



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: May 19, 2021
To: Urban Subcommittee
From: Jared Nelson, District Engineer *JN*
Subject: Urban Subcommittee Meeting Minutes – May 2021

The Urban Subcommittee met virtually at 5:30pm, on Tuesday, May 18, 2021. Subcommittee members participating included Tom Green, Gary Aldridge, Bob Andersen, Christine Lamberty, Luke Peterson, Larry Ruth, Ray Stevens, and Susan Seacrest. Others participating included NRD staff Paul Zillig, Dave Potter, Mike Murren, Al Langdale, Tracy Zayac, Bryce Jensen, and Jared Nelson; Kelly Oelke with the City of Hickman; and LPSNRD Board Chair Deb Eagan. Director Green called the meeting to order at 5:31pm, and gave a brief welcome before reviewing the agenda.

The first item was consideration of a Professional Services Agreement for Engineering Services for Repairs to the Antelope Creek Drainage Structure near 5200 Van Dorn Street. Jensen described the problem and proposed project and referred to the attached Agreement from FYRA Engineering.

It was moved by Andersen, seconded by Stevens, and approved by the Subcommittee (with Green, Andersen, Lamberty, Ruth, Stevens, and Seacrest voting yes, Peterson abstaining, and Aldridge not voting) to recommend that the Board of Directors approve the Professional Services Agreement with FYRA Engineering, for Engineering Services for Repairs, on the Antelope Creek Pipe Rehabilitation Project near 5200 Van Dorn Street, in an amount not to exceed \$20,870.

The second item was consideration of an Interlocal Agreement finalizing the terms for the Hickman Trail Project (68th St underpass), a Community Assistance Program project. Zayac referred to the prior Board Action approving the Community Assistance Program project for the City of Hickman 68th Street Bike Trail Underpass, and described that this was a follow-up to that board action. The subcommittee reviewed and discussed the attached Interlocal Agreement.

It was moved by Stevens, seconded by Seacrest, and approved by the Subcommittee (with Green, Andersen, Lamberty, Peterson, Ruth, Stevens, and Seacrest voting yes and Aldridge not voting) to recommend that the Board of Directors approve the Interlocal Agreement with the City of Hickman for the City of Hickman 68th Street Bike Trail Underpass Community Assistance Program project.

The third item was to review program area accomplishments and to develop recommendations for the FY 22 budget and updates for the FY 23-26 Long Range Implementation Plan.

The FY 2021 accomplishments for each program (Community Assistance Program, Lincoln Stream Channel Improvements, Operation and Maintenance of Stormwater Facilities, and Stormwater Management) were presented and discussed, as well as the LRIP and budget status codes and Master Plan goals, desired outcomes and objectives. The nine-month update of the measurable goals and the Natural Resources Benefits of Practices and Programs Table were also reviewed and discussed. The subcommittee then discussed the proposed actions and expenditures for FY 2022 and for FY 2023-2026 for each Urban Subcommittee Program Area. Staff explained each action item and proposed expenditure.

With no recommended modifications, additions, or and deletions, it was moved by Andersen, seconded by Peterson, and approved by the Subcommittee (with Green, Andersen, Lamberty, Peterson, Ruth, Stevens, and Seacrest voting yes and Aldridge voting no) to submit the Final FY 2022 Actions and Budget Requests and the FY 2023-2026 Actions and Proposed Expenditures for the Urban Subcommittee to the Finance and Planning Subcommittee for inclusion in the first draft of the FY 2022 Budget and LRIP.

There being no further business the meeting adjourned at approximately 7:13 pm.


JN/jn



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Memorandum

Date: May 14, 2021
To: Board of Directors
From: Jared Nelson, District Engineer 
Subject: Urban Subcommittee Background Information – May 2021

The Urban Subcommittee will be meeting virtually on Tuesday, May 18, 2021 at 5:30pm to consider the following two items (in advance of the planned discussion regarding Urban LRIP & Budget). The Subcommittee will consider the following two items, and report to the Board their recommendations. Attached is background information on these items.

(a.) Consideration of a Professional Services Agreement for Engineering Services for Repairs to the Antelope Creek Drainage Structure near 5200 Van Dorn Street – During routine annual inspections in Lincoln, staff has found a 52-inch diameter CMP pipe in need of rehabilitation. This pipe discharges into Antelope Creek near 52nd and Van Dorn Streets. A Professional Services Agreement has been received from FYRA Engineering, for Engineering Services for design, bidding, and construction administration.

The Subcommittee will consider a recommendation that the Board of Directors approve the Professional Services Agreement with FYRA Engineering, for Engineering Services for Repairs, on the Antelope Creek Pipe Rehabilitation Project near 5200 Van Dorn Street, in an amount not to exceed \$20,870.

(b.) Community Assistance Program – Consideration of an Interlocal Agreement finalizing the terms for the Hickman Trail Project (68th St underpass). – See attached Memorandum from Tracy Zayac regarding this item, and the Interlocal Agreement for the City of Hickman's 68th Street Bike Trail Undercrossing, a Board approved Community Assistance Program Cost-Share project.

The Subcommittee will consider a recommendation that the Board of Directors approve the Interlocal Agreement with the City of Hickman for the City of Hickman 68th Street Bike Trail Underpass Community Assistance Program project.

Enclosures;

cc: Steve Seglin
Corey Wasserburger
Deb Eagan

PROJECT: Antelope Creek Pipe Rehabilitation **FYRA Engineering, LLC JOB #:** 002-21-04
CLIENT: Lower Platte South NRD
ADDRESS: 3125 Portia Street, Lincoln, NE 68521
CONTACT: Bryce Jensen **TEL:** 402.476.2729 **FAX:** 402.476.6454
CONSULTANT: FYRA Engineering, LLC
ADDRESS: 12702 Westport Pkwy, Suite 300, Omaha, NE 68138
CONTACT: Lindy Rogers, P.E. **TEL:** 402.502.7131 **FAX:** 402.932.6940
PROJECT DESCRIPTION: Inspection, design, bidding and construction coordination/observation for a 54" diameter CMP outletting into Antelope Creek near 52nd and Van Dorn Streets in Lincoln, Nebraska.

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

☐ **SCHEDULE (See Attachment)**

COMPENSATION:

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

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

TIME AND MATERIALS. Compensation for these services will not exceed \$20,870.00 without written authorization and will be based on the following option (per the attached Budget or List of Hourly Rates), and Reimbursable Expenses based on actual costs incurred and approved by FYRA Engineering, LLC and as authorized in writing by Client.

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


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

COMPENSATION DETAIL (See Following Pages)

SCHEDULE OF PAYMENTS (See Following Pages)

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

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

CONSULTANT:	<u>FYRA Engineering, LLC</u>	CLIENT:	<u>Lower Platte South NRD</u>
BY:	<u>Melinda C. Rogers</u>	BY:	<u>Paul Zillig</u>
SIGNATURE:		SIGNATURE:	_____
TITLE:	<u>Owner/Senior Engineer</u>	TITLE:	<u>General Manager</u>
DATE:	<u>14 May 2021</u>	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 insurance and coverage limits during the period of service as specified on the Certificate of Liability attached hereto and incorporated herein by this reference.

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.

ANTIDISCRIMINATION. 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.

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.



Task and Fee Schedule
Antelope Creek Pipe Rehabilitation
Design, Bidding and Construction Phases
52nd and Van Dorn Streets, Lincoln, Nebraska
FYRA Project No. 002-21-04

		Prj Engr/Prj Mngr	Engineer	El	Student Intern	Admin	FYRA Expenses	Total
Tasks		Rogers	(Varies)	(Varies)	(Varies)	Stratton		
		\$205	\$125	\$110	\$65	\$80		
Task 1	Project Management							
1.1	Coordination Meeting with NRD Staff (1)	3						
	LPSNRD Sub-Committee Meeting for FYRA Contract Approval	3					\$25	
1.3	LPSNRD Board Meeting For FYRA Contract Approval	3					\$25	
1.4	Monthly Invoicing & Project/Schedule Updates (4)	2				4		
Project Management Task Total		\$2,255	\$0	\$0	\$0	\$320	\$50	\$2,625
Task 2	Final Design¹							
2.1	Site Visit, Site Survey and Pipe Inspection	1	5	5			\$25	
2.2	Hydrologic and Hydraulic Analysis	1		5	2			
2.3	Construction Documents and Specifications	4		40	25			
2.4	Engineer's Opinion of Probable Construction Cost	1.5		6				
Final Design Task Total		\$1,230	\$625	\$5,500	\$1,755	\$0	\$25	\$9,135
Task 3	Project Bidding							
3.1	Coordination with Contractors During Bidding	4		2				
3.2	Pre-Bid Meeting	3					\$25	
3.3	Project Bidding and Coordination with Contractors After Bidding	4		4				
3.4	LPSNRD Sub-Committee and Board Meetings	5					\$25	
Project Bidding Task Total		\$3,280	\$0	\$660	\$0	\$0	\$50	\$3,990
Task 4	Construction Phase							
4.1	ROW Permit Coordination with City and Pre-Construction Meeting	5		4			\$25	
4.2	On-Site Construction Observation and Final Inspection ²	5	8				\$35	
4.3	Construction Reporting, Pay Application and Project Closeout	4	6					
Construction Phase Task Total		\$2,870	\$1,750	\$440	\$0	\$0	\$60	\$5,120
Subtotal Hours		47	19	60	27	4		
Subtotal Costs		\$9,635	\$2,375	\$6,600	\$1,755	\$320	\$185	\$20,870

Notes

- ¹ Assumes that a floodplain development permit is not required for this project.
- ² Assumes 1 day on site for pre-construction review and 1-12 hour day for construction.

Memorandum

Date: May 13, 2021

To: Urban Subcommittee

From: Tracy Zayac, Stormwater/Watershed Specialist

RE: City of Hickman CAP project interlocal agreement

At the March 17, 2021, Board meeting, the District approved a Community Assistance Program request from the City of Hickman to cost-share on the City's proposed 68th Street bike trail underpass. The project is currently scheduled to commence construction in Spring 2022 as part of the improvements to 68th Street; the District's approved cost-share amount is \$103,743.

The Board's approval was made contingent on the execution of an interlocal agreement between the District and the City. The City of Hickman unanimously approved the attached interlocal agreement at its May 11, 2021, City Council meeting.

Staff recommended motion: Recommend the Board of Directors approve the interlocal agreement with the City of Hickman for the City of Hickman 68th Street bike trail underpass Community Assistance Program project.

1 attachment

**HICKMAN BIKE TRAIL UNDERCROSSING
COMMUNITY ASSISTANCE PROGRAM COST-SHARE PROJECT
INTERLOCAL AGREEMENT
BETWEEN
CITY OF HICKMAN, NEBRASKA,
AND
LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT**

This Interlocal Agreement (“Agreement”) is made and entered into by and between the City of Hickman, Nebraska, a municipal corporation (“City”), and Lower Platte South Natural Resources District, a political subdivision of the State of Nebraska (“District”), hereinafter may be referred to as each Party or collectively as the Parties.

WITNESSETH:

RECITALS

A. City is a municipal corporation and city of the second class as provided in *Neb. Rev. Stat.* § 17-501 and has the authority pursuant to such section to enter into contracts. In addition, City, pursuant to *Neb. Rev. Stat.* §§ 17-508 and 17-509, has the authority to (1) provide for the construction of bridges and culverts, (2) widen roadways, and (3) construct pedestrian and sidewalk facilities.

B. District, pursuant to *Neb. Rev. Stat.* § 2-3229, has the authority to develop and execute plans, facilities, works, and programs which include, among others, recreational facilities.

C. City updated its most recent Hickman Trail Master Plan in 2017 to incorporate new development areas and extend the City’s existing trail network. City is concerned that current and future traffic volume on 68th Street may impact the safety of users traveling on planned trails that will cross 68th Street.

D. City plans to construct improvements to 68th Street to accommodate increased traffic volume and future development. City will construct a bike trail underpass as part of this improvement project, to route trail users under 68th Street. City intends to construct this project beginning in Spring 2022.

E. District has established the Community Assistance Program, which is a cost-share program for communities undertaking projects which coincide with District goals and authorities.

F. The City and District wish to work together to make the most effective use of their powers by cooperating on a basis of mutual advantage under the auspices of the Interlocal Cooperation Act, *Neb. Rev. Stat.* §§ 13-801 to 13-827, to provide partial funding from District for a project through the Community Assistance Program to improve future pedestrian and cyclist safety on City's recreational trails which will cross 68th Street ("Trails"). The District's sole obligation under this Agreement is to provide cost-share funding to the City and provided herein.

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

1. **Contract.** The City will contract with an engineering firm ("Engineer") to perform the services set out in the attached conceptual design plan (Exhibit A), at a total estimated cost of \$451,990, of which \$207,487.50 is eligible for cost-share under the District's Community Assistance Program ("Eligible Costs").

2. **Preliminary design plans.** The City will submit to the District a copy of the preliminary design plans for the Trails underpass for District review.

3. **Final design plans.** The City will approve the final design plans following District review and submit to the District a copy of the final design plans.

4. **Bidding, construction, and maintenance.** The City is responsible for all aspects of the Trails, including, but not limited to, the following project components:

- (a) Obtaining all necessary permits and land rights, including easements;
- (b) Soliciting, reviewing, and approving bids from contractors;
- (c) Constructing the project; and
- (d) Operating and maintaining the Trails, once completed.

5. **Trail completion.** The City agrees to complete the Trails which will connect to the 68th Street trail undercrossing within five (5) years.

6. **Cost-sharing.** Subject to the District's approval of the actual costs, the District agrees to pay up to 50% of the Eligible Costs of the project, not to exceed \$103,743.

7. **Other Funding Sources.** Additional funding sources may be available for the project. Any additional funds that are obtained for the project will be subtracted from the total cost of the project, and the City and District agree to share equally in the remaining Eligible Costs of the project.

8. **Payment by the District.** Upon completion of the project, the City will provide to the District a copy of each bill for Eligible Costs and proof of payment of those costs. The District will pay to the City a 50% share of the Eligible Costs of the project, up to the amount shown in Paragraph 6, within thirty (30) days of receipt of a request for reimbursement, unless disputed by the District. If any amount of the Eligible Costs is disputed by the District, the District shall timely pay all amounts that are not in dispute and meet with the City and/or Engineer to attempt to resolve the disputed amounts.

9. **Term.** The term of this Agreement shall commence after approval by the Parties and execution by each Party and shall continue until it is modified by mutual consent or terminated by either party giving the other sixty (60) days' written notice of the intent to terminate this Agreement. In no event shall this Agreement continue for more than three (3) years.

10. **Binding.** This Agreement shall inure to the benefit of the Parties hereto and the successors of each. Each Party agrees that this Agreement may not be assigned without the prior written consent of the other.

11. **Amendment.** This Agreement may only be amended in writing, and the Parties agree that this Agreement contains the entire agreement between them.

12. **Additional Provisions.**

(a) **Mutual Indemnity.** Each Party shall indemnify and hold harmless the other Party, its officers, agents, and employees from and against claims, damages, losses and expenses, including, but not limited to, attorney's fees, if permitted by law, arising out of or resulting from performance of this Agreement, that results in any claim for 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, and are caused in whole or in part by the intentional or negligent act or omission of the Party or the Party's employees, or any directly or indirectly employed by the Party, or anyone for whose acts any of them may be liable.

(b) Insurance. Each Party shall have in place and maintain during the life of this Agreement, either by being self-insured or purchasing insurance or having a combination of both, the following types and amounts: (1) General Liability [\$1,000,000.00] Per Occurrence – General Aggregate [\$2,000,000.00]; Personal and Advertising injury [\$1,000,000.00]; Fire Damage (any one fire) [\$50,000.00]; Medical Expense (any one person) [\$5,000.00]; (2) Automobile Liability – Bodily Injury and Property Damage Liability including owned, non-owned and hired autos, Combined single limit [\$1,000,000.00]; Aggregate [\$2,000,000.00]; Umbrella Coverage [\$2,000,000.00]; (3) Worker's Compensation and Employer's Liability – statutory amount. Each Party specifically states that it will require its insurer to provide each party thirty (30) days' notice of cancellation, non-renewal or any material reduction of insurance coverage, to name each Party an additional insured and that subrogation has been waived for commercial liability and automobile liability policies.

(c) Independent Contractor Status. It is the express intent of the Parties that this Agreement shall not create an employer-employee or agency relationship between the Parties, and any contractor, or any employee's or other person's action on behalf of any contractor, in the performance of this Agreement, shall be deemed to be independent contractor(s) during the entire term of this Agreement or any renewals thereof. It is agreed between the Parties that any employees of contractor shall at all times continue to be employees of the contractor for the duration of this Agreement. The

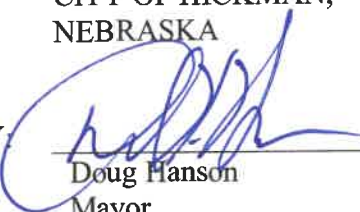
contractor shall be responsible for all salary and benefits of its employees and they shall not be entitled to any salary or benefits for either Party. The contractor shall also be responsible for maintaining worker's compensation, sick leave or injury leave.

(d) Assumption of Liability. Each Party agrees that it will be responsible for its own acts and the results thereof and those of its agents and/or employees while they are performing duties and obligations of Each Party under this Agreement. Each Party also agrees that it shall not be responsible for the acts of the other Party while they are performing duties and obligations of such other Party. Each Party therefore agrees that it will assume all risk and liability to itself, its agents and employees while performing duties and obligations within the scope of their employment for such Party, for injury to persons or property resulting in any manner from the conduct of its own operations and the operations of its own agents and employees, while acting on such Party's behalf while in the scope of their employment, and for any loss, cost, damage caused thereby during the performance of duties and obligations under this Agreement.

(e) Anti-Discrimination. Each Party agrees that, if a contractor or subcontractor is hired by either or both of them, then the Party or Parties will add a provision in any contract requiring the contractor or any subcontractors not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to the employee's or applicant's hire, tenure, terms, conditions, or

privileges of employment, because of the employee's or applicant's race, color, religion, age, sex, sexual orientation, genetic information, disability, national origin, familial status, veteran status, or other factors which lawfully cannot be the basis for employment decisions.

IN WITNESS WHEREOF, Each Party has duly executed this Agreement on the date specified below.

CITY OF HICKMAN,
NEBRASKA
BY: 
Doug Hanson
Mayor
(Date) 5/12/2021

LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT
BY: _____
Paul D. Zillig
General Manager
(Date) _____