



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: June 15, 2021
To: Each Director
From: Paul D. Zillig, General Manager
RE: Water Resources Subcommittee Meeting Minutes.

The Water Resources Subcommittee met via video/teleconference at 4:30 p.m. on Monday, June 14, 2021. Subcommittee members participating included Larry Ruth, Chelsea Johnson, John Yoakum, Vern Barrett, Don Jacobson, Ken Vogel, and Gary Hellerich. Other Directors participating included Deborah Eagan. And others participating included Jason Sall of USDA/NRCS, Mike Sotak of FYRA, David Potter, Tracy Zayac, Nathan Kuhlman, Mike Murren, Maclane Scott, Dick Ehrman, Dan Schulz, Al Langdale, Craig Matulka, Steve Herdzina, and myself.

Chair Ruth opened the meeting and welcomed those in attendance. Craig Matulka first reported on Upper Salt 4-A and the need to determine the necessary repairs. Matulka reported that the dam was constructed in 1956 and the principal spillway pipe is 24" diameter. The State/DNR completed a video inspection of the pipe and recommended we repair a cracked section of the pipe. It appears that slip lining the pipe (similar to Plattsmouth 7-C) is the preferred method. Mike Sotak of FYRA Engineering reported on the proposed contract for design, bidding and construction observation (attached). Hellerich asked that we check on a warranty for the specific repairs to be completed. It was pointed out that this is action is to hire an engineering firm and the Board will need to approve a contract to make the repairs, at a later time. FYRA will report back on a warranty for this work. To save costs we hope the work can be done at the same time as other similar projects in the area.

It was moved by Vogel, seconded by Barrett, and unanimously approved by the Subcommittee to **recommend the Board of Directors approve the Professional Services Agreement with FYRA Engineering for the Upper Salt 4-A Spillway Rehabilitation Project at a cost not to exceed \$16,160.**

The next item on the agenda was to consider a contract modification for the Oak-Middle 82-B Watershed Rehabilitation project. Mike Murren reported that we are partnering with USDA/NRCS on the rehabilitation of this watershed dam. NRCS provided the design and 65% cost-share assistance to the NRD. Murren then highlighted the attached memo outlining 4 bid items that were underestimated by USDA/NRCS (the NRCS engineer before Jason Sall) and a modification is needed to account for the additional

work in excess of 25% over the NRCS estimated amount. The memo explains that for 2 of 4 items the contractor's (Goes Construction) unit price is far above what we feel is a fair price. The proposed action is to approve a modification using prices in line with the local market and also approve 14 additional days to complete the additional work. NRCS Engineer, Jason Sall indicated that the units of fencing are still an estimate and the final amount is likely to vary slightly.

The Subcommittee discussed many issues related to the project, including delays in completing the work, reviewed the additional work to be done, NRCS's errors in estimating the work to be done, and the likelihood this item will require future negotiations with the contractor of delays in completing the work.

It was moved by Vogel, seconded by Youkum, and unanimously approved by the Subcommittee to **recommend the Board of Directors authorize the approval of Modification #5 to the Oak-Middle 82-B Watershed Rehabilitation Project contract with Goes Construction of Talmage, Nebraska for an additional \$85,858.00 and an additional 14 extra working days to complete the work omitted from the estimated quantities.**

I then reported on staff's inspection for the Duane Burd property along Middle Creek (east of Pleasant Dale). Mr. Burd attended the last Board Meeting and requested assistance removing trees from the creek. The Subcommittee will hear the report on this at a future meeting. I also reviewed the upcoming Monolith Well Permit meeting schedule.

There being no additional business the meeting adjourned at 5:30 pm.

PDZ/pz

cc: Steve Seglin & Corey Wasserburger



PROFESSIONAL SERVICES AGREEMENT

PROJECT: Upper Salt Dam 4A Spillway Rehabilitation FYRA Engineering, LLC JOB #: 002-21-02
CLIENT: Lower Platte South NRD
ADDRESS: 3125 Portia Street, Lincoln, NE 68521
CONTACT: Jared Nelson, P.E. TEL: 402.476.2729 FAX: 402.476.6454
CONSULTANT: FYRA Engineering, LLC
ADDRESS: 12702 Westport Pkwy, Suite 300, Omaha, NE 68138
CONTACT: Michael K. Sotak, P.E. TEL: 402.502.7131 FAX: 402.932.6940
PROJECT DESCRIPTION: Design, bid solicitation and Construction Observation services for CIPP rehabilitation of watershed dam near Sprague, NE.

[X] SCOPE OF SERVICES (See Attachment) [X] SCHEDULE (See Attachment)

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

[] LUMP SUM. Compensation for these services shall be a Lump Sum of \$
[] TIME AND MATERIALS. Compensation for these services will not exceed \$16,160 without written authorization and will be based on the following option (per the attached Budget or List of Hourly Rates), and Reimbursable Expenses based on actual costs incurred and approved by FYRA Engineering, LLC and as authorized in writing by Client.
[] Subconsultant's Direct Job Wages times a factor of [] Budget/List of Subconsultant's Hourly Rates.
[] COST PLUS FIXED FEE. Compensation for these services shall be Subconsultant Cost plus a fixed professional fee, including Reimbursable Expenses. The estimated compensation for services is \$ plus a fixed fee of \$ for a total of \$

COMPENSATION DETAIL (See Following Pages) SCHEDULE OF PAYMENTS (See Following Pages)

SERVICES AUTHORIZED BY: [X] Execution of Agreement or [] Amendment(s) and/or NTP

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

CONSULTANT: FYRA Engineering, LLC CLIENT: Lower Platte South NRD
BY: Michael K. Sotak, P.E., D.WRE BY: Paul Zillig
SIGNATURE: [Signature] SIGNATURE:
TITLE: Owner/Principal Engineer TITLE: General Manager
DATE: 12 May 2021 DATE:



FYRA ENGINEERING, LLC STANDARD CONDITIONS

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



Engineer's Fee Estimate
Upper Salt Dam 4A Spillway Rehab
Lower Platte South Natural Resources District
Lancaster County, Nebraska

Tasks	FYRA Engineering			Expenses	Total
	Pg Manager	EI	Acctg		
	Sotak	Varies	Stratton		
	\$225	\$110	\$80		
No. Project Management					
1.1 Client Meetings (1 meeting)	4				
1.2 Monthly Invoicing (3 months)	1.5		1.5		
1.3 NDNR Dam Safety Coordination	3				
Project Management Task Total	\$1,913	\$0	\$120	\$0	\$2,033
No. Preliminary Design					
2.1 Review/Document Pipe Inspection Video	1.5	4			
2.2 Site Visit for Incidental Items	4			\$50	
Preliminary Design Task Total	\$1,238	\$440	\$0	\$50	\$1,728
No. Final Design					
3.1 Prepare Plans	6	24			
3.2 Prepare Bid Documents	4				
3.3 Prepare Technical Specifications	4				
Final Design Task Total	\$3,150	\$2,640	\$0	\$0	\$5,790
No. Construction					
4.1 Solicit Bids from Contractors	4				
4.2 Bid Recommendation	2				
4.3 Pre-Construction Meeting	2				
4.4 Construction Observation	4	20		\$150	
4.5 As-Builts/Record Drawings/NDNR Construction Certification	4	6			
Construction Task Total	\$3,600	\$2,860	\$0	\$150	\$6,610
Subtotal Hours	44	54	2	\$200	
Subtotal Costs	\$9,900	\$5,940	\$120	\$200	\$16,160

Schedule: Draft plans to be delivered to NRD for review within 30 days of execution of contract

P:\Projects\002-LPSNRD\002-21-02 Upper Salt 4-A PS Rehab\Contract\US 4-A CIPP Contract



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

To: Water Resources Subcommittee
From: Mike Murren
Date: June 14, 2021
Re: Oak-Middle 82-B Quantity Additional overruns (Modification #5)

Bid item 9-Topsoiling

Final Quantity	Bid Quantity	25%excess amount bid	Bid Price
16,509 sq/yd	4,725 sq/yd	1181sq/yd	\$10.00sq/yd

LPSNRD owe Goes Construction $4,725 + 1181 = 5906$ @\$10.00 = \$59,060.00

This leaves a total number of 16,509 Sq/yd -5906 sq/yd = 10,603 sq/yds to come up with a fair equitable unit cost.

Goes Construction requested \$10.00 Sq/Yd = \$ 106,030.00

LPSNRD Staff Recommendation \$6.00 Sq/Yd= \$63,618.00 and 7 additional workdays for the topsoiling.

Bid Item 20-Seeding/Mulching

Final Quantity	Bid Quantity	25% Excess of bid amount.	Bid Price
13 acres	3.9 acres	.9 acres	\$6,000/acre

LPSNRD owe Goes Construction 3.9-acre +.9 acre = 4.8 acres @\$6,000/acre =\$28,800.00

This leaves a total number of 13 acres – 4.8 acres = 8.2 acres to come up with a fair and equitable unit cost.

Goes Construction requested \$6,000/Acre =\$49,200.00

LPSNRD Staff Recommendation \$2,000/ Acre =\$16,400.00 and 3 additional workdays for Seeding & Mulching.

Bid Item 17- Diversions

Final quantity Additional owed	Bid Quantity	25% excess amount bid	Bid Price
820 Lin Ft	294 Lin Ft	\$4.00 Lin Ft	\$4.00 Lin Ft

LPSNRD owes Goes Construction 294+74= 368 @ \$ 4.00Lin/Ft. =\$1,472.00

This leaves a total number of 820 Lin/Ft-368 Lin/Ft=452 Lin/Ft to come up with a fair and equitable unit cost.

Goes Construction requested \$4.00 Lin/Ft = \$1,808.00

LPSNRD Staff Recommends \$4.00 Lin/Ft = \$1,808.00 and 1 additional day for the Diversion work.

Bid Item- 27 Fencing

Final quantity	Bid Quantity	25% excess of bid amount	Bid Price
1,789 Lin Ft	962 Lin Ft	232 Lin Ft	\$8.00 Lin/Ft

LPSNRD owes Goes Construction 962+232=1285 Lin/Ft 2 \$8.00 Lin/Ft =\$10,280

This leaves a total number of 1,789-1285=504 Lin/Ft to come up with a fair and Equitable unit cost.

Goes Construction requested \$8.00 Lin/Ft =\$4,032.00

LPSNRD staff recommends \$8.00 Lin/Ft =\$4,032.00 and 3 additional workdays for the Fence work.

	<u>Amount</u>	<u>Additional Workdays</u>
Bid Item 9-Topsoiling	\$63,618.00	7
Bid Item 20- Seeding and Mulching	\$16,400.00	3
Bid Item 17- Diversions	\$1,808.00	1
Bid Item 27- Fence	<u>\$4,032.00</u>	<u>3</u>
Total	\$85,858.00	14

Please note the unit costs of the diversions and fencing are in line with other projects so the LPSNRD will pay the bid unit price as indicated above.

The LPSNRD will allow 14 extra working days to complete the added work for the topsoiling and seeding/mulching/Diversions/Fencing per discussion with Jason Sall.

LPSNRD will also require Goes to either provide a lien waiver signed by all sub-contractors or vendors which acknowledges full payment of work or require Goes to update his current bond to reflect the additional negotiated amount of money that is agreed on with the LPSNRD.



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

AGENDA ITEM #11

Memorandum

Date: June 11, 2021
To: Each Director
From: Paul Zillig, General Manager
Subject: Water Resources Subcommittee Meeting – Additional Info.

The Water Resources Subcommittee will meet via video/teleconference at 4:30pm on Monday, June 14, 2021. Listed below and attached is some additional information on the agenda items that will require Board action.

Item 11a – Consideration of a Professional Services Agreement with FYRA Engineering for the Upper Salt 4-A Spillway Rehabilitation Project.

US 4-A is one of 70 dams as part of the Upper Salt Creek Watershed Project. The USDA/NRCS was the federal lead on this project and the NRD continues to operate and maintain the dam. This dam is located just NW of the Intersection of Hwy 77 and Hickman Road (see map). The State (Nebraska Dept of Natural Resources recently completed a video inspection of the pipe and noted cracks in the pipe. This needs to be corrected soon. Staff contacted and negotiated a contract with FYRA Engineering to provide engineering services from preliminary design, final design, and construction observation on a time and materials basis, at a cost not to exceed \$16,160. Staff is recommending approval of the attached agreement.

Item 11b - Consideration of Oak-Middle 82-B Rehabilitation Project contract Modification #5 with Goes Construction of Talmage, NE.

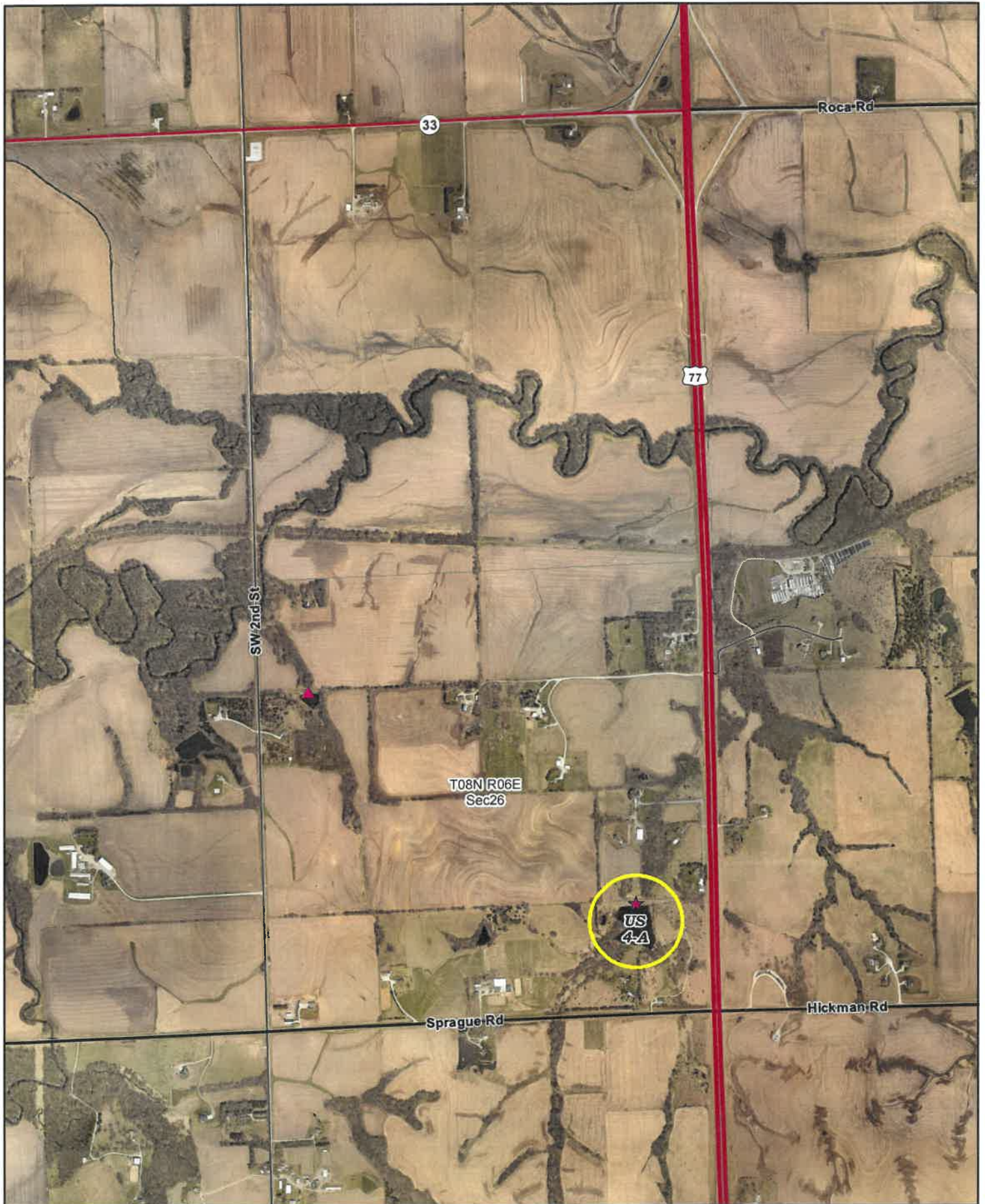
Progress continues to be slowly made by Goes Construction in completing the construction of Oak-Middle 82-B, north of Garland. A number of contract quantities far exceeded the USDA/NRCS estimated amounts or were omitted from the plans and now need to be added. Most unit prices are included in the contract but a few are not and are currently being negotiated. These items will add up to approximately an additional \$100,000 depending on the negotiated unit price. All of this work is required to complete the project, the unit price needs to be negotiated. Staff is working with Legal Counsel on this issue and the negotiations and will have additional information as we get closer to the WRS meeting on the 14th.

PDZ/pz

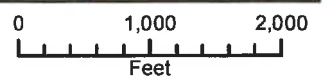
Cc: Steve Seglin & Corey Wasserburger



Upper Salt 4-A Location Map - SE Sec 26, T8N-R6E



Map By: Lower Platte South NRD, sdr June 2021





PROFESSIONAL SERVICES AGREEMENT

PROJECT: Upper Salt Dam 4A Spillway Rehabilitation FYRA Engineering, LLC JOB #: 002-21-02
CLIENT: Lower Platte South NRD
ADDRESS: 3125 Portia Street, Lincoln, NE 68521
CONTACT: Jared Nelson, P.E. TEL: 402.476.2729 FAX: 402.476.6454
CONSULTANT: FYRA Engineering, LLC
ADDRESS: 12702 Westport Pkwy, Suite 300, Omaha, NE 68138
CONTACT: Michael K. Sotak, P.E. TEL: 402.502.7131 FAX: 402.932.6940
PROJECT DESCRIPTION: Design, bid solicitation and Construction Observation services for CIPP rehabilitation of watershed dam near Sprague, NE.

[X] SCOPE OF SERVICES (See Attachment) [X] SCHEDULE (See Attachment)

COMPENSATION:

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

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

[X] TIME AND MATERIALS. Compensation for these services will not exceed \$16,160 without written authorization and will be based on the following option (per the attached Budget or List of Hourly Rates), and Reimbursable Expenses based on actual costs incurred and approved by FYRA Engineering, LLC and as authorized in writing by Client.

[] Subconsultant's Direct Job Wages times a factor of _____ [X] Budget/List of Subconsultant's Hourly Rates.

[] COST PLUS FIXED FEE. Compensation for these services shall be Subconsultant Cost plus a fixed professional fee, including Reimbursable Expenses. The estimated compensation for services is \$ _____ plus a fixed fee of \$ _____ for a total of \$ _____.

COMPENSATION DETAIL (See Following Pages)

SCHEDULE OF PAYMENTS (See Following Pages)

SERVICES AUTHORIZED BY: [X] Execution of Agreement or [] Amendment(s) and/or NTP

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

CONSULTANT: FYRA Engineering, LLC CLIENT: Lower Platte South NRD
BY: Michael K. Sotak, P.E., D.WRE BY: Paul Zillig

SIGNATURE: [Handwritten Signature] SIGNATURE: _____

TITLE: Owner/Principal Engineer TITLE: General Manager

DATE: 12 May 2021 DATE: _____



FYRA ENGINEERING, LLC STANDARD CONDITIONS

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



Engineer's Fee Estimate
Upper Salt Dam 4A Spillway Rehab
 Lower Platte South Natural Resources District
 Lancaster County, Nebraska

Tasks	FYRA Engineering			Expenses	Total
	Prj Manager	El	Acctg		
	Sotak	Varies	Stratton		
	\$225	\$110	\$80		
No. Project Management					
1.1 Client Meetings (1 meeting)	4				
1.2 Monthly Invoicing (3 months)	1.5		1.5		
1.3 NDNR Dam Safety Coordination	3				
Project Management Task Total	\$1,913	\$0	\$120	\$0	\$2,033
No. Preliminary Design					
2.1 Review/Document Pipe Inspection Video	1.5	4			
2.2 Site Visit for Incidental Items	4			\$50	
Preliminary Design Task Total	\$1,238	\$440	\$0	\$50	\$1,728
No. Final Design					
3.1 Prepare Plans	6	24			
3.2 Prepare Bid Documents	4				
3.3 Prepare Technical Specifications	4				
Final Design Task Total	\$3,150	\$2,640	\$0	\$0	\$5,790
No. Construction					
4.1 Solicit Bids from Contractors	4				
4.2 Bid Recommendation	2				
4.3 Pre-Construction Meeting	2				
4.4 Construction Observation	4	20		\$150	
4.5 As-Builts/Record Drawings/NDNR Construction Certification	4	6			
Construction Task Total	\$3,600	\$2,860	\$0	\$150	\$6,610
Subtotal Hours	44	54	2	\$200	
Subtotal Costs	\$9,900	\$5,940	\$120	\$200	\$16,160

Schedule: Draft plans to be delivered to NRD for review within 30 days of execution of contract

P:\Projects\002-LPSNRD\002-21-02 Upper Salt 4-A PS Rehab\Contract\US 4-A CIPP Contract