murren, Projects Coordinator
Lower Platte South NRD
3125 Portia Street
Lincoln, NE 68521

RE: Oak Middle 82-B expanded permanent easement and temporary access easement compensation



Dear Mike:

As discussed with at our place a few times, we understand changes were required for the emergency spillway area, partly to handle an adjacent low drainage area, and that now a small additional area of 0.05 acres is needed as part of the permanent easement for long term operation and maintenance. We would be in agreement of the additional easement at an updated cost per acre calculated for the original spillway easement for a total of \$150.00.

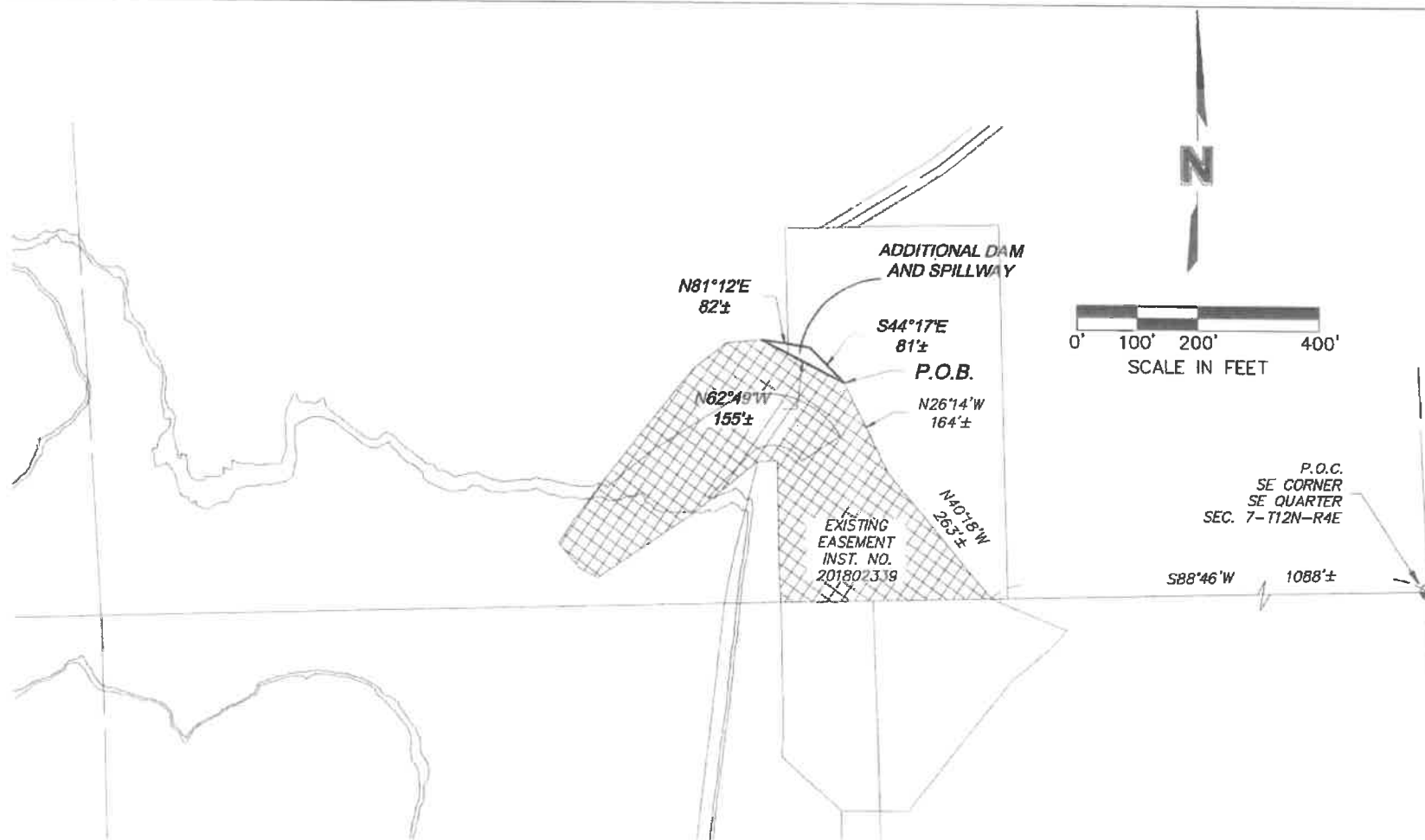
We are disappointed that there have been a number of issues associated with the construction of this project that have delayed completion for over a year. The temporary construction access easement through our fields has prevented us from planting crops now for two seasons and the compaction from nearly two years of vehicle and heavy equipment use will likely prevent successful yields in future years. Due to delays in the project and the extended use of the access easement beyond what was planned, we are requesting compensation for the additional year. We would request compensation at an updated cost per acre calculated for the original temporary construction access easement for a total of \$1,350.00.

Please make payment to Robert Kunasek, 2313 – 210th St., Bee, NE 68314.

Sincerely,



Robert and Mona Kunasek

DWG: F:\2019\2501-3000\019-2898\40-Design\Survey\SRVY\Xref\XESMT_Tract 1_0192898.dwg USER: dthomson
DATE: May 26, 2021 8:16am XREFS: V_LandRights(Rev-May-2018)_Dom_828_017-3664 nrcs cONTROL



PROJECT NO: 017-3664
DRAWN BY: DAT
DATE: 05.25.21

ADDITIONAL DAM AND SPILLWAY EASEMENT TRACT 1

MOLSSON
ASSOCIATES

601 P Street, Suite 200
P.O. Box 84808
Lincoln, NE 68508
TEL. 402.474.8311
FAX 402.474.8160

EXHIBIT

**LEGAL DESCRIPTION
ADDITIONAL DAM AND SPILLWAY EASEMENT
TRACT 1**

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF A PORTION OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 12 NORTH, RANGE 4 EAST OF THE 6TH P.M., SEWARD COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 7; THENCE, WEST, ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, ON AN ASSUMED BEARING OF SOUTH 88 DEGREES 46 MINUTES WEST, A DISTANCE OF 1088 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF AN EXISTING DAM AND SPILLWAY EASEMENT AS REFERRED TO IN INST. NO. 201802339, SEWARD COUNTY RECORDS; THENCE NORTH 40 DEGREES 18 MINUTES WEST, ALONG THE NORTHEAST LINE OF SAID EXISTING EASEMENT, A DISTANCE OF 263 FEET, MORE OR LESS, TO A POINT; THENCE NORTH 26 DEGREES 14 MINUTES WEST, ALONG THE NORTHEAST LINE OF SAID EXISTING EASEMENT, A DISTANCE OF 164 FEET, MORE OR LESS, TO **THE TRUE POINT OF BEGINNING**; THENCE, NORTH 62 DEGREES 49 MINUTES WEST, ALONG THE NORTHEAST LINE OF SAID EXISTING EASEMENT A DISTANCE OF 155 FEET, MORE OR LESS, TO A POINT; THENCE NORTH 81 DEGREES 12 MINUTES EAST, A DISTANCE OF 82 FEET, MORE OR LESS, TO A POINT; THENCE SOUTH 44 DEGREES 17 SECONDS WEST, A DISTANCE OF 81 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.05 ACRES, MORE OR LESS.

May 26, 2021

F:\2019\2501-3000\019-2898\40-Design\Survey\SRVY\Description\V_Dam&SpillEase_REv_Tract-1_019-2898.doc

LEGAL NOTICE

The Lower Platte South Natural Resources District, a political subdivision of the State of Nebraska, hereby gives notice pursuant to Section 25-2504 R.R.S 1943, that it will hold a public hearing concerning the acquisition of private property (easement) needed for the construction, operation and maintenance of a watershed rehabilitation project, known as Oak-Middle 82-B Watershed Rehabilitation Project, such private property being described as part of the SE1/4 Section 7, T-12-N, R-4-E, Seward County, Nebraska

The hearing on property acquisition for Oak-Middle 82-B Watershed Rehabilitation Project will be held at the Lower Platte South NRD office, 3125 Portia Street, Lincoln, NE 68521 on Monday, August 23, 2021 at 3:00 pm.

At the hearing the District will explain the nature of and the necessity for the project, the project details, the right of the owners to be represented by an attorney and to accept or reject any offer, and the right to require that such damages be determined pursuant to the procedures for acquisition by eminent domain. The District shall hear and consider any objections from any persons.

The Lower Platte South Natural Resources District, a political subdivision.

*** Please publish 1X in the Seward County Independent on August 11, 2021.**