




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: July 17, 2019
To: Each Director
From: Paul D. Zillig, General Manager 
RE: Water Resources Subcommittee Meeting Minutes.

The Water Resources Subcommittee met in the NRD Office at 5:30 p.m. on Tuesday, July 16, 2019. Subcommittee members present included Bob Andersen, Karen Amen, Vern Barrett, Greg Osborn, Chelsea Johnson, Mark Spangler, and David Landis. Others present included Katie Cameron, Dan Schulz, Maclane Scott, Chris Witthuhn, David Potter, and myself.

Chair Andersen opened the meeting and called on Dave Potter to report on the proposed amendment for the Watershed Rehabilitation reimbursable agreement with NRCS for Upper Salt 3-A. Potter reported that we are in the landright's phase for this project and this agreement is set to expire this September. He reported that we have extended the project agreement to December 2020 and now need to do the same for the reimbursable agreement. This will allow us to get reimbursed by NRCS for approximately 65% of the cost of the project. A copy of the amendment is attached.

It was moved by Osborn, seconded by Barrett, and unanimously approved by the Subcommittee to **recommend the Board of Directors approve Amendment No. 2 for the Upper Salt 3-A "reimbursable agreement" with USDA/NRCS.**

The next item on the agenda was to consider recommending approval of a professional services agreement with Aqua Geo Frameworks, LLC on behalf of ENWRA for work to be done on the Nebraska GeoCloud Project. Cameron explained the work to be done and that it is expected to not exceed \$16,200 in cost. It was moved by Landis, seconded by Osborn, and unanimously approved by the Subcommittee to **recommend the Board of Directors approve, on behalf of ENWRA, a Professional Services Agreement with Aqua Geo Frameworks, LLC for the Nebraska GeoCloud Project, at a cost not to exceed \$16,200.**

The final action item for the meeting was to consider several applications for cost-share assistance for groundwater best management practices and authorizing the General Manager to approve additional applications this fiscal year. Andersen called on Scott to make the report



on this item. Scott reviewed his memo (attached) on the well decommissioning applications from John Petsche and the Highlands Golf Course and talked a little about each situation. It was moved by Amen, seconded by Landis, and unanimously approved by the Subcommittee to **recommend the Board of Directors approve the well decommissioning applications of John Petsche for \$1,250 and City of Lincoln Highlands Golf Course for \$1,200 and to authorize the General Manager to approve additional ground water BMP cost-share applications up to the FY'20 budgeted amounts for the District-wide, CWSPA, and Lower Salt Creek Cost-share Programs and direct staff to report those additional approvals to the Water Resources Subcommittee.**

Potter then reported on the status of the landrights negotiations for Upper Salt 3-A. MidWest ROW is currently negotiating the acquisition of the 3 remaining easements. We anticipate that we will receive counter offers to be considered by the Board of Directors in closed session on the 24th.

There being no additional business the meeting adjourned at 6:05 pm.

PDZ/pz

cc: Steve Seglin
Corey Wasserburger

AMENDMENT NO. 2
to
AGREEMENT FOR NRCS SERVICES
between the
LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT
and
UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

Relative to: Upper Salt Creek Watershed Site 3A

Purpose: To extend the performance period end date from September 25, 2019 to December 15, 2020.

The following paragraphs to the agreement are hereby revised:

PERIOD OF PERFORMANCE

This reimbursable agreement is effective when signed by all parties and expires December 15, 2020. All work shall be performed and completed within the agreement period.

All other items remain the same.

AUTHORIZED SIGNATURES

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT	
BY:	
TITLE:	Paul Zillig General Manager
DATE:	

U.S. DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE	
BY:	
TITLE:	Craig Derickson, State Conservationist
DATE	

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") is made and entered into as of June 1, 2019 by and between the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT, as acting Administrator on behalf of the Eastern Nebraska Water Resources Assessment (ENWRA), having an office at 3125 Portia Street, Lincoln, Nebraska, 68521 (hereinafter collectively called "District") and Aqua Geo Frameworks, LLC., a limited liability corporation of the State of Nebraska, having its principal office located at 130360 County Road D, Mitchell, NE 69357-2508 (hereinafter called "AGF" or the "Contractor"). The District and Contractor are sometimes referred to below as "Parties" and each of them as a "Party."

WITNESSETH:

RECITALS

A. The District desires to have the inventory of Airborne Electromagnetic (AEM) Survey data (Data) available for Eastern Nebraska transformed into one coordinate system with consistent data formats provided for each survey. The District also desires to have the Contractor provide collaboration services with the District on the Nebraska GeoCloud Project (NGC).

B. AGF is a Company qualified and experienced in conducting and preparing the AEM Survey Data (AGF team members authored much of the original Data deliverables) and agrees to contract with the District to provide both reprocessed Data and NGC collaboration services as further described below.

NOW THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained below, the parties agree as follows:

1. SCOPE OF WORK

The Contractor shall transform all the coordinate systems and units to State Plane meters (EPSG 32104) and State Plane feet for existing eastern Nebraska AEM survey inverted Data (spatially constrained inversion [SCI].xyz files), adhering to a file naming convention, populating the NGC database with the relevant metadata, and fixing any errors that might occur.

- 1.2 For each AEM survey dataset, the Contractor shall create a Project in the “Project Administration” page of the NGC and upload the raw AEM files as attachments under the Project.
- 1.3 The Contractor shall review the NGC draft standards and guidelines and provide potential edits based on author level knowledge of the data (costs associated with this scope item will be reimbursed to ENWRA through the NGC project lead, Dr. Jesse Korus of the University of Nebraska-Lincoln, under separate agreement).
- 1.4 There will be no report for this work, only a transmittal letter and/or digital text file documenting the Data and NGC collaboration work completed (Project Documentation).

2. SCHEDULE.

The Data upload work shall be completed by approximately September 30, 2019. Accurate pricing estimates are subject to known scheduling constraints related to ENWRA’s 2018 AEM survey reports contracted under separate cover currently estimated for delivery between May 2019 and early 2020.

3. COMPENSATION.

- 3.1 For the services satisfactorily rendered as set forth in this Agreement Sections 1.1, 1.2 and 1.4, the Contractor will be paid as described below:
 - 3.1.1 The District shall pay a fee of \$ 14,400.00 (estimated 80 hours at \$180.00 per hour).
- 3.2 For the services satisfactorily rendered as set forth in this Agreement Section 1.3, the Contractor will be paid as described below:
 - 3.2.1 The District shall pay a fee of \$ 1,800.00 (estimated 10 hours at \$180.00 per hour)
- 3.3 In no event shall the work described herein exceed \$16,200.00 unless authorized in writing by the District.

4. TERM AND TERMINATION

- 4.1 This Agreement is effective as of June 1,2019 and shall continue until the Project is completed, no later than December 30, 2019, unless terminated

earlier as provided for in the Agreement, or extended by mutual agreement of the Parties.

4.2 If AGF defaults in the performance of its material obligations, the District may, without prejudice to any other remedy it may have, give AGF written notice of its intent to terminate this Agreement, unless AGF remedies the default within ten (10) days after receiving such notice. If AGF has not remedied said default within such time, District may, upon written notice to AGF, terminate this Agreement.

4.3 The District may, at its option, terminate this Agreement for reasons other than AGF's default at any time prior to the completion of the Project upon giving AGF thirty (30) days written notice. If the District elects to terminate this Agreement prior to the completion of the Project, then the District shall pay to AGF all costs incurred by AGF, pursuant to this Agreement or for which AGF has become obligated to incur, prior to the date of termination.

5. INDEPENDENT CONTRACTOR

It is understood and agreed that AGF is, and shall be deemed and treated as an independent contractor while engaged in the performance of professional services to the District and none of its employees, agents or subcontractors shall be employees or agents of the District for any purpose. AGF maintains the absolute right to supervise, manage, and exclusively control the operation and safety of its personnel, facilities and other equipment and property and the manner and means of performing the rights and obligations under this Agreement. The District shall have no right of direction or control of AGF or its employees or agents, being only interested in the final results of the Project.

6. QUALIFICATION OF CONTRACTOR

The Contractor warrants and represents that it and all employees, agents, and subcontractors are qualified to perform the services described in this Agreement and in compliance with all applicable state and federal laws, policies, practices and procedures.

7. SUBCONTRACTORS

- 7.1 Contractor shall not otherwise transfer any rights, duties and/or obligations under this Agreement without prior written consent of the District. The duties and obligations of the Contractor shall not terminate or transfer upon the use of any subcontractor. The District acknowledges and agrees that to fully perform under this Agreement, the Contractor may use subcontractors for certain services. The Contractor will oversee all subcontractors' efforts and the District will not be liable or responsible for any actions of any subcontractor.
- 7.2 This Agreement is between the Contractor and the District and nothing herein is intended to create any third party benefit to subcontractors. The Contractor shall ensure that all financial obligations are met between the Contractor and subcontractor and shall ensure there are no liens upon the District or its property arising from subcontractor's actions or deliverables. Privity of contract only exists between the District and the Contractor. Separate privity of contract exists between the Contractor and subcontractor. These are mutually exclusive relationships; accordingly, there is no privity of contract between the District and the subcontractors.

8. GOVERNING LAW

This Agreement shall be governed, construed and interpreted by the laws of the State of Nebraska, excluding any choice of law rules that would otherwise require the application of laws of any other jurisdiction. AGF irrevocably submits to the jurisdiction of the courts of the State of Nebraska including the federal court and waives any objection that it may have to either the jurisdiction, venue, or inconvenient forum of such courts.

9. INDEMNITY

- 9.1 To the fullest extent permitted by law, each Party (the "Indemnitor") shall indemnify, defend, and hold harmless the other Party, including ENWRA, and its board members, officials, directors, officers, members, managers, agents, and employees (each an "Indemnified Party") from and against all claims, damages, losses, fines, assessments, and expenses, including, but not limited to, attorneys' fees if permitted by law (collectively, "Losses"), arising out of or resulting from: (a) a breach of this Agreement by the Indemnitor; (b) the unlawful acts of the Indemnitor or the Indemnitor's

subcontractors; or (c) the negligent or intentional acts or omissions of the Indemnitor or the Indemnitor's subcontractors, provided that, in no event shall an Indemnitor be required to indemnify, defend, or hold harmless an Indemnified Party for Losses to the extent such Losses are caused by the negligent or intentional acts or omissions of the Indemnified Party.

- 9.2 If any claim covered by this indemnity is asserted by a third party, the Indemnified Party shall promptly give the Indemnitor notice of the claim and give the Indemnitor an opportunity to defend or settle the claim with counsel of its choice and at its expense, and the Indemnified Party shall extend its full cooperation in connection with the defense, subject to reimbursement for actual out-of-pocket expenses incurred by the Indemnified Party as the result of a request by the Indemnitor. If the Indemnitor fails to defend a claim within a reasonable time, the Indemnified Party shall be entitled to assume the defense and the Indemnitor shall be bound by the results obtained by the Indemnified Party with respect to the claim, and the Indemnitor shall be liable to the Indemnified Party for its expenses incurred in the defense, including, without limitation, reasonable attorney's fees if permitted by law and any settlement payments.

10. INSURANCE

At all times during the term of this Agreement, Contractor shall carry and maintain at its own expense, work insurance protection of the kinds and the minimum amounts set forth below:

- 10.1 Commercial General Liability (CGL) Insurance in the sum of \$1,000,000.00 to any person and \$2,000,000.00 in the aggregate. Such insurance shall cover all operations in which the Data may be performed by AGF.
- 10.2 Professional Liability insurance to cover malpractice of AGF employees, agents or subcontractors in connection with the performance of this Agreement in an amount not less than \$2,000,000.
- 10.3 With respect to all such policies of insurance, AGF shall furnish evidence that AGF's insurers waive all rights of subrogation against the District, AGF shall also furnish evidence that the District is listed as an additional insured in such policies.

10.4 Upon execution of this Agreement, AGF shall furnish the District with certificates of insurance certifying that the insurance required under this Paragraph is in full force and effect. Each certificate shall contain a provision stating that the insurer agrees to give the District thirty (30) days prior written notice in the event of cancellation or material change in the insurance.

10.5 The Parties specifically recognize that certain federal or state statutory or case law may obligate or require modification to Paragraph 10 INSURANCE and Paragraph 9 INDEMNITY and that future changes in the law and interpretations of the law during the term of this Agreement may affect the validity or scope of those Paragraphs. Therefore, the Parties specifically agree that, if any provision of Paragraphs 10 or 9 is determined to be unenforceable or in contravention of any applicable law, such provision shall be deemed modified to the minimum extent required to bring such provision into compliance with said applicable law.

11. FORCE MAJEURE

Any delay or failure in the performance by either Party here under shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes that prevent Contractor from performing, and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Contract.

12. DISPUTE RESOLUTION

Notwithstanding the provisions of Paragraph 4.2 above, before a Party may bring suit in any court concerning any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, such Party must first seek in good faith to resolve the dispute through negotiation or other form of nonbinding alternate dispute resolution

mutually acceptable to the Parties.

13. ACCESS TO RECORDS

The Contractor shall be granted reasonable access to the District's records as may be necessary to complete the scope of work.

14. CONFIDENTIALITY

14.1 AGF shall use its reasonable best efforts to keep confidential (a) data acquired from working with the Data to be conducted pursuant to this Agreement, (b) information relating to the location of the surveys and the type of work performed, and (c) information supplied by the District, which is not otherwise proprietary to AGF, and which is identified in writing by the District to AGF as being confidential. AGF shall not divulge to anyone other than its employees, subcontractors, and agents, and the District's representative, employees and agents, such confidential data or information unless previously authorized by the District in writing. AGF will require the same degree of confidentiality from its subcontractors.

14.2 Likewise, the District shall observe the above confidentiality obligation, insofar as it has access to and knowledge of the equipment, instruments, programs, and procedures of the operation hereof, which are the property of and proprietary to AGF.

14.3 The foregoing obligation of confidentiality shall survive the termination of this Agreement but it shall not apply to information which (a) was or shall have been in the possession of the receiving Party prior to disclosure by the other Party, or (b) is acquired by the receiving Party from others who have no direct or indirect confidential commitment to the other Party with respect to same, or (c) are or become part of the public domain without the fault or participation of the receiving Party, or (d) as required by law.

15. CONFLICT OF INTEREST:

The Contractor warrants that he/she has no interest presently and shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of the services required under this Agreement.

16. SEVERABILITY OF TERMS:

Should any provision of this Agreement be deemed invalid or unenforceable, that provision shall be deemed to be deleted from this Agreement and all remaining provisions shall remain in full force and effect.

17. DISTRICT REPRESENTATIVES

17.1 The District designates: Kathleen Cameron, Phone: 402-476-2729, Email address: kcameron_enwra@lpsnrd.org as its representative, to whom AGF's representative may deliver reports and other information and from whom AGF representative will receive instructions, provided such instructions are in accordance with the terms of this Agreement. AGF shall be entitled to rely on the apparent authority of such District representative on the District's behalf to inspect such activities and give instructions to AGF. Such instructions shall be related to the Project.

18. OWNERSHIP OF DATA

Upon AGF's receipt of the final payment, all information, documents, and data pertaining to the Data shall become the sole property of the District and shall be delivered to the District at the conclusion of the analysis. Subject to Paragraph 14 (Confidentiality), AGF reserves the right, but not the obligation to maintain a digital backup of the data from the Project for archival purposes.

19. LAWS, RULES, AND LICENCES

AGF shall comply with all provisions of applicable law including, federal, state, and municipal laws, ordinances, rules and regulations relating to the performance of the Project. AGF warrants that it is duly licensed and authorized to perform the Project covered under this Agreement, if required by State, Federal or local laws, or that it will be so licensed and authorized prior to commencement thereof.

20. MECHANIC'S OR OTHER LIENS

AGF shall promptly pay all costs and charges incurred by it in connection with this Agreement and shall not suffer nor permit any Mechanic's lien or other liens attached to any property of the District.

21. ENFORCEMENT OF DISCIPLINE

AGF shall at all times enforce discipline and maintain good order among its employees and subcontractors, and shall not retain on the job any person not skilled in the task assigned to that person. AGF shall forthwith remove from the Project any employee of AGF or a subcontractor who is unacceptable, for good cause, to the District.

22. NOTICE

All notices, demands and consents required or permitted to be given under this Agreement shall be in writing and may be delivered personally, transmitted by facsimile or e-mail, or may be forwarded by first class prepaid certified mail, return receipt requested, to the addresses set forth below. Any notice shall be deemed given and received on the next business day after personal delivery or facsimile transmission or email, or if mailed, on the expiration of three (3) days after it is post marked, addressed as follows:

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT
3125 Portia Street
Lincoln, NE 68501-3581

Attention: Mr. Paul D. Zillig
General Manager
Phone: 402-476-2729

AQUA GEO FRAMEWORKS, LLC
130360 County Road D
Mitchell, NE 69357-2508

Attention: James C. Cannia
Member Principle Geologist
Phone: 308-641-2635

Email address: jcannia@aquageoframeworks.com

23. WAIVER

The rights herein given to either Party may be exercised from time to time, singularly or in combination, and the waiver of one or more of such rights shall not be deemed to be a waiver of such right in the future or of any one or more of the other rights that the exercising Party may have. No waiver of any breach of a term, provision, or condition of this Agreement by one Party shall be deemed to have been made by the other Party unless such waiver is expressed in writing and signed by an authorized representative of such Party and failure of either Party to insist upon the strict performance of any term, provision, or condition of this Agreement or to exercise any option herein given shall not be construed as a waiver or relinquishment in the future of the same or any other term, provision, condition or option.

24. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the Parties and supersedes and replaces any oral or written communication previously made between the Parties relating to the subject matter hereof. This Agreement shall not be amended except by written instrument executed by the duly authorized representatives of both parties.

25. ASSIGNMENT

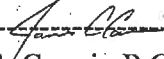
Neither the Contractor nor the District shall assign, subcontract, pledge, mortgage or otherwise encumber any of its rights hereunder without the prior written consent of the other Party.

26. DISCLAIMER

AGF shall conduct this Project using the current standards of the geophysical industry and will use in-house quality control standards to produce the converted geophysical survey products. AGF's services are performed consistent with the professional skill and care ordinarily provided by professional geophysicists under the same or similar circumstances. No other warranty or representation, either expressed or implied, is made by AGF in connection with its services unless in writing and signed by an authorized representative of AGF.

IN WITNESS WHEREOF, the Parties to this Agreement have caused it to be executed by their duly authorized representatives as of June 1, 2019.

AQUA GEO FRAMEWORKS, LLC

By:-----
James C. Cannia P.G., Member Principal
Geologist

LOWER PLATTE SOUTH
NATURAL RESOURCES
DISTRICT, as Administrator for the
Eastern Nebraska Water Resources
Assessment

By:-----
Paul D. Zillig, General Manager of the
Lower Platte South Natural Resources District



LOWER PLATTE SOUTH natural resources district

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Memorandum

Date: July 16, 2019
To: Water Resources Subcommittee
From: Maclane Scott, Water Resources Technician
Subject: Applications Received for Ground Water BMP Programs

Two applicants have applied for cost share assistance with the well decommissioning program. With the well decommissioning program, applicants can receive cost share assistance for decommissioning wells. The amount of assistance is based off of material that a contracted well driller uses in the decommissioning process, not to exceed 100%.

The following represents the reimbursement based on the above mentioned limits.

Applicant	Cost of Decommissioning	Cost Share
John Petsche	\$2500.00	\$1250.00
Highlands Golf Course	\$3000.00	\$1200.00

Staff Recommendation: The Water Resources Subcommittee recommends the NRD Board of Directors approve the applications of John Petsche for \$1250.00 and Highlands Golf Course for \$1200 and to authorize the General Manager to approve additional BMP cost-share applications up to the FY'20 budgeted amounts for the District-wide, CWSPA, and Lower Salt Creek Cost-Share Programs and direct staff to report those additional approvals to the Water Resources Subcommittee.

Enc.