




## LOWER PLATTE SOUTH natural resources district

3125 Portia Street | P.O. Box 83581 • Lincoln, Nebraska 68501-3581  
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### Memorandum

**Date:** December 13, 2019  
**To:** Board of Directors  
**From:** Jared Nelson, District Engineer   
**Subject:** Urban Subcommittee Meeting Minutes – December 2019

The Urban Subcommittee met at 5:30pm on Thursday, December 12, 2019 in the District office to review, discuss and take action on several items. Subcommittee members present included Mike DeKalb, Robert Andersen, Deborah Eagan, Luke Peterson, Milt Schmidt, and Ray Stevens. Members absent included Tom Green, and Anthony Schutz. Others present included Paul Zillig, Al Langdale, Mike Murren, Jared Nelson, and Tracy Zayac. Director DeKalb called the meeting to order at 5:30, gave a brief welcome, and reviewed the agenda. The following contains a summary of the meeting and related background information:

**(a.) Consideration of Cooperation Agreement with USACE for the Salt Creek Levee PL 84-99 Repair Project.** – Al Langdale, staff, discussed the US Army Corps of Engineers (USACE) PL 84-99 Repair Project on Salt Creek Levee which repair damages occurring in March. The USACE plans to advertise the project on December 13<sup>th</sup>, 2019 in order to receive bids, with anticipated notice to proceed on January 22<sup>nd</sup>. To-date, the USACE has not indicated a schedule change. Langdale discussed the attached USACE's Cooperation Agreement for this work which formalizes the USACE's and NRD's responsibilities in this effort, and is required by USACE to receive rehabilitation assistance.

**It was moved by Stevens, seconded by Eagan, and unanimously approved by the Subcommittee to recommend that the Board of Directors approve the Cooperation Agreement between the United States of America and LPSNRD, for PL 84-99 Rehabilitation of a Federal Flood Control Work for the Salt Creek Levee System, pending legal counsel review.**

**(b.) LPSNRD Rain-Ready Landscapes Program.** – Tracy Zayac, staff, discussed efforts in revamping the District's Urban Water Quality Program (UWQP) into a "Rain-Ready Landscapes Program" similar to the City of Lincoln's Rainscaping Program, for which we currently provide matching funds. Zayac went over her attached Memorandum information and described that the program gives the same opportunity as the Rainscaping Program in Lincoln, but in order to not 'double dip', the new Rain-Ready Landscapes program will only be available for property owners in the District which are outside the City of Lincoln. The program will be made available to property owners, including individual homeowners and businesses. Applicants would be encouraged to work with staff on a project description and a design that it makes sense, and they could work with a landscaper to install or install themselves, and would need to maintain the feature for five years. Discussion followed with Subcommittee members and staff. DeKalb asked if the program is currently funded. It was discussed with this new Rain-Ready Landscapes Program replacing the UWQP program, the current funding under UWQP can be used. Eagan sought clarification that those in the City

of Lincoln can apply for the City's Rainscaping Program, and those outside of the City can apply for the NRDs Rain-Ready Landscapes Program. It was discussed that once an approved applicant's project moves forward, staff would check that it was completed per the approved design, before reimbursing. If there are modifications that were made that are not in alignment with the project, the applicant would be given an opportunity to rectify those, or they would not be reimbursed. Stevens asked if this work would cover a dry creek bed, to which staff responded that a new proposed bio-swale resembles a dry creek bed and would be, but modification of an existing creek bed would not be encouraged as it could fall under USACE authority and 404 regulations. Staff responded to Peterson's question that a time extension could be granted administratively. Schmidt asked about noxious weeds and inspections and staff responded they intend to conduct spot-checks over the 5-year maintenance period or if made aware of issues.

**It was moved by Stevens, seconded by Schmidt, and unanimously approved by the Subcommittee to recommend that the Board of Directors approve the Rain-Ready Landscapes Program to replace the District's Urban Water Quality Program.**

**(c.) Consideration of the Lincoln Flood Mitigation Master Plan.** – Paul Zillig described that the City of Lincoln has obtained a Federal Mitigation Assistance (FMA) grant from FEMA for a Lincoln Flood Mitigation Master Plan. The grant is a \$99,500 grant with 75% cost share from FEMA and a local share of 25% (24,875). The City reached out to the NRD (letter is attached) and is requesting a 50/50 cost share with the City for the local share only (\$12,437.50 each). Zillig explained that these types of projects are typically in the annual Stormwater Interlocal Agreement Work Plan between the City and NRD, but this request was not ready when the District did the Interlocal Agreement with the City, so it is not currently in our agreement nor budgeted for. Zillig further described that this effort will aid the City of Lincoln in keeping its current Community Rating System (CRS) rating at a '5'. FEMA oversees the CRS program to promote good floodplain management, and floodplain insurance holders in a floodplain of a community with a rating of 5 receive a 25% reduction in flood insurance rates.

**It was moved by Andersen, seconded by Stevens, and unanimously approved by the Subcommittee to recommend that the Board of Directors approve the cost-share request from the City of Lincoln for 50% of the local share, for the Lincoln Flood Mitigation Master Plan, at a cost not to exceed \$12,438 NRD funds, pending legal counsel review.**

**(d.) Status update on current Community Assistance Program Projects.** – Next, Zayac, gave a quarterly updated of Community Assistance Program project, which are summarized in her attached Memorandum.

**(e.) Reports** - Jared Nelson, staff, gave a report on the Deadmans Run 205 Flood Reduction Project, and that on December 18<sup>th</sup> the NRD will find out if its Water Sustainability Fund grant application for this project will be selected and approved. Peterson asked what happens to our budget if we receive this grant funding, which is for \$5.8 Million (being shared 50/50 with the City of Lincoln), and the subcommittee discussed "this good problem to have", which ultimately helps improve the Deadmans Run sinking fund position, and future years allocations to it and the budget. Nelson also gave an update that the USACE notified the NRD of an error USACE made in surveying Deadmans Run, and they have since rectified the issue, but it will cause a delay in schedule of several weeks.

Finally, Nelson and Langdale gave a report of the Antelope Park Pipe Replacement Project near Randolph & Capitol Parkway, and that Pat Thomas Construction began work last week.

Enclosures (4)

**COOPERATION AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
and  
LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT  
for  
REHABILITATION OF A FEDERAL FLOOD CONTROL WORK**

**THIS AGREEMENT**, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") represented by the District Engineer, Omaha District, U.S. Army Corps of Engineers, and the Lower Platte South Natural Resources District, (hereinafter referred to as the "Public Sponsor") represented by the General Manager.

**WITNESSETH THAT:**

**WHEREAS**, the Government constructed a flood control project (hereinafter referred to as the "project") authorized by Public Law 500, 85<sup>th</sup> Congress, in accordance with the report of the Chief of Engineers contained in House Document 396, 84<sup>th</sup> Congress, Second Session. to the United States of America Relative to the Local Flood Protection Project on the Salt Creek Levee Systems at Lincoln, Nebraska, and which remains in full effect;

**WHEREAS**, pursuant to 33 U.S.C. 701n, the Government is authorized to assist in the repair or restoration of flood control improvements threatened or destroyed by floods;

**WHEREAS**, via written correspondence, the Public Sponsor has requested that the Government repair or restore the project, which was damaged by recent flooding or coastal storms, in accordance with 33 U.S.C. 701n and established policies of the U.S. Army Corps of Engineers; and,

**WHEREAS**, Public Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the rehabilitation effort of the authorized project in accordance with the terms of this Agreement;

**NOW, THEREFORE**, the Government and the Public Sponsor agree as follows:

**ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS**

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean the restoration of the channel to the original design grade and cross sections that existed prior to the flood event as generally described in the Project Information Reports approved by the Division Commander on June 9, 12, and 16, 2019 respectively.

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Public Sponsor and the Government, in accordance with the terms of this Agreement, directly related to implementation of the Rehabilitation Effort. The term shall include, but is not necessarily be limited to: actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XIA. The term shall not include any costs for operation and maintenance; any costs to correct deferred or deficient maintenance; any costs for betterments; any costs for Public Sponsor-preferred alternatives; or the costs of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas required for the Rehabilitation Effort.

C. The term "betterment" shall mean the design and construction of a feature accomplished on behalf of, or at the request of, the Public Sponsor in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

## **ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSOR**

A. The Government, subject to receiving funds appropriated by the Congress of the United States, and using those funds (and using funds provided by the Public Sponsor) shall expeditiously implement the Rehabilitation Effort, applying those procedures usually followed or applied in Government construction of Federal projects, pursuant to Federal laws, regulations, and policies. The Public Sponsor shall be afforded the opportunity to review and comment on solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The Contracting Officer will, in good faith, consider the comments of the Public Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Public Sponsor shall provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the project and the Rehabilitation Effort.

C. As further specified in Article IV, the Public Sponsor shall contribute, in cash, in-kind services, or a combination thereof, a contribution toward construction of the Rehabilitation Effort in an amount equal to \$0 towards the total Rehabilitation Effort costs.

D. The Public Sponsor shall not use Federal funds to meet its share of total Rehabilitation Effort costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized by statute.

E. The Public Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort and any authorized project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

F. The Public Sponsor agrees to continue to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program, and of Title 33, Code of Federal Regulations, Part 208.10 (33 CFR 208.10).

G. The Public Sponsor may request the Government to accomplish betterments. The Public Sponsor shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Public Sponsor in accordance with Article IV.

### **ARTICLE III - LANDS, RELOCATIONS, AND PUBLIC LAW 91-646**

A. The Government shall provide the Public Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Public Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Rehabilitation Effort and the authorized project. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of that construction contract.

B. The Public Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, required for construction, operation, and maintenance of the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged or excavated material disposal,

and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

#### **ARTICLE IV - METHOD OF PAYMENT**

A. The Public Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Public Sponsor's obligations under Article II of the Agreement. Rehabilitation Effort costs are currently estimated to be \$5,500,000 and the Public Sponsor's share (cash and services in kind) of total Rehabilitation Effort costs is currently estimated to be \$0. In order to meet Public Sponsor's cash payment requirements, the Public Sponsor must provide a cash contribution estimated to be \$0. The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred, and are not to be construed as the total financial responsibilities of the Government and the Public Sponsor.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Public Sponsor of the Public Sponsor's estimated share of the total Rehabilitation Effort costs including the Public Sponsor's estimated share of the costs attributable to the Rehabilitation Effort incurred prior to the initiation of construction. Within five calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, Omaha District (G6)" to the Contracting Officer representing the Government. The Government shall draw on the funds provided by the Public Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Rehabilitation Effort as they are incurred, as well as Rehabilitation Effort costs incurred by the Government. In the event that total Rehabilitation Effort costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Public Sponsor of the additional contribution the Public Sponsor will be required to make to meet the Public Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total Rehabilitation Effort costs and status of contributions made by the Public Sponsor. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall compute the total Rehabilitation Effort costs and tender to the Public Sponsor a final accounting of the Public Sponsor's share of Rehabilitation Effort costs.

1. In the event the total contribution by the Public Sponsor is less than the Public Sponsor's required share of total Rehabilitation Effort costs, the Public Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Public Sponsor's required share of the total Rehabilitation Effort costs.

2. In the event total contribution by the Public Sponsor is more than the Public Sponsor's required share of total Rehabilitation Effort costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Public Sponsor; however, the Public Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Public Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Public Sponsor for excess contributions provided.

#### **ARTICLE V - CREDITING OF IN-KIND SERVICES**

The Government has approved a credit for In-Kind Services, compatible with the Rehabilitation Effort, in the estimated amount of \$0 for implementation of such services by the Public Sponsor. The affording of such credit shall be subject to an onsite inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Rehabilitation Effort. The actual amount of such credit shall be subject to an audit conducted to determine reasonableness, allocability, and allowability of costs. The Government shall apply the credit amount toward any additional cash contribution required under this Agreement. The Public Sponsor shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Public Sponsor be entitled to any reimbursement for any excess credit amount.

#### **ARTICLE VI - OPERATION AND MAINTENANCE**

A. After the Contracting Officer has determined that construction of the Rehabilitation Effort is complete and provided the Public Sponsor with written notice of such determination, the Public Sponsor shall continue to operate and maintain the completed Rehabilitation Effort as part of the project, at no cost to the Government, in accordance with specific directions prescribed by the Government in Title 33, Code of Federal Regulations, Part 208.10, Engineer Regulation 500-1-1, and any subsequent amendments thereto.

B. The Public Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsor owns or controls for access to the project for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the Project. If an inspection shows the Public Sponsor for any reason is failing to fulfill the Public Sponsor's obligations under this

Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsor. If, after 30 calendar days from receipt of such notice, the Public Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsor owns or controls for access to the authorized project for the purposes of completing, operating, and maintaining the project. No action by the Government shall operate to relieve the Public Sponsor of responsibility to meet the Public Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

#### **ARTICLE VII - FEDERAL AND STATE LAWS**

In the exercise of the Public Sponsor's rights and obligations hereunder, the Public Sponsor agrees to comply with all applicable Federal and state laws and regulations.

#### **ARTICLE VIII - RELATIONSHIP OF PARTIES**

The Government and the Public Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

#### **ARTICLE IX - OFFICIALS NOT TO BENEFIT**

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

#### **ARTICLE X - COVENANT AGAINST CONTINGENT FEES**

The Public Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Public Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE XI - TERMINATION OR SUSPENSION**



If at any time the Public Sponsor fails to carry out its obligations under this Agreement, the District Commander shall terminate or suspend work on the Rehabilitation Effort, unless the District Commander determines that continuation of work on the Rehabilitation Effort is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Rehabilitation Effort. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Public Sponsor elects to proceed with further construction or terminates this Agreement.

## **ARTICLE XII - HAZARDOUS SUBSTANCES**

A. After execution of this Agreement and upon direction by the Contracting Officer, the Public Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government of the Public Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands necessary to Rehabilitation Effort construction, operation, and maintenance. All actual costs incurred by the Public Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in Rehabilitation Effort costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Public Sponsor and the Government shall provide prompt notice to each other, and the Public Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Public Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort and the authorized Project. Should the Government and the Public Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Public Sponsor shall be responsible, as between the

Government and the Public Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Public Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Public Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort, or proceed with further work as provided in Article X of this Agreement.

D. The Public Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsor, the Public Sponsor shall be considered the operator of the project (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsor shall operate and maintain the authorized project in a manner that will not cause liability to arise under CERCLA.

### **ARTICLE XIII – NOTICES**

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Public Sponsor:

Mr. Paul Zillig  
Lower Platte South Natural  
Resources District  
3125 Portia Street  
Lincoln, Nebraska 68521

If to the Government:

District Engineer  
Omaha District, Corps of Engineers  
1616 Capitol Avenue  
Omaha, NE 68102-4901

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

**IN WITNESS HEREOF**, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

LOWER PLATTE SOUTH NATURAL  
RESOURCES DISTRICT

BY:

John L. Hudson, P.E.  
Colonel, Corps of Engineers  
District Commander

BY:

Paul Zillig  
General Manager  
Lower Platte South- NRD

DATE:

DATE:

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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Mr. Paul Zillig  
General Manager  
Lower Platte South  
Natural Resources District  
3125 Portia Street  
Lincoln, Nebraska 68521



## LOWER PLATTE SOUTH natural resources district

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### Memorandum

**Date:** December 12, 2019  
**To:** Urban Subcommittee  
**From:** Tracy Zayac  
**Subject:** Rain-Ready Landscapes Program proposal

The LPSNRD proposes to implement the Rain-Ready Landscapes Program to encourage District landowners to install small-scale landscaping features, such as rain gardens and bioswales, to capture and filter storm runoff before it enters streams and storm sewers. This Program will be open to properties located within the District, but outside the City of Lincoln. Currently, we partner with the City of Lincoln on its Rainscaping Lincoln program, and we want to make the same kind of opportunity available to landowners throughout the NRD. This program will replace of the Urban Water Quality Program. The approved FY2020 budget allocates \$20,000 for this program under Account 470100 (currently still carrying the Urban Water Quality Program label), in accordance with the approved 2019-2024 Long-Range Implementation Plan.

The Program year will run from July 1 to June 30, to match the fiscal year. Applications will be accepted on a first-come, first-served basis until all available funds for that year are obligated. Landowners will have one year to implement an approved project, unless the NRD grants an extension. Landowners must maintain the project for at least five years.

The NRD will publish program guidelines, a process map, an application-packet example, and FAQs to assist applicants in understanding the program and preparing application materials. We will also have a brochure for the Program. If individual communities want to use this opportunity to develop their own rainscaping program, then we will work with them to partner in a way similar to our partnership with Lincoln on its program.

I have attached the following documents to aid the discussion:

- Program summary sheet
- Program process overview
- Program guidelines
- Schedule of eligible expenses for reimbursement
- Template for agreement between NRD and participating landowner

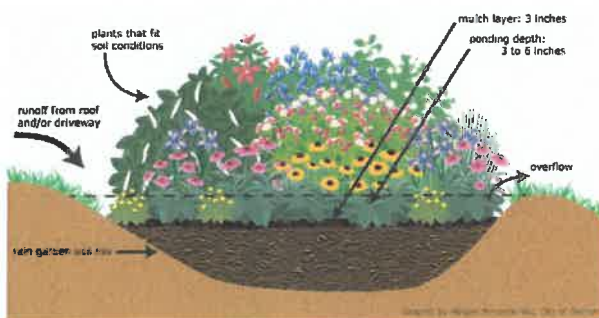
**Proposed Rain-Ready Landscapes Program**  
**Summary of basics**

**Proposed Rain-Ready Landscapes Program**

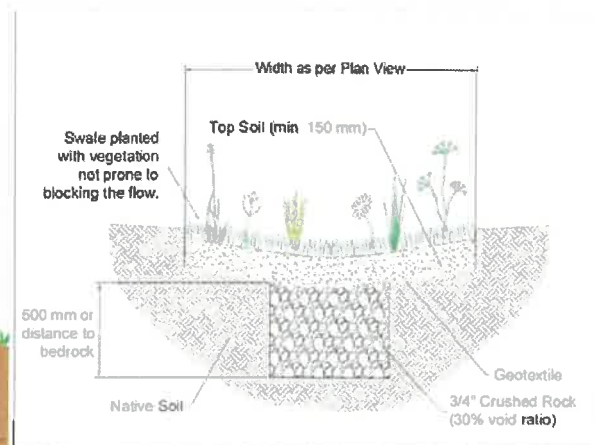
- **Purpose:** establish a cost-share program for landowners within the District (outside Lincoln) to implement best management practices that will improve water quality of storm runoff
- **Proposed title:** Rain-Ready Landscapes Program (RRLP)—to distinguish from City of Lincoln’s Rainscaping Lincoln Program
- Open to any property within the District but outside the City of Lincoln
  - We already provide funding to the City’s program
- **Funding amount:** 50% cost share, up to \$2,000 per project
- **Types of projects:**
  - Rain garden
  - Vegetated bioswale
  - Flow-through or infiltration planter/basin
  - Others on a case-by-case basis
  - Rain barrels and trees are eligible components of projects, but not eligible for stand-alone cost share (maximum of 2 per project)
- No set application period—applications accepted until funding runs out
  - Implementation required within one year of signing agreement
  - May be extended with NRD approval
- Opportunity to partner with individual communities that wish to take active role in promoting the program or starting their own

**Key differences from Rainscaping Lincoln Program (besides the name)**

- Lincoln’s program offers “waterwise” lawns and pavement removal as project options
- Lincoln’s program has a set application period (April) and implementation deadline (late October of same calendar year)

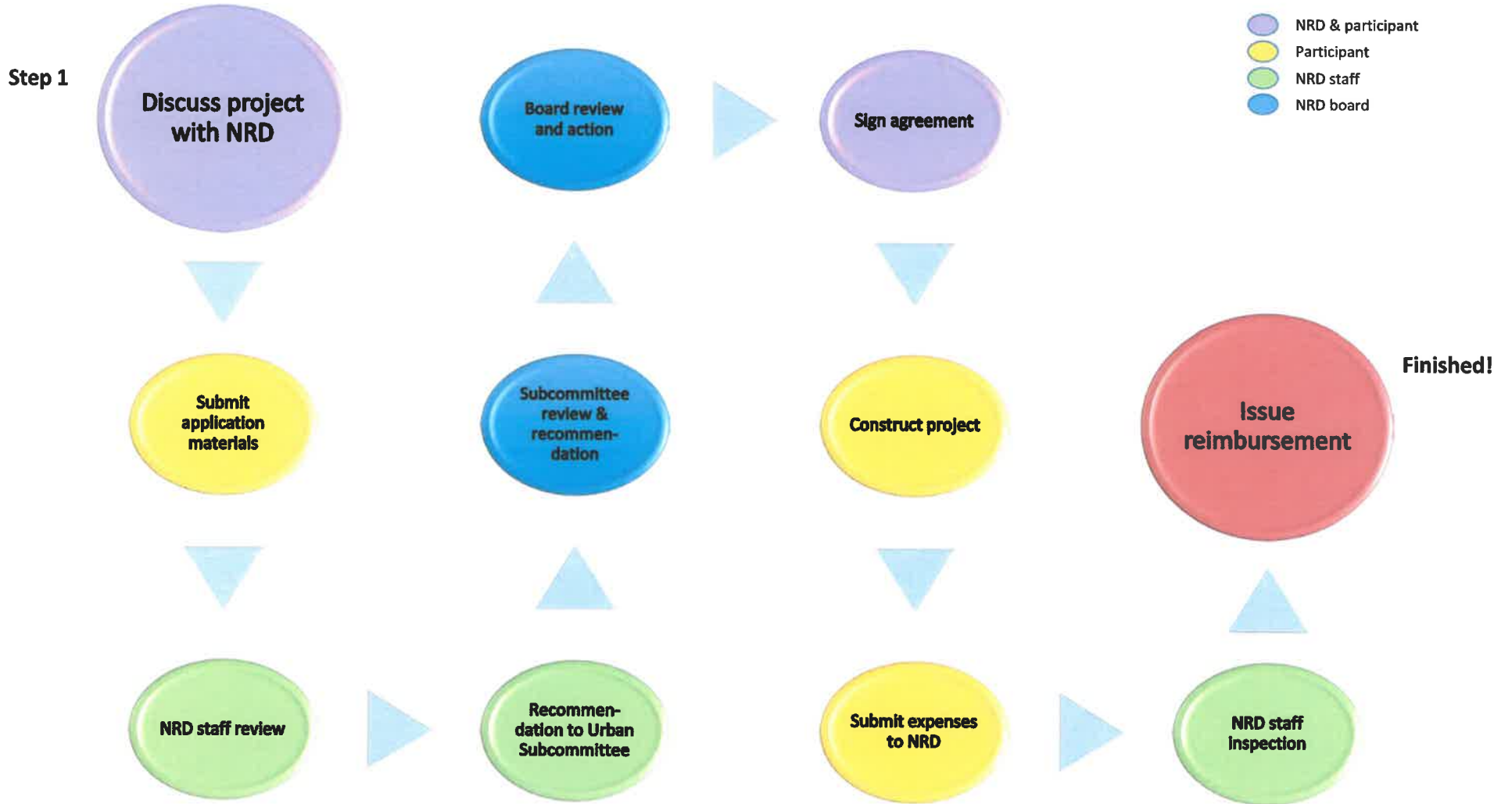


Rain garden  
(image by City of Durham, NC)



Bioswale  
(image by City of Charlottetown, PEI, Canada)

# NRD rainscaping program general process outline



**Proposed Rain-Ready Landscapes Program  
Program Guidelines**

**Rain-Ready Landscapes Program Guidelines**

The Lower Platte South Natural Resources District's (LPSNRD or District) Rain-Ready Landscapes Program (RRLP or Program) provides cost-share to landowners with property within the District, but outside the City of Lincoln, to implement best management practices (BMPs) for improving water quality of storm runoff before it enters storm sewers, ditches, and streams.

**Program Goals**

- Improve quality of surface water in our District by capturing and filtering storm runoff to reduce pollutants and sediment loads.
- Provide an opportunity for landowners across the LPSNRD to implement small-scale stormwater best management practices through cost-share partnerships.

**Project types**

The LPSNRD will accept the following BMPs as part of the RRLP:

- Rain garden
- Vegetated bioswale
- Infiltration or flow-through planters or basins which do not connect directly to municipal stormwater infrastructure
- Other practices which may be considered on a case-by-case basis

**Add-ons**—these can be a component of a proposed project but will not be funded on their own; maximum of 2 per project)

- Rain barrel
- Trees (suitable for eastern Nebraska, according to the Nebraska Statewide Arboretum)
  - Up to \$300 per individual tree (excluding installation)

**Who can apply?**

Any property within the LPSNRD may be eligible for the RRLP, EXCEPT that a project proposed as part of a District or state permit requirement or to correct a violation of District rules will not be eligible for cost-share under this Program. Because the LPSNRD already partners with the City of Lincoln on the City's Rainscaping Lincoln Program, the District will direct any City of Lincoln applicants to the Lincoln program.

In some cases, a specific project may not fit neatly within the City of Lincoln's program or in the RRLP. The LPSNRD will explore ways to partner with the applicant in such cases to accomplish the project and advance our goals of improving water quality and managing stormwater effectively.

**Project requirements**

All projects must meet the following requirements:

- No project may be located in the public right-of-way or directly above buried utilities.
- Projects must be designed in accordance with the City of Lincoln's [Small-Scale Residential Stormwater Best Management Practices](#).

**Application format**



## **Proposed Rain-Ready Landscapes Program Program Guidelines**

An applicant to the LPSNRD Rain-Ready Landscapes Program must provide the following to the District to be considered for cost-share assistance:

- Letter to LPSNRD requesting cost share, including the following:
  - Detailed project description
  - Outline of project costs
  - Implementation timeline
  - Landowner's contact information
- Aerial photo with property and project location clearly labeled
- Diagrams/drawings/design plans depicting the project
- Proposed contractor (if any)
- Maintenance plan for the project

LPSNRD staff may contact a landowner for additional information on the project during the review process.

The District will accept applications on a first-come, first-served basis until all funding for that year has been obligated. The LPSNRD will accept only one (1) project application per landowner per program year (July 1 – June 30).

### **Review and approval process**

See the "Rain-Ready Landscapes Program Process Map" for a depiction of the general steps.

The LPSNRD will consider the following factors in reviewing applications:

- Appropriateness of the proposed BMP to the setting in which it will be installed
- Conformance with the City of Lincoln's [\*Small-Scale Residential Stormwater Best Management Practices\*](#) and other standard resources, as applicable
- Project timeline
- The District's previous experiences with the proposed BMP
- Other considerations deemed necessary to ensure that the BMP will, when implemented, achieve RRLP goals.

Practices not on the above BMP list may receive additional scrutiny, so that the District can understand the proposed practice and its likely effects and longevity at the project location.

### **Project implementation**

Project implementation may begin after the LPSNRD Board approves the application, and the landowner and the LPSNRD sign a Program Agreement, which outlines responsibilities and requirements under the RRLP. The landowner has one (1) year from the date the Agreement is signed to complete the project, unless the LPSNRD grants an extension. Once the project is completed, LPSNRD staff will come out and inspect the site to verify that the project was constructed as shown in the application materials.

If a landowner, or the landowner's contractor, wants to make changes to the approved plan for the project during construction, then the landowner must notify the District immediately, to ensure that the project remains in compliance with the Program. If the project is not constructed according to the approved plan, and the District does not approve the modifications, then the

**Proposed Rain-Ready Landscapes Program  
Program Guidelines**

LPSNRD may withhold all or part of the cost-share payment for the project. In addition, the LPSNRD may restrict the landowner from future participation in the RRLP.

**Cost-share payment**

The landowner must submit a completed W-9 and Citizenship Attestation Form before payment will be disbursed. The LPSNRD will provide these forms to the applicant at the time of signing the Program Agreement. Failure to submit these forms will result in delayed payment.

Payment for project expenses occurs on a reimbursement basis, once the project is completed and inspected. The landowner will submit receipts and/or invoices for project expenses to the LPSNRD. The District will reimburse eligible expenses at a 50% rate, up to a maximum of \$2,000 per approved project. The District will not reimburse ineligible expenses. See the “Rain-Ready Landscapes Schedule of Expenses for Reimbursement” for descriptions of expenses that the LPSNRD will accept for reimbursement.

**Project maintenance**

The LPSNRD requires that the landowner will maintain the project in good order for a minimum of five (5) years after the project is completed. The District may periodically inspect projects to verify that the landowner is performing ongoing maintenance. If the landowner removes the project prior to the end of that five-year period, then the LPSNRD will require the landowner to repay all or a portion of the cost-share money paid to the landowner.

**Questions**

Questions regarding the Rain-Ready Landscapes Program may be directed to Tracy Zayac at [tzayac@lpsnrd.org](mailto:tzayac@lpsnrd.org) or (402) 476-2729.

**Proposed Rain-Ready Landscapes Program  
Schedule of eligible/ineligible expenses**

**Rain-Ready Landscapes Program  
Schedule of Expenses for Reimbursement**

This list organizes typical eligible and ineligible expenses by project type. This list is not comprehensive. The NRD may, upon review of all expenses submitted for reimbursement on a given project, determine eligibility of other project expenses not listed here.

**Rain garden or bioswale**

<b>Eligible for reimbursement</b>	<b>Ineligible for reimbursement</b>
Approved native or hardy introduced plants appropriate for rain gardens or bioswales	Unapproved plants (e.g., annuals, vegetables, invasive species, certain turf grasses)
Soil amendments (e.g., compost) to increase soil fertility and infiltration rate	Ornamental features (e.g., lawn ornaments, bird baths/feeders, lighting, edging)
Hardwood mulch to line the project installation	Tools (e.g., rakes, shovels, wheelbarrows)
Stone needed to prevent erosion in overflow and inlet areas, or to direct water to a rain garden or bioswale	Irrigation equipment, including hoses and sprinklers
Downspout extensions to direct water to rain garden or bioswale	Retaining walls or raised garden beds
Soil grading to direct water to a rain garden or bioswale	Additional landscaping or dirtwork that does not directly pertain to the project
Rental fees for equipment needed to install the project (e.g., rototiller)	Water or other utility bills, gasoline, etc.
Design and installation labor performed by a landscape company or contractor	Design and installation labor done by the landowner or a non-professional
Attendance at a rain garden or stormwater workshop or educational class	Expenses for work performed or projects completed prior to approval of a cost-share application

**Proposed Rain-Ready Landscapes Program  
Schedule of eligible/ineligible expenses**

**Infiltration or flow-through planter or basin**

<b>Eligible for reimbursement</b>	<b>Ineligible for reimbursement</b>
Approved native or hardy introduced plants appropriate for planter or basin	Unapproved plants (e.g., annuals, vegetables, invasive species, certain turf grasses)
Soil amendments (e.g., compost) to increase soil fertility and infiltration rate	Ornamental features (e.g., lawn ornaments, bird baths/feeders, lighting, edging, etc.)
Gravel, filter fabric, hardwood mulch to line the project installation	Tools (e.g., rakes, shovels, wheelbarrows)
Stone needed to prevent erosion in overflow and inlet areas	Irrigation equipment, including hoses and sprinklers
Structural materials to construct planter (e.g., wood, plastic, blocks)	Retaining walls or raised garden beds
Inlet and overflow pipe	Additional landscaping or dirtwork that does not directly pertain to the project
Rental fees for equipment needed to install the project (e.g., cement mixer)	Water or other utility bills, gasoline, etc.
Design and installation labor performed by a landscape company or contractor	Design and installation labor done by the landowner or a non-professional
Attendance at a stormwater workshop or educational class	Expenses for work performed or projects completed prior to approval of a cost-share application

**Rain barrel (available as project add-on only)—maximum 2 per project**

<b>Eligible for reimbursement</b>	<b>Ineligible for reimbursement</b>
Rain barrel and parts (e.g., spigot, overflow, screen)	Ornamental features
Gutter additions and downspout extensions to direct water to rain barrel	Irrigation equipment, including hoses and sprinklers
Materials to construct rain barrel platform (e.g., blocks)	Tools (e.g., rakes, shovels, wheelbarrows)
Design and installation labor performed by a landscape company or contractor	Water or other utility bills, gasoline, etc.
Attendance at a rain barrel or stormwater workshop or educational class	Rain barrel as a stand-alone project
	Additional landscaping or dirtwork that does not directly pertain to the project
	Design and installation labor done by the landowner or a non-professional
	Expenses for work performed or projects completed prior to approval of a cost-share application

**Proposed Rain-Ready Landscapes Program  
Schedule of eligible/ineligible expenses**

Trees (available as project add-on only) — maximum 2 per project

<b>Eligible for reimbursement</b>	<b>Ineligible for reimbursement</b>
Trees suitable for eastern Nebraska*	Unapproved tree species or varieties
Individual tree cost up to \$300, excluding installation	Individual tree cost exceeding \$300, excluding installation
Planting kits (e.g., stakes, mulch, tree wrap)	Irrigation equipment, including hoses and sprinklers
Rental fees for equipment needed to install the project (e.g., auger)	Tools (e.g., rakes, shovels, wheelbarrows)
Installation labor performed by a landscape company or contractor	Water or other utility bills, gasoline, etc.
Attendance at a stormwater workshop or educational class	Trees as a stand-alone project
	Additional landscaping or dirtwork that does not directly pertain to the project
	Installation labor done by the landowner or a non-professional
	Expenses for work performed on projects completed prior to approval of a cost-share application

\*Refer to the Nebraska Statewide Arboretum's current list at [https://plantnebraska.org/file\\_download/inline/7294c965-5637-4af9-9cb3-fbf170a1169e](https://plantnebraska.org/file_download/inline/7294c965-5637-4af9-9cb3-fbf170a1169e)

**AGREEMENT FOR  
RAIN-READY LANDSCAPES PROGRAM**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between \_\_\_\_\_, hereinafter referred to as “Landowner”, and the Lower Platte South Natural Resources District, hereinafter referred to as “District”.

WHEREAS, the District currently partners with the City of Lincoln on the Rainscaping Lincoln Program, which encourages City of Lincoln landowners to install landscaping measures for the purpose of reducing urban pollutants in stormwater; and

WHEREAS, the District has established the Rain-Ready Landscapes Program (“Program”) to provide landowners within the District but outside the City of Lincoln with the same opportunity afforded to City of Lincoln landowners under the Rainscaping Lincoln Program; and

WHEREAS, the Landowner desires to participate in the Program and has made an application to the District to enroll Landowner’s property in the Program; and

WHEREAS, the application has been approved by the District.

NOW THEREFORE, in consideration of the promises contained herein, the Parties agree as follows:

I. THE LANDOWNER AGREES:

- A. To construct, or cause to be constructed, the landscaping measure(s) described in the application materials (“Project”), in the location(s) designated in the application materials, which are attached to this Agreement as Exhibit “A”.
- B. To maintain the Project in good working order for not less than five (5) years.
- C. To control all noxious weeds on the property shown in Exhibit A.
- D. To abide by all applicable municipal and association ordinances, covenants, codes, and restrictions regarding the installation and maintenance of landscaping on the property.
- E. Notify the District immediately if the Project is modified or removed prior to the termination of this Agreement.
- F. To allow the inspection of the Project by District staff to ensure compliance with the Program.

II. THE DISTRICT AGREES:

RRLP.20 \_\_\_\_.

- A. To administer the Program in the manner described in Exhibit "B" and as further provided herein.
- B. To make one (1) cost-share payment to Landowner, upon completion of the Project and inspection by District staff, of 50% of the eligible expenses incurred by the Landowner, up to a maximum of \$2,000.

III. IT IS MUTUALLY AGREED:

- A. Payment under this Agreement shall be sent to \_\_\_\_\_.
- B. If the Landowner fails to maintain the Project or is otherwise in violation of this Agreement, the Agreement may be terminated, and the Landowner may be required to repay all or part of any payment received.
- C. Disbursement of funds by the District is contingent upon the District receiving a completed W-9 and Citizenship Attestation Form from the Landowner.
- D. This Agreement shall remain in effect for five (5) years from the date of the last signature, unless extended by mutual agreement of the Parties.

By signing this Agreement, Landowner certifies that the statements made herein and in the application materials are true, complete, and correct.

\_\_\_\_\_  
Landowner/Landowner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Landowner/Landowner

\_\_\_\_\_  
Date

\_\_\_\_\_  
District Representative

\_\_\_\_\_  
Date



PUBLIC WORKS & UTILITIES DEPARTMENT  
Watershed Management  
555 South 10th Street Suite 203 Lincoln, NE 68508  
lincoln.ne.gov

Lower Platte South NRD Board  
Lower Platte South NRD  
3125 Portia Street  
Lincoln, NE 68521

December 9, 2019

Board Members:

The City of Lincoln has obtained a Federal Mitigation Assistance (FMA) grant from FEMA for a Lincoln Flood Mitigation Master Plan. The grant is a \$99,500 grant with 75% (\$74,625) cost share from FEMA and a local share of 25% (\$24,875).

The request from the NRD is a 50/50 cost share (\$12,437.50 each) with the City for the local share cost.

The purpose of the grant is to investigate known flooding problems and identify flood mitigation activities. It's an approximate 18 month long project that includes public involvement and stakeholder participation. The scope of work includes gathering of background information, a hazard assessment, development of a flood mitigation master plan and development of an annual maintenance strategy.

This Mitigation Master Plan along with what is learned other combined NRD/City efforts (e.g. Salt Creek Resiliency Study) that are based on our ongoing annual mutual inter-local agreements will be used as a guide to future outreach efforts and for future projects/programs.

A significant byproduct of this grant is that it is being designed to follow the Flood Mitigation Study steps from the Community Rating System that should help for the city to keep its current 5 rating (provides a 25% reduction in flood insurance for flood insurance holders in the floodplain).

Thanks,

**Ben Higgins**, Director of Stormwater Watershed Management  
City of Lincoln Transportation and Utilities  
O: 402-441-7589 M: 402-430-9703





# 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:** December 12, 2019  
**To:** Urban Subcommittee  
**From:** Tracy Zayac  
**Subject:** Status update on current CAP Projects

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Following is a short summary of the current status of in-progress CAP projects.

1. ~~The Preserve HOA dam rehabilitation~~ (approved 7/20/2018): Contractor has been selected (Bookstrom). Construction to start this month, weather permitting.
2. ~~Wee Pin & Water Gos Del Run bank stabilization Phase 1~~ (approved 11/16/2018): Initial bid estimates came in much higher than anticipated. Project to be bid in Spring 2020, in hopes of costs coming in lower.
3. ~~Hamann Meadows Townhome HOW dam rehabilitation Phase 2~~ (approved 3/22/2019): Construction is complete. HOA is waiting on final invoice to send in reimbursement request. Site visit to be scheduled.
4. ~~Ashland drainage ditch improvements and Salt Creek bank stabilization~~ (approved 4/26/2019): Construction complete and site visited October 2019. Awaiting reimbursement request from City.
5. ~~Garland drainage study~~ (approved 7/25/2019): update not yet received from Village or consultant.
6. ~~Shadow Pines Townhome HOA bank stabilization Phase 2~~ (approved 9/18/2019): Construction is proceeding.
7. ~~Louisville Mill Creek bank stabilization Phase 1~~ (approved 9/18/2019): City has received draft plans and obtained a permit to work in the highway right-of-way. Waiting to receive 404 permit from USACE.