



LOWER PLATTE SOUTH natural resources district

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Agenda Item #10

Memorandum

Date: February 13, 2020
To: Urban Subcommittee
From: Jared Nelson, District Engineer *JN.*
Subject: Urban Subcommittee Meeting Minutes – February 2020

The Urban Subcommittee met at 5:30pm on Monday, February 10, 2020 in the District office to review, discuss and take action on three items. Subcommittee members present included Mike DeKalb, Karen Amen, Robert Andersen, Greg Osborn, Milt Schmidt, and Anthony Schutz. Members absent included Tom Green and Ray Stevens. Others present included Larry Ruth, Paul Zillig, Dave Potter, Mike Murren, Tracy Zayac, Jared Nelson, Adam Rupe (JEO Consulting Group), and Sophia Custer (Village of Ceresco Board Member). 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:

(a.) Consideration of an Agreement with UNL for the Deadmans Run Flood Reduction Project. – Paul Zillig gave a brief overview of the overall Deadmans Run Flood Reduction Project, and how there are several “Local” projects identified to be completed separately from the US Army Corps of Engineers “Section 205 Project”. Zillig went on to describe that one of the Local projects is the replacement and enlargement of the 38th Street Bridge which is owned and maintained by the University of Nebraska (UNL), and the Corps’ estimated cost to replace and enlarge the 38th Street Bridge is \$1.43M. He described the effort with UNL, which has taken over a year, to finalize the attached proposed Agreement to complete the 38th Street Bridge, and that currently UNL is interviewing consultants for the design of the bridge. Zillig referred to the attached proposed Agreement which describes that UNL will design, permit, and replace/enlarge the 38th Street Bridge to the Corps required capacity, and the NRD agrees to reimburse UNL for the actual costs of the Bridge work, up to \$1.43M. Zillig also discussed the following items needed for the Deadmans Run Flood Reduction Project but are to be made part of separate agreements:

1. Land necessary for the Conveyance Channel enlargement
2. Utilization of soil excavated from the Channel and Fleming Field Detention Basin
3. The Fleming Field Detention Basin design, maintenance and construction

It was moved by Osborn, seconded by Anderson, and approved by the Subcommittee (with Schutz abstaining) to recommend that the Board of Directors approve the Agreement between UNL and LPSNRD, for the Deadmans Run Flood Reduction Project.

(b.) Consideration of Nebraska Water Sustainability Fund Grant Award Agreement with DNR for the Deadmans Run Flood Reduction Project. – Director Amen briefly introduced the next item on the agenda, and how the Nebraska Natural Resources Commission approved the \$5.8M application under the Nebraska Water Sustainability Fund Grant Program, for the Deadmans Run Flood Reduction Project. Amen described how this project did not receive a high enough score by the Commission in order to receive full funding, however the Commission elected to use their “Cap” tool in order award the project, with partial funding coming in this cycle, and the rest coming from

next year's cycle. Zillig then discussed that the grant covers 60% of the non-federal portion of the Deadmans Run Flood Reduction Project, or about \$5.8M. He described how the Commission approved an allocation of \$5,857,792, whereas to begin the Project, the Commission agreed to obligate and make available to the District \$3,293,651, and will take action to obligate the remainder \$2,564,141 during next funding cycle. Zillig discussed the grant Agreement, and referred to a map of project components, and a table of costs and funding breakdown. Next, Jared Nelson, staff handed out a red-lined version of the Agreement which included revisions from the Districts Attorney and Zillig discussed these changes. See attachments for a 'clean' version of the Agreement which includes these changes.

It was moved by Schmidt, seconded by Schutz, and unanimously approved by the Subcommittee to recommend that the Board of Directors approve the Agreement between the Nebraska Department of Natural Resources and LPSNRD for the Nebraska Water Sustainability Fund Grant Award Agreement for Application No. 5253, for the Deadmans Run Flood Reduction Project, including changes from the Districts legal counsel.

(c.) Community Assistance Program - Consideration of an application from the Village of Ceresco for the Hobson Branch Stream Stability Study. – Tracy Zayac, staff, described a problem occurring along Hobson Branch, a tributary to Rock Creek, which runs through the Village of Ceresco. Zayac described that staff visited the site at Ceresco's request about a year ago, and then last September Zayac and Nelson met with the Village. She discussed how the Village Board is concerned about stream erosion and its impacts to the park and bridges. She described how the Village expressed an interest in completing a project in phases and are currently seeking assistance in completing a stream stability evaluation to understand the problems and solutions before moving into future phases (including design and construction). Tracy referred to her attached memorandum and the request for CAP funding assistance from the Village. Schmidt asked if there are concerns with both bridges, and Sophia Custer responded that they are, and described the Evaluation looks at both which are maintained by the Village.

It was moved by Andersen, seconded by Amen, and unanimously approved by the Subcommittee to recommend that the Board of Directors approve the Community Assistance Program application from the Village of Ceresco, for the Hobson Branch Stream Stability Project – Phase 1 (Evaluation), in an amount of 50% of the estimated cost, not to exceed \$9,750 NRD funds, pending legal counsel review.

(d.) Reports. – For the last item on the agenda, several reports were given to the Subcommittee: Nelson gave an update on the Salt Creek Levee USACE PL 84-99 Repair Project, and that Blade Masters Ground Maintenance received their Notice to Proceed from USACE on February 4th and will have 210 days to substantially complete the work; the Contractor plans to break ground in March. Next, Nelson gave an update on the City of Lincoln's latest update to their Community Rating System ranking and referred to the attached verification report which describes that the City of Lincoln will remain classified as a CRS Class 5 which provides all flood insurance holders in the City a 25% reduction in flood insurance rates. Third, Nelson gave an update of the Antelope Creek Pipe Replacement Project which is now substantially complete. Next, the Subcommittee inquired about the investigation along Deadmans Run near Tommys Carwash and Zillig mentioned that Olsson had some weather delays, but is currently wrapping up their investigation which will be provided to the District soon. Finally, Mike Murren, Staff gave an update of the project at Gapp Park along Beal Slough downstream of 70th St. Murren discussed that survey was complete and geotechnical borings were underway with anticipated design alternatives to be coming this summer.

Enclosures (4)

A.

**AGREEMENT
DEADMAN’S RUN FLOOD REDUCTION PROJECT**

This Agreement is entered into effective the ___ day of _____ 2020 by and between the **Lower Platte South Natural Resources District**, a political subdivision of the State of Nebraska, located at 3125 Portia St., Lincoln, NE 68501-3581 (the “NRD”) and the Board of Regents of the University of Nebraska, a public body corporate and governing body of the **University of Nebraska-Lincoln**, (“UNL”), collectively referred to as the “Parties.”

WITNESSETH:

RECITALS:

- A. The Parties have a common interest in reducing the flood threat on Deadmans Run (“DMR”) which runs through UNL East Campus, in Lincoln, Nebraska.
- B. The part of DMR which runs through UNL East Campus includes one mile of the channel and over 100 acres of land in the 100 year (1% Annual Chance of Flood) Floodplain of which approximately 70 acres of land are designated as the Floodway.
- C. The NRD and the City of Lincoln, Nebraska (“City”) have prepared the DMR Basin Master Plan in 2008 which, among other things, identified improvements to reduce flood damages within the City of Lincoln, NE.
- D. The NRD and City partnered with the US Army Corps of Engineers (the “Corps”) to complete a Section 205 Study to further evaluate potential projects and provide federal funding assistance,
- E. The Section 205 Feasibility Study was completed in 2018,
- F. The NRD and City identified a \$25.5M Flood Reduction Project that would greatly reduce the flood threat to a majority of the DMR Watershed, called the DMR Flood Reduction Project (the “Project”),
- G. The Project includes a \$15M Section 205 Corps Project and a \$10.5M Local Project.
- H. The Section 205 Corps Project includes a Conveyance Channel from 48th to Cornhusker Hwy, a concrete flume at railroad bridges, the Baldwin Street Termination at 33rd St., and an Access Road Relocation at State Fair Park Drive.
- I. The Local Project includes replacing/enlarging the 33rd Street Bridge (City bridge), 38th Street Bridge (UNL bridge), 48th Street Bridge (City bridge), and constructing the Fleming Fields Detention Basin,

- J. Both the Section 205 Corps Project and the Local Project will include design, permitting, land acquisitions, construction observation, construction, and operation & maintenance.
- K. The City and NRD have entered into an Interlocal Cooperation Agreement in 2018 to jointly implement the DMR Flood Reduction Project.
- L. The NRD and Corps have approved a Project Partnership Agreement in 2018 for the implementation of the Section 205 Corps Project.
- M. The Parties desire to work together to set forth the rights and responsibilities of the Parties with respect to the DMR Flood Reduction Project for the benefit of UNL's East Campus and the surrounding neighborhood, in accordance with the terms, conditions, and guidance of this Agreement.

NOW, THEREFORE, in consideration of the above Recitals and the mutual promises and covenants contained herein the Parties agree as follows:

1. **Purpose.** The purpose of this Agreement is to set forth the responsibilities of the Parties with respect to the DMR Flood Reduction Project. No separate legal or administrative entity is created under this Agreement.
2. **Duration.** This Agreement shall expire on December 31, 2025 unless mutually extended by the Parties.
3. **Concrete Flume model.** – The Parties have negotiated a separate contract to develop a model of the concrete flume at the railroad bridges to Corps standards.
4. **Geotechnical sampling for the Project.** Geotechnical sampling for the Project has been completed.
5. **Replacing and enlargement of the 38th Street DMR bridge.** The bridge by which 38th Street crosses Deadmans Run is currently owned and maintained by UNL (the 38th Street Bridge). The Corps estimated cost to replace and enlarge the 38th Street Bridge is \$1.43M to the size and capacity required to pass the 100 year flows in the conveyance channel as set forth in the map attached hereto as Exhibit "A" and incorporated herein. UNL agrees to design, permit, and replace/enlarge the 38th Street Bridge to the Corps required capacity (the "Bridge Work") on or before December 31, 2021 (the "Bridge Completion Date"), subject to reimbursement by the NRD. NRD agrees to reimburse UNL for the actual costs of the Bridge Work with such reimbursement not to exceed \$1.43M without the prior consent of NRD. Upon completion of each component of the Bridge Work, UNL will submit an invoice to NRD and NRD agrees to reimburse UNL, after review and approval, within thirty (30) days of UNL's submittal of such invoice. Notwithstanding the foregoing, in the event the Project is delayed, or if UNL's performance of the Bridge Work is materially hampered, interrupted or interfered with by any other condition or action out of UNL's control, the Parties agree to amend this Agreement to

extend the Bridge Completion Date to reasonably accommodate such delay, interruption or interference.

6. **Conveyance Channel enlargement.** The Section 205 Corps Project will be designed by the Corps and the major component is the enlargement of the Deadmans Run Channel (the "Channel"). UNL will enter into a separate easement agreement with the NRD for the land necessary for the construction, operation and maintenance of the portions of the Channel on UNL property.

7. **Fleming Field Detention Basin construction.** The Local Project requires the construction of a detention basin on the west portion of Fleming Fields (the "Detention Basin"). The Parties will work with the City of Lincoln to enter into a mutually agreeable contract with respect to the design, maintenance and construction of the Detention Basin; provided, however, that UNL shall not be responsible for any costs associated with the design, construction or maintenance of the Detention Basin. The NRD will assume major maintenance of the flood control components of the Detention Basin.

8. **Utilization of soil excavated from the Channel and Fleming Field Detention Basin.** The construction of the Channel and Basin will require removal of soil. If UNL allows the temporary or permanent storage of all or a portion of this soil on UNL property, the Parties will enter into a separate agreement setting forth the rights and responsibilities with respect to such soil storage. The decision whether to allow such soil storage shall be made in UNL's sole discretion and UNL has no obligation to store any soil or other excess materials or debris unless specifically agreed to in a separate agreement.

9. **Amendments.** This Agreement may be amended by mutual consent of the Parties. Any amendments to this Agreement must be in writing.

10. **Governing Law and Interpretation.** This Agreement will be governed and interpreted in accordance with the laws of the State of Nebraska.

11. **No Third Party Rights.** Except as herein specifically provided, no rights, privileges, or immunities of either Party hereto shall inure to the benefit of any unintended third party, nor shall any third party be deemed a beneficiary of any of the provisions contained in this Agreement.

12. **No Lease or Easement.** This Agreement does not create any lease, tenancy right, easement, or other right, title, or interest in, to, or with respect to any UNL property.

13. **No Gift or Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any property of UNL to the general public, or for any public use or purpose whatsoever.

14. **Indemnification.** To the fullest extent permitted by law, NRD shall indemnify, defend and hold harmless UNL, its officers, agents and employees from and against claims, damages,

losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from performance of this Agreement, except for those parts of the Agreement that UNL is specifically responsible for performing, that results in any claim or damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of NRD, or any person or entity for whose acts NRD may be liable.

15. **Nondiscrimination.** NRD agrees that neither it nor any of its contractors shall discriminate against any employee, or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privilege of employment because of the race, color, religion, sex, disability, or national origin of the employee or applicant in accordance with the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. § 48-1122, as amended.

16. **Work Status Verification.** NRD and any of its contractors shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska pursuant to Neb. Rev. Stat. § 4-108 to 4-114 as amended.

17. **Capacity.** The undersigned represents that he or she has the legally authority to sign this Agreement and to lawfully bind his or her represented party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives on the date opposite their respective signatures.

LOWER PLATTE SOUTH NATURAL RESOURCES
DISTRICT,

BY:

Paul Zillig, General Manager

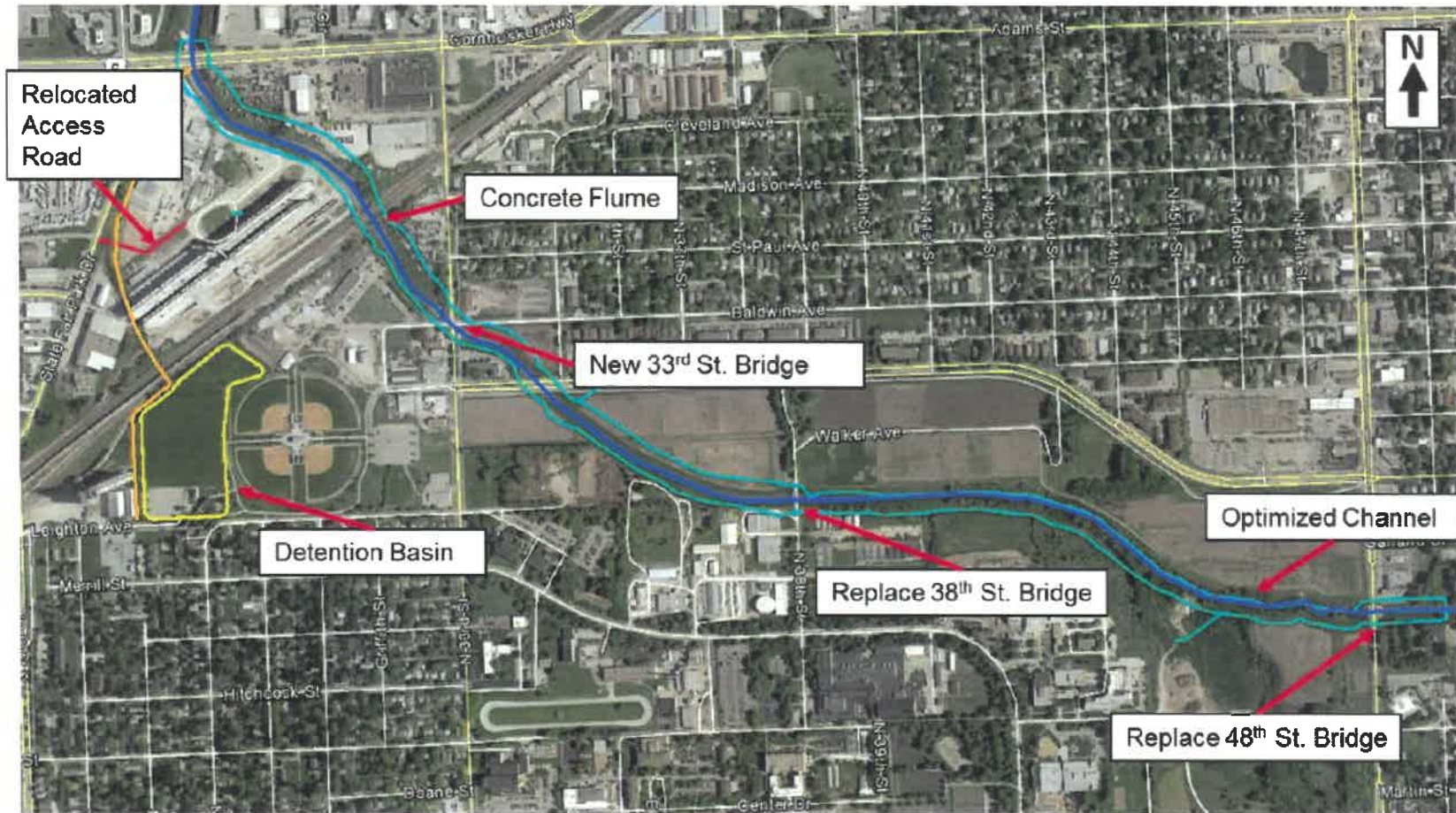
BOARD OF REGENTS OF THE UNIVERSITY OF
NEBRASKA,
by and on behalf of the University of Nebraska-Lincoln

BY:

William J. Nunez, Vice Chancellor, Business and Finance

A-6

Figure A-6(1) Deadmans Run Flood Reduction Project Components



B.

SECTION A

A-5

Table A-5(1) – Project Cost and Funding Breakdown

Project Feature	Total	Costs Incurred to Date	Federal Funding	Non-Federal (Grant Eligible) Funding	Non-Federal Funding Breakdown		
					WSF	LPSNRD*	City of Lincoln*
Professional Services	\$3,401,003	\$1,050,441	\$1,784,000	\$566,562	\$566,562	\$525,220	\$525,220
Land Rights	\$3,732,340	\$0	\$0	\$3,732,340	\$1,436,868	\$1,147,736	\$1,147,736
Federal Construction	\$11,023,400	\$0	\$7,469,000	\$3,554,400	\$2,132,640	\$710,880	\$710,880
Non-Federal Construction	\$8,608,610	\$0	\$0	\$8,608,610	\$1,721,722	\$3,443,444	\$3,443,444
Total	\$26,765,352	\$1,050,441	\$9,253,000	\$16,461,912	\$5,857,792	\$5,827,280	\$5,827,280

*Includes costs incurred to date

Table 1. Capital Cost Summary

Project Feature	Cost
Federal Construction	
Widen Channel	\$7,796,000
Concrete Flume	\$2,182,000
Relocated Access Road	\$747,000
Baldwin Ave Termination	\$298,400
Federal Subtotal	\$11,023,400
Non-Federal Construction	
33 rd St Bridge Installation	\$2,087,341
38 th St Bridge Replacement	\$1,267,112
48 th St Bridge Replacement	\$2,254,156
Detention Basin	\$3,000,000
Non-Federal Subtotal	\$8,608,610

Professional Services	
Federal	\$1,784,000
Non-Federal	\$1,617,003
Prof. Services Subtotal	\$3,401,003
Land Rights	
Federal	\$1,726,000
Non-Federal	\$2,006,340
Land Rights Subtotal	\$3,732,340
Project Total	\$26,765,352



ok
FINAL

**STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
NEBRASKA WATER SUSTAINABILITY FUND
GRANT AWARD AGREEMENT
FOR APPLICATION NO. 5253**

This Agreement is entered into by and between the Nebraska Department of Natural Resources (Department) and the applicant organization, Lower Platte South Natural Resources District (Sponsor), sometimes hereinafter individually referred to as "Party," or collectively referred to as "Parties."

WHEREAS, pursuant to the Nebraska Water Sustainability Fund Grant Program (Fund), *Neb. Rev. Stat.* § 61-222 and § 2-1511(2), and Title 261 of the Nebraska Administrative Code (NAC Title 261), the Nebraska Natural Resources Commission (Commission) and the Department are charged with the responsibilities of establishing and administering a grant process for the purpose of attaining the goals set out in *Neb. Rev. Stat.* § 2-1506; and

WHEREAS, the Sponsor submitted application number 5253 (Application) requesting a grant under the Fund for a project titled "Deadmans Run Flood Reduction Project" (Project). A copy of the Application is located at nrc.nebraska.gov and is hereby incorporated by reference into this Agreement; and

WHEREAS, the Commission has adopted rules for administration of the Fund under NAC Title 261, which are hereby incorporated into this Agreement by reference; and

WHEREAS, Title 261 Neb. Admin. Code Ch. 3, § 002.03 allows the Commission to "...approve and partially fund (obligate) one additional project. In doing so, the Commission must be able to fully allocate this project utilizing the "cap"; and

WHEREAS, pursuant to Title 261 Neb. Admin. Code Ch. 3, § 002.03, the Commission approved an allocation for the Project in the amount of \$5,857,792.00 (Allocation); and

WHEREAS, to begin the Project, the Commission agreed to partially obligate the Allocation or make Fund dollars available to the Sponsor for reimbursement in the amount of \$3,293,650.96; and

WHEREAS, the Commission will take action to obligate the remainder of the Allocation or \$2,564,141.04 during the next funding cycle of the Fund provided additional funding is made available by the Legislature.

NOW, THEREFORE, in consideration of the mutual promises and understandings contained herein, the receipt and sufficiency of which is hereby acknowledged, the Department and Sponsor hereby mutually agree as follows:

1. Exclusive State Funding.

Resources from the Fund will not replace any local share required by other state funds expended by the Sponsor in carrying out the Project.

2. Term.

This Agreement shall be for a term commencing on December 18, 2019 and continuing thereafter until Project close out, unless all eligible reimbursements are made prior to that time thus terminating the Agreement as completed, or unless the Agreement is:

- A. Terminated with cause in the event either Party defaults on any of its material obligations or representations under this Agreement. The non-defaulting party shall notify the other Party in writing, specifying in detail the nature and extent of such breach. If within thirty (30) calendar days after written notice of such default, the defaulting Party fails to remedy the default, this Agreement will terminate.
- B. Terminated by the Department, in whole or in part, in the event funding is no longer available. If funds are revoked by the Legislature, the Department may terminate any portions of the Agreement for which funds have become unavailable. The Department will give the Sponsor notice of such revocation as soon as possible. The Sponsor shall be entitled to receive reimbursements subject to the availability of such funds for any authorized work that has been satisfactorily completed as of the termination date.
- C. Amended by written amendment signed by both parties.

3. Scope of Agreement.

- A. Sponsor shall complete through its own efforts, or through contracting with a capable party, the obligations for completing the Project as set forth in the Application.
- B. Any changes to the scope of the Project shall be considered according to procedures set out in NAC Title 261.

4. Agreement Managers.

- A. The Department's Agreement Manager is Kent Zimmerman. His telephone number is (402) 471-0575. His address is: Nebraska Department of Natural Resources, P.O. Box 94676, Lincoln, NE 68509-4676. His email address is kent.zimmerman@nebraska.gov.
- B. The Sponsor shall designate a person as the Sponsor's Agreement Manager to direct or report on the Sponsor's work under the Project and coordinate with the Department. The Sponsor's Agreement Manager is Mike Murren and his address is Lower Platte South NRD, 3125 Portia Street, P O Box 83581, Lincoln, NE 68501-3581. His email address is mmurren@lpsnrd.org.
- C. Communications under this Agreement shall be through the respective Agreement Managers.

- D. The Sponsor may change its Agreement Manager only after notifying the Department in writing.

5. Reimbursement.

- A. From the annual appropriations by the Legislature to the Fund and set aside by the Commission, but subject to subsequent quarterly limitations that may be imposed by the Department of Administrative Service's Budget Office, the Department agrees to reimburse the Sponsor for eligible costs as defined in NAC Title 261 that are incurred after approval by the Commission in the application process and during the term of this Agreement in performance of activities necessary for the Project as described in the Application.
- B. Total reimbursement amount and payments for this Project shall not exceed the total Allocation of \$5,857,792.00. Reimbursements shall be limited to amounts obligated by the Commission; and which have been approved by the Department as: (1) having met the definition of eligible costs under NAC Title 261; and (2) that include adequate documentation. The Sponsor shall not be entitled to reimbursement for expenditures incurred during any fiscal year in excess of the amount, if any, then actually obligated for the Project by the Commission.
- C. Upon execution of this Agreement, \$3,293,650.96 of the total Allocation will be considered obligated funds and therefore, available for reimbursement by the Sponsor, subject to Paragraph 5.B.(1) and (2) immediately above. The remainder of the Allocation or \$2,564,141.04 will not be obligated until the Commission takes a formal action to do so.
- D. Reimbursement shall be made for expenses electronically submitted by the Sponsor to the Department's Agreement Manager. All submissions shall include a detailed, itemized summary of each reimbursable expenditure and include all appropriate support documentation.
 - (1) Reimbursement requests for expenditures acquiring interests in real property must include, for each legal interest acquired:
 - (a) Title insurance policy showing title in the seller;
 - (b) Closing statement signed by both the buyer and seller;
 - (c) Copy of recorded instrument (deed/easement) from the seller to the Sponsor for the specified real estate;
 - (d) Copy of certified check or wire transfer payable to the seller for the indicated transaction; and
 - (e) Brief explanation of the relationship of the property interest to the Project.
 - (f) If an irrigation water use is to be leased, relinquished, retired or purchased, then prior to the Sponsor entering into an agreement with the real property owner, the Sponsor shall consult with the Department for the purpose of determining if (a) the surface water right is valid and not subject to some known restriction or limitation

(such as CREP) or (b) the ground water use is subject to some known restriction or limitation (such as CREP).

- E. Reimbursement payments shall be made by the Department no more often than monthly based upon the reimbursement request submissions. The final billing for all expenses under this Agreement must be clearly marked "final billing." Upon payment of the final billing, any unused Project funds will be transferred into the unreserved balance of the Water Sustainability Fund pursuant to Neb. Rev. Stat. § 2-1507 (4).
- F. Expense records shall be subject to inspection by the Department and any other agency of the State of Nebraska with responsibility for monitoring progress or auditing records pursuant to this Agreement. The Department shall have the right to audit billings both before and after payment, and payment under this Agreement shall not foreclose the right of the Department to recover excessive or improper payments.
- G. Sponsor, upon payment of the amounts due under this Agreement, releases the Department, its officers and employees, and the State of Nebraska from all liabilities, claims, and obligations whatsoever arising from or under this Agreement, except for those arising as a result of the intentional conduct or gross negligence on the part of the Department, its employees or agents.

6. Inspection During and After Construction.

The Director of the Department or his or her designated representative(s) shall have the privilege of inspecting the construction of the Project at any time in order to ensure that plans and specifications are being followed, that the works are being constructed in accordance with sound engineering and technical principles and practices, and that the Project continues to provide benefits as proposed in the Application. Such inspection shall never subject the State of Nebraska to any action for damages.

7. Project Completion Expected.

Sponsor shall provide and maintain adequate support, including the necessary professional or technical personnel and local funding identified in the Application to permit timely completion of the Project.

8. Independent Contractor.

- A. The relationship of the Department and Sponsor established by this Agreement is that of independent contractors. Nothing in this Agreement shall be construed in any manner as creating or establishing any agency or employment relationship between the Department and the Sponsor, or contractors of Sponsor.
- B. All claims on behalf of any person arising out of employment or alleged employment (including but not limited to claims of discrimination against the Sponsor, its officers, or its agents) shall in no way be the responsibility of the

Department or the State. The Sponsor will hold the Department and the State harmless from any and all such claims. Sponsor personnel and all other persons acting for the Sponsor are not entitled to any reimbursements, rights, or benefits from the Department or the State including but not limited to tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

9. Notices.

All notices, requests, demands, and other communications hereunder shall be in writing and delivered or mailed, with postage prepaid, to the Agreement Managers at the addresses set forth in Paragraph 4 of this Agreement.

10. Binding.

This Agreement shall inure to and bind the successors, assigns, and representatives of the Parties, providing, however, this Agreement may not be assigned by either Party without the prior written consent of the other. Neither the Department nor the Sponsor intends anyone to be a third-party beneficiary of this Agreement.

11. Entire Agreement/Severability/Waiver.

This Agreement is the entire agreement between the parties hereto; no representations, inducements, promises, or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force or effect. In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either Party of any provision, term, condition, or covenant shall not be construed by the other Party as a waiver of a subsequent breach of the same by the other Party.

12. Amendment of Agreement.

This Agreement may be amended only by a written instrument signed by the Department and the Sponsor.

13. Attachments.

If there are any terms and conditions contained in any Attachment hereto that are inconsistent with the terms and conditions contained in this Agreement, the terms and conditions of the Attachments shall be construed to conform to the terms of this Agreement unless specifically expressed in a writing signed by the Parties.

14. Prevailing Law.

This Agreement is governed by the laws of the State of Nebraska including the State Contract Claims Act, *Neb. Rev. Stat.* §§ 81-8,302 through 81-8,306.

15. Indemnification.

Neither the Department nor the State of Nebraska shall be liable for any damage or compensation payable with respect to or in consequence of any accident or injury to any workman or other person in the employment of the Sponsor that would be covered by Worker's Compensation insurance, liability insurance, or otherwise, except an accident or injury resulting from an intentional act or gross negligence of the Department, its employees or agents. The Sponsor shall indemnify, defend, and hold harmless the Department and the State of Nebraska against all such damages, compensation, and against all claims, proceedings, costs, charges, attorney's fees, and expenses whatsoever in respect thereof or in relation thereof. The Sponsor shall indemnify the Department and the State of Nebraska for any damages, claims, or liability to the extent caused by the Sponsor's negligent acts, errors, or omissions arising out of the performance of professional services under this Agreement.

16. Drug Free Work Place Policy.

Sponsor certifies that it maintains a drug free work place environment to ensure workers safety and workplace integrity. Sponsor agrees to provide a copy of its drug free workplace policy at any time upon request by the Department.

17. Technology Access.

Sponsor agrees to ensure compliance with Nebraska Access Technology Standards. See website at: <http://nitc.nebraska.gov/standards/2-201.pdf>. In the event that the State's technology access standards change during the term of the Agreement, the Department may create an amendment to the Agreement to ensure that it comply with the changed standard. If the amendment causes any changes in costs to the Sponsor, the costs shall be mutually agreed on by both Parties.

18. Fair Employment Practices.

Sponsor agrees to ensure compliance with the Nebraska Fair Employment Practice Act, which prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, or national origin, *Neb. Rev. Stat.* §§ 48-1101 through 48-1125.

19. Worker Eligibility Status Requirements.

The Sponsor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of any new employees paid with proceeds of this Agreement that are physically performing services within the State of Nebraska. The Sponsor understands and agrees that lawful presence in the United States is required for such employment and the Sponsor may be disqualified or the Agreement terminated if such lawful presence cannot be verified as required by *Neb. Rev. Stat.* § 4-108. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant

Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

20. Compliance with All Laws and Ordinances.

Sponsor covenants that it does and shall at all times pertinent to this Agreement comply with all applicable state, federal, and local laws, ordinances and regulations including but not limited to corporate registration, payment of taxes and registration required for payment of taxes, and acquisition and payment for any permits, licenses, and approvals necessary for completion of the Project.

21. Audit Requirements.

All of the Sponsor's books, records, and documents relating to work performed or monies received under the Agreement shall be subject to audit at any reasonable time after reasonable notice by the Department. The Sponsor shall maintain all of these records for a period of five (5) years from the date of final payment, or until all issues related to an audit, litigation, or other action are resolved, whichever is longer. All records shall be maintained in accordance with generally accepted accounting principles.

22. Audit by Office of State Auditor.

Any public or private non-profit entity or political subdivision of the State serving as the recipient or sub-recipient of funds under this Agreement, except for an individual person, is subject to audit by the Office of State Auditor and must comply with requests for any information or records within three (3) business days after an the actual receipt of the request pursuant to *Neb. Rev. Stat.* § 84-304 (4)(a) and § 50-1213 (2).

23. Annual Report.

The Sponsor will annually submit to the Department's Agreement Manager, electronic reports on or before April 1st of each year up to and including the year final payment is made to the Project. Annual reports shall specify the reporting period and contain information detailing Project progress and the anticipated progress for the next year; and shall include some analysis of whether the Project is attaining its purposes as identified in the Application. After Project completion/close out, annual reports are no longer required unless real estate or other real property acquired or constructed as part of this Project is rented or otherwise generating revenue exclusive of park entry fees, city fees, or revenue not resulting from the Project.

24. Final Report

The Sponsor will electronically submit to the Department's Agreement Manager, a final report summarizing the results of the Project and discussing whether or not the benefits described in the Application were achieved or not.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date last stated below by their duly authorized representatives.

Sponsor

By: Paul Zillig, General Manager
Lower Platte South NRD
3125 Portia ST, PO Box 83581
Lincoln, NE 68501-3581

_____ Date _____

Nebraska Department of Natural Resources
By: Gordon W. Fassett, P.E., Director
Department of Natural Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, NE 68509-4676

_____ Date _____

This Agreement signed in duplicate.



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: February 4, 2020
To: Urban Subcommittee
From: Tracy Zayac
Subject: CAP Project for consideration at February 10, 2020, meeting

The Village of Ceresco has requested CAP funding assistance for the first phase of their multi-phase approach to resolving stream stability and erosion concerns along an approximately 0.5-mile stretch of Hobson Branch, a tributary to Rock Creek that runs north-south along the west side of US Highway 77. The Village is concerned that bank erosion and headcutting may undermine the bridge crossing the creek at Elm Street, north of the Village’s park.

Phase 1 will involve collecting data and analyzing the watershed to develop potential solutions to the problem the Village has identified; JEO has been selected to provide these services. Subsequent phases of this project will include design/permitting (Phase 2) and construction (Phase 3) of the solution that the Village ultimately selects.

This application requests a cost-share amount of \$9,750, or 50% of the total cost of \$19,500, for Phase 1 (study) of this project.

Enc.: Village of Ceresco Phase 1 request information

VILLAGE OF CERESCO
217 S 2ND STREET PO BOX 160 CERESCO, NE 68017
PHONE: 402-665-2391 FAX: 402-665-2393

January 30, 2020

Tracy Zayac
Lower Platte South Natural Resources District
3125 Portia Street
Lincoln, NE 68521

Ms. Zayac,

The Village of Ceresco is requesting assistance through the NRDs Community Assistance Program (CAP). Hobson Branch flows north to south, generally just west of Highway 71 through Ceresco, before flowing into Rock Creek, South of town. The reach south of Elm Street has experienced significant erosion and stability issues with the stream bank and bed. This has already caused issues with park maintenance. There is concern that the stream erosion will worsen, migrate upstream, and threaten infrastructure (bridges, pump station, etc.). Representatives from the Village met with Jared Nelson and Dave Potter in 2019.

The Village recently hired JEO Consulting Group (JEO) to evaluate the stream through town to better understand the causes and extents of the stream degradation so that an improvement plan can be developed. At this time the Village has authorized JEO to begin work on Tasks 1 and 2 of the project scope. Depending on the findings, JEO may also perform Task 3, which will detail out an improvement plan for the stream. A map of the stream location and JEO's scope and fee are attached for your reference.

The total cost of this initial study phase is \$19,500. Currently, the Village is requesting the NRD cost-share on this phase at a 50/50 split, bringing the request from the NRD at \$9,750. The study phase is anticipated to be complete in May 2020. At that time costs, schedule, etc. of future phases (if necessary) would be identified.

I appreciate your assistance, and the consideration by the NRD Board of Directors on this project. If you have any additional questions, or need any additional information, please don't hesitate to contact me at 402.665.2391 or by email jlindgren@cerescocne.com.

Sincerely,


Joan Lindgren
Village Clerk

Attachments

Ceresco, NE

Hobson Creek Stream Stability Study Area

Legend

 Hobson Creek - Study Reach

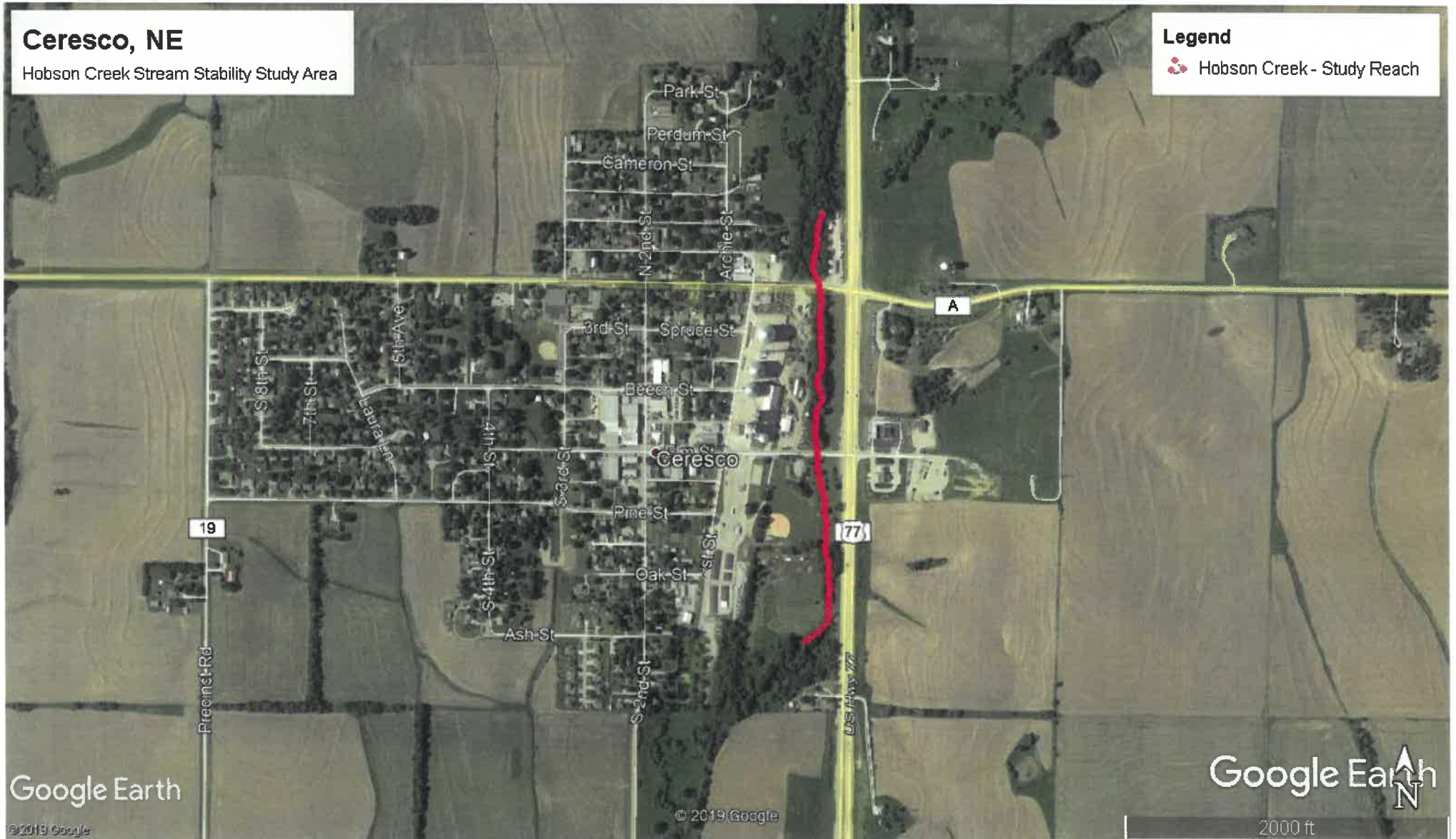




EXHIBIT A

SCOPE OF SERVICES – Stream Stabilization Evaluation

Village of Ceresco

JEO Project #191713.00

December 2019

PROJECT BACKGROUND AND UNDERSTANDING

Hobson Branch flows north to south, generally just west of Highway 71 through Ceresco, before flowing into Rock Creek, South of town. The reach south of Elm Street has experienced significant erosion and stability issues with the stream bank and bed. There is concern that the stream erosion will migrate upstream and threaten infrastructure (bridges, pump station, etc.). The Village of Ceresco wishes to study the stream through town to better understand the causes and extents of the stream degradation so that an improvement plan can be developed.

The purpose of this evaluation is to complete a review of the existing conditions and develop a phased improvement strategy to reduce erosion and protect the village park and other infrastructure. This evaluation is intended to be used by the Village to obtain grant funding from the Lower Platte South Natural Resources District (LPSNRD). This project is intended to be split into three phases: Evaluation, Design, and Construction. The first phase (Evaluation) is detailed in this scope of services. Once complete, the Village will have the option to work with JEO and the LPSNRD to pursue the Design and Construction phases. Separate scope of services will be developed for each phase, which will allow the Village to better budget and plan for each phase.

SCOPE OF SERVICES

1: Topographic Field Survey

JEO will collect limited field survey of critical features throughout the channel reach to document the existing conditions. This survey will not include a full topographic survey and additional survey data will likely be necessary if recommended improvements proceed to the design phase.

The survey will include channel cross sections and the location of crossing pipes or other nearby infrastructure to adequately describe the channel shape and alignment.

Deliverables:

- Survey information will be drafted into AutoCAD

Key Assumptions/Understandings:

- Survey drawings will also serve as the basis for modeling efforts
- Boundary or property information will NOT be collected at this time
- Additional data may be necessary if the project proceeds to final design

2: Existing Conditions Evaluation

Hydrologic Analysis: Hydrologic analysis will be performed for drainage area that contributes to the stream utilizing a HEC-HMS model. Sub-basins will be delineated to fully understand the runoff conditions. The hydrologic analysis will be performed to obtain existing condition peak flow

discharges for the 50%, 10%, 4% and 2% annual chance storm events. Such discharges will be the basis for the subsequent hydraulic analysis.

Hydraulic Analysis: The hydraulic analysis will be performed utilizing a HEC-RAS model for steady flow conditions of the main stem stream channel. The hydraulic analysis will be performed to determine water surface elevations, hydraulic structure capacity, and stream velocities at critical cross-sections.

Field Assessment: A reconnaissance level field assessment will be conducted to determine geomorphic indicators, soil and rock properties, groundwater, and vegetative conditions of the stream. The field work will include a bank erosion hazard index (BEHI) assessment, identification of bankfull depths, and identification of stream bed material.

Field observation data will be compiled and incorporated into a GIS database indicating locations of stable reaches, incision, channel widening, erosion, active meandering, nick points, head-cuts, etc. The present channel alignments will be compared to locations of the channels shown on historical aerial photos. Areas adjacent to the stream be reviewed for their capacity to serve as stream buffers.

Deliverables:

- Technical memorandum with a summary of the stream assessment, including descriptions and analyses of the geomorphic conditions within the watershed

3: Concept Improvements and Recommendations

The development of conceptual level recommendations (10% design plans) relating to streambank stabilization or rehabilitation will be based upon the above-mentioned survey and stream assessment. Recommended projects will function within a balanced system and will not cause harm elsewhere. An opinion of cost will also be provided for each proposed project. The proposed projects will also be prioritized, and an implementation plan developed.

A Technical Memorandum will be developed including relevant figures and attachments to summarize the analysis. This memorandum will be reviewed with the Village Board at one (1) meeting. Following this review any final revisions will be made and Technical Memorandum will be finalized.

Deliverables:

- Hydrologic and Hydraulic Analysis
- Stream Assessment and Improvement Plan
- Phasing Plan for Implementation
- Summary Technical Memorandum Summarizing the Analysis and Assessment

Key Assumptions/Understandings:

- One (1) meeting between the Village Board and JEO project engineer

ANTICIPATED PROJECT SCHEDULE:

Notice to Proceed	January 2019
1 – Field Survey	February 2020
2 – Existing Conditions Evaluation	April 2020
3 – Concept Design and Recommendations	May 2020

TOTAL LUMP SUM FEE:

1 – Topographic Field Survey	\$2,400.00
2 – Existing Conditions Evaluation	\$6,800.00
3 – Concept Design and Recommendations	<u>\$10,300.00</u>
TOTAL:	\$19,500.00

The services stated above are billed on a lump sum basis. Invoices will be prepared monthly based on the percentage complete and are due upon receipt. JEO will provide additional services via contract amendment at the client’s request.

SERVICES NOT INCLUDED IN THIS SCOPE:

- Additional site visits and meetings not currently noted in this scope
- Full topographic survey
- Property Acquisition or Easement Support
- Geotechnical investigation and/or testing
- Wetland Delineations and Environmental Permitting
- Floodplain Permitting
- Final Design

Village of Ceresco Hobson Branch project area



**Hobson Branch
Village of Ceresco**



Bank erosion along Hobson Branch. Photo looking south. Park is to the right. Hwy 77 to the left.



Erosion at Elm Street bridge.

**Hobson Branch
Village of Ceresco**



Riffle in stream, indicative of potential headcutting.



COMMUNITY
RATING
SYSTEM

VERIFICATION
REPORT

City of Lincoln, NE

Verified Class 5

NFIP Number: 315273

Cycle

Date of Verification Visit: June 8, 2017

This Verification Report is provided to explain the recommendations of Insurance Services Office, Inc. (ISO) to DHS/FEMA concerning credits under the Community Rating System (CRS) for the above named community.

A total of 2591 credit points are verified which results in a recommendation that the community remain classified as a CRS Class 5. The community has met the Class 5 prerequisite with a Building Code Effectiveness Grading Schedule (BCEGS) Classification of 4/4. The following is a summary of our findings with the total CRS credit points for each activity listed in parenthesis:

Activity 310 – Elevation Certificates: The Building and Safety Department maintains elevation certificates for new and substantially improved buildings. Copies of elevation certificates are made available upon request. (22 points)

Activity 320 – Map Information Service: Credit is provided for furnishing inquirers with basic flood zone information from the community's latest Flood Insurance Rate Map (FIRM). Credit is also provided for the community furnishing additional FIRM information, special flood related hazards, and historical flood information. The service is publicized annually and records are maintained. (90 points)

Activity 330 – Outreach Projects: Credit is provided for general outreach projects that include mailed community flood information brochure, annual home builder's booth, no dumping signage, and social media efforts and priority audience messages that include a letter to the repetitive loss area and to SFHA parcels. These projects are disseminated annually. (104 points)

Activity 340 – Hazard Disclosure: Credit is also provided for state and community regulations requiring disclosure of flood hazards. (15 points)

Activity 350 – Flood Protection Information: Documents relating to floodplain management are available in the reference section of the Lincoln City Libraries. Credit is also provided for floodplain information displayed on the community's website. (51 points)

Activity 410 – Floodplain Mapping: Credit is provided for conducting and adopting flood studies for areas not included on the flood insurance rate maps and that exceed minimum mapping standards. (67 points)

Activity 420 – Open Space Preservation: Credit is provided for preserving approximately 65 percent of the Special Flood Hazard Area (SFHA) as open space and preserving open space land in a natural state. Credit is also provided for regulations that minimize development in the SFHA. (1249 points)

Activity 430 – Higher Regulatory Standards: Credit is provided for enforcing regulations that require development limitations, freeboard for new and substantial improvement construction, foundation protection, and local drainage protection. Credit is also provided for the enforcement of building codes, a BCEGS Classification of 4/4, state mandated regulatory standard, and regulations administration. (261 points)

Activity 440 – Flood Data Maintenance: Credit is provided for maintaining and using digitized maps in the day to day management of the floodplain. (155 points)

Activity 450 – Stormwater Management: The community enforces regulations for stormwater management, soil and erosion control, and water quality. (117 points)

Section 502 – Repetitive Loss Category: Based on the updates made to the NFIP Report of Repetitive Losses as of January 31, 2017, the City of Lincoln, NE has 7 repetitive loss properties and is a Category B community for CRS purposes. All requirements for a Category B community have been met. (No credit points are applicable to this section)

Activity 510 – Floodplain Management Planning: Credit is provided for the adoption and implementation of the Multi-Jurisdictional All Hazard Mitigation Plan, Lower Platte South, November 2, 2015. A progress report must be submitted on an annual basis. An update to the credited plan will be due by October 1, 2020. (225 points)

Activity 520 – Acquisition and Relocation: Credit is provided for acquiring and relocating 64 buildings from the community's regulatory floodplain. (190 points)

Activity 630 – Dams: Credit is provided for a State Dam Safety Program. (45 points)

Activity 710 – County Growth Adjustment: All credit in the 400 series is multiplied by the growth rate of the county to account for growth pressures. The growth rate for Lancaster County, NE is 1.11.

Attached is the Community Calculations Worksheet that lists the verified credit points for the Community Rating System.

CEO Name / Address:

The Honorable Chris Buetler
Mayor of Lincoln
555 South 10th Street, Ste. 301
Lincoln, Nebraska 68508

CRS Coordinator Name / Address:

Terry Kathe
Building and Safety Manager
555 South 10th Street, Ste. 203
Lincoln, Nebraska 68508
(402) 411-6447

Date Report Prepared: December 28, 2019

DRAFT

Community : City of Lincoln, NE

NFIP Number : 315273

720 COMMUNITY CREDIT CALCULATIONS (Cycle):

CALCULATION SECTION :

Verified Activity Calculations:

Credit

c310	22				22
c320	90				90
c330	104				104
c340	15				15
c350	51				51
c360					
c370					
c410	60	x CGA	1.11	=	67
c420	1125	x CGA	1.11	=	1249
c430	235	x CGA	1.11	=	261
c440	140	x CGA	1.11	=	155
c450	105	x CGA	1.11	=	117
c510	225				225
c520	190				190
c530					
c540					
c610					
c620					
c630	45				45

Community Classification Calculation:

cT = total of above cT = 2591

Community Classification (from Table 110-1): Class = 5

CEO Name/Address:

The Honorable Chris Buetler
Mayor of Lincoln
555 South 10th Street, Ste. 301
Lincoln, Nebraska 68508

CRS Coordinator Name/Address:

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Building and Safety Manager
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Date Report Prepared: December 28, 2019

AW-720