



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: November 9, 2018
To: Board of Directors
From: Ed Ubben
Subject: Urban Subcommittee Minutes

The Urban Subcommittee met on November 8, 2018 at the District office at 5:30 pm. There was three items on the agenda. Present at the meeting was Bruce Johnson, (Chair), Karen Amen, Bob Andersen, Mike DeKalb, Richard Bolte, Milt Schmidt, Anthony Schutz and Ron Svoboda. Ray Stevens, Chairman of the Board was also present. There was a quorum. Staff present was; Paul Zillig, Dave Potter, Jared Nelson, Kyle Hauschild, and Ed Ubben. Also in attendance were Michael Barrett, Mayor of Weeping Water and Travis Figard with Olsson.

The agenda items are as follows:

- a. Community Assistance Program --- Consideration of an application from the City of Weeping Water for the Gospel Run Bank Stabilization Project “G” to “H” Streets. (ACTION)
 - b. Consideration of a Project Partnership Agreement with the Department of the Army for Design and Construction of the Deadmans Run, Lincoln, Nebraska Section 205 Project. (ACTION)
 - c. Consideration of a Mutual Access Agreement with EADO, LLC. and the City of Lincoln to access the Antelope Valley Project near 22nd and “M” Street. (ACTION)
-
- a. **Community Assistance Program --- Consideration of an application from the City of Weeping Water for the Gospel Run Bank Stabilization Project “G” to “H” Streets. –** The City of Weeping Water has come to us for assistance through the Community Assistance Program for a cost-share to stabilize a channel which is on the western edge of the downtown area. The channel is right behind the curb, the roadway is getting undermined. They have contacted Olsson for professional services which include; design, survey, drainage analysis, permitting and bidding services for a fee of \$30,500. Weeping Water is asking for a 50% cost-share. (See attached). **It was moved by DeKalb, seconded by Andersen, and unanimous to approve the Community Assistance Program application from the City of Weeping**



Water for 50% of Engineering and Design, for the Gospel Run Bank Stabilization project up to and not to exceed \$15,250 NRD funds.

b. Consideration of a Project Partnership Agreement with the Department of the Army for Design and Construction of the Deadmans Run, Lincoln, Nebraska Section 205 Project. -

-- Zillig stated that the next step for the Section 205 Flood Reduction Project located on Deadmans Run is to put in place a Project Partnership Agreement with the Department of the Army (Corps of Engineers). The agreement covers the steps that need to be taken in order to construct the project. Zillig did state that the City Council approved the interlocal agreement with the NRD at Monday's meeting for the project.

It was moved by DeKalb, seconded by Andersen, and unanimously approved by the subcommittee to recommend the Board of Directors approve of the Project Partnership Agreement between the Department of the Army and the NRD for Design and Construction of the Deadmans Run, Lincoln, Nebraska section 205 Project.

c. Consideration of a Mutual Access Agreement with EADO, LLC. and the City of Lincoln to access the Antelope Valley Project near 22nd and "M" Street. – The District maintains the Antelope Valley Flood Reduction Project. Part of the maintenance plan is to remove accumulated sediment behind the "N" Street Weir. Every two to three years the District needs access to remove the sediment. (See attachment) **It was moved by Andersen, seconded by DeKalb, and unanimously approved by the subcommittee to recommend the Board of Directors approve the Mutual Access Agreement with EADO, LLC. and the City of Lincoln for access to an area near 22nd & "M" Streets for the maintenance and access of the Antelope Valley Flood Reduction Project.**

With no other business the meeting was adjourned at 5:57 pm.

8a.

CITY OF WEEPING WATER
P.O. BOX 329
WEEPING WATER, NE 68463
402-267-5152
kg33101@windstream.net

ROGER JOHNSON
CITY ATTORNEY

MICHAEL BARRETT
MAYOR

LINDA FLEMING
CITY CLERK

October 11, 2018

Mr. Paul Zillig
Lower Platte South NRD
3125 Portia Street
Lincoln, NE 68521

Weeping Water – Gospel Run Bank Stabilization Work

Dear Mr. Zillig,

The City of Weeping Water is requesting funding through the Community Assistance Program. The requested funding is for a 50% cost split for the design of channel bank stabilization along Gospel Run. Olsson has been retained by the City of Weeping Water to perform the topographic survey, drainage analysis, design, permitting and bidding services for this project. The design contract with Olsson is for \$30,500 so the City of Weeping Water is requesting \$15,250 from the Lower Platte South NRD (LPSNRD).

Currently the section of Gospel Run along Commercial Street between G and H Street is experiencing severe bank stability problems. The banks are incised and within a couple feet of undermining the street. There are several utilities along Commercial Street that may be compromised if the erosion continues. Olsson has begun the design on this project due the current condition of the banks and the timing required for USACE 404 permitting. As part of the design project, Olsson needs to perform a wetland delineation along this stretch and the delineation needs to be completed prior to the end of October 2018. If the delineations are not completed prior to the end of October, then construction will not be able to occur until the late spring or summer of 2019 which could allow for more damage to occur along Gospel Run and to Commercial Street.

Attached you will find some representative photos of the areas that need repaired along with the approved contract with Olsson for the design work. We respectfully ask that you forward this request to the LPSNRD Board of Directors and let us know if we make the agenda for the November 14th Board Meeting. Olsson will attend the board meeting to represent the interests of the City.

Sincerely,


Michael Barrett, Mayor

cc: File, Travis Figard (Olsson), Linda Fleming (City of Weeping Water)

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LETTER AGREEMENT FOR PROFESSIONAL SERVICES

September 25, 2018

City of Weeping Water
Attn: Linda Fleming
101 West Eldora Avenue
Weeping Water, NE 68463

Re: LETTER AGREEMENT FOR PROFESSIONAL SERVICES
City of Weeping Water Design of Gospel Run Bank Stabilization Project
Between H Street and G Street
Weeping Water, Nebraska

Dear Mayor & City Council Members:

It is our understanding that the City of Weeping Water ("Client") requests Olsson Associates, Inc. ("Olsson") to perform the services described herein pursuant to the terms of this Letter Agreement for Professional Services, Olsson's General Provisions and any exhibits attached hereto (all documents constitute and are referred to herein as the "Agreement") for the Project.

Olsson has acquainted itself with the information provided by Client relative to the Project and based upon such information offers to provide the services described below for the Project. Client warrants that it is either the legal owner of the property to be improved by this Project or that Client is acting as the duly authorized agent of the legal owner of such property. Client acknowledges that it has reviewed the General Provisions and any exhibits attached hereto, which are expressly made a part of and incorporated into the Agreement by this reference. In the event of any conflict or inconsistency between this Letter Agreement, and the General Provisions regarding the services to be performed by Olsson, the terms of the General Provisions shall take precedence.

Olsson shall provide the following services ("Scope of Services") to Client for the Project: as more specifically described in "Scope of Services" attached hereto. Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.

SCHEDULE FOR OLSSON'S SERVICES

Unless otherwise agreed, Olsson expects to perform its services under the Agreement as follows:

Anticipated Start Date: October 8, 2018

Anticipated Completion Date: May 1, 2019

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

COMPENSATION

Client shall pay to Olsson for the performance of the Scope of Services, the actual time of personnel performing such services on an hourly cost basis times a factor of 3.085 for services rendered by our principals and employees engaged directly on the Project, and all actual reimbursable expenses in accordance with Reimbursable Expense Schedule attached to this Agreement. Olsson shall submit invoices on a monthly basis and payment is due within 30 calendar days of invoice date.

If applicable: Olsson's Scope of Services will be provided on a time and expense basis not to exceed \$30,500.

TERMS AND CONDITIONS OF SERVICE

We have discussed with you the risks, rewards and benefits of the Project, the Scope of Services, and our fees for such services and the Agreement represents the entire understanding between Client and Olsson with respect to the Project. The Agreement may only be modified in writing signed by both parties.

Client's designated Project Representative shall be Mike Barrett.

If this Agreement satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain one original for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.

OLSSON ASSOCIATES, INC.

By 
Travis A. Figard, PE

By 
Brian P. Dunnigan, PE

By signing below, you acknowledge that you have full authority to bind Client to the terms of the Agreement. If you accept the terms set forth herein, please sign:

CITY OF WEEPING WATER

By 
Signature

Print Name Michael Barrett

Title Mayor

Dated 10-11-18

Attachments
General Provisions
Scope of Services

GENERAL PROVISIONS

These General Provisions are attached to and made a part of the respective Letter Agreement or Master Agreement, dated September 25, 2018 between City of Weeping Water ("Client") and Olsson Associates, Inc. ("Olsson") for professional services in connection with the project or projects arising under such Letter Agreement or Master Agreement (the "Project(s)").

As used herein, the term "this Agreement" refers to these General Provisions, the applicable Letter Agreement or Master Agreement, and any other exhibits or attachments thereto as if they were part of one and the same document.

SECTION 1—OLSSON'S SCOPE OF SERVICES

Olsson's scope of services for the Project(s) is set forth in the applicable Letter Agreement or Master Agreement ("Scope of Services").

SECTION 2—ADDITIONAL SERVICES

2.1 Unless otherwise expressly included, Scope of Services does not include the categories of additional services set forth in Sections 2.2 and 2.3.

2.2 If Client and Olsson mutually agree for Olsson to perform any optional additional services as set forth in this Section 2.2 ("Optional Additional Services"), Client will provide written approval of the agreed-upon Optional Additional Services, and Olsson shall perform or obtain from others such services and will be entitled to an increase in compensation at rates provided in this Agreement. Olsson may elect not to perform all or any of the Optional Additional Services without cause or explanation:

2.2.1 Preparation of applications and supporting documents for governmental financial support of the Project(s); preparation or review of environmental studies and related services; and assistance in obtaining environmental approvals.

2.2.2 Services to make measured drawings of or to investigate existing conditions of facilities.

2.2.3 Services resulting from changes in the general scope, extent or character of the Project(s) or major changes in documentation previously accepted by Client where changes are due to causes beyond Olsson's control.

2.2.4 Services resulting from the discovery of conditions or circumstances which were not contemplated by Olsson at the commencement of this Agreement. Olsson shall notify Client of the newly discovered conditions or circumstances and Client and Olsson shall renegotiate, in good faith, the compensation for this Agreement, if amended terms cannot be agreed upon, Olsson may terminate this Agreement and Olsson shall be paid for its services through the date of termination.

2.2.5 Providing renderings or models.

2.2.6 Preparing documents for alternate bids requested by Client.

2.2.7 Analysis of operations, maintenance or overhead expenses; value engineering; the preparation of rate schedules; earnings or expense statements; cash flow or economic evaluations or; feasibility studies, appraisals or valuations.

2.2.8 Furnishing the services of independent professional associates or consultants for work beyond the Scope of Services.

2.2.9 Services necessary due to the Client's award of more than one prime contract for the Project(s); services necessary due to the construction contract containing cost plus or incentive-savings provisions; services necessary in order to arrange for performance by persons other than the prime contractor; or those services necessary to administer Client's contract(s).

2.2.10 Services in connection with staking out the work of contractor(s).

2.2.11 Services during out-of-town travel or visits to the site beyond those specifically identified in this Agreement.

2.2.12 Preparation of operating and maintenance manuals.

2.2.13 Services to redesign some or all of the Project(s).

2.2.14 Preparing to serve or serving as a consultant or witness or assisting Client with any litigation, arbitration or other legal or administrative proceeding.

2.2.15 Services relating to Construction Observation, Certification, Inspection, Construction Cost Estimating, project observation, construction management, construction scheduling, construction phasing or review of Contractor's performance means or methods.

2.3 Whenever, in its sole discretion, Olsson determines additional services as set forth in this Section 2.3 are necessary to avoid a delay in the completion of the Project(s) ("Necessary Additional Services"), Olsson shall perform or obtain from others such services without waiting for specific instructions from Client, and Olsson will be entitled to an increase in compensation for such services at the standard hourly billing rate charged for those employees performing the services, plus reimbursable expenses, if any:

2.3.1 Services in connection with work directive changes and/or change orders directed by the Client to any contractors.

2.3.2 Services in making revisions to drawings and specifications occasioned by the acceptance of substitutions proposed by contractor(s); services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by contractor(s); or evaluating an unreasonable or extensive number of claims submitted by contractor(s) or others in connection with the Project(s).

2.3.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.3.4 Additional or extended services during construction made necessary by (1) work damaged during construction, (2) a defective, inefficient or neglected work by any contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any contractor.

SECTION 3—CLIENT'S RESPONSIBILITIES

3.1. Client shall provide all criteria and full information as to Client's requirements for the Project(s); designate and identify in writing a person to act with authority on Client's behalf in respect of all aspects of the Project(s); examine and respond promptly to Olsson's submissions; and give prompt written notice to Olsson whenever Client observes or otherwise becomes aware of any defect in the Olsson's services.

3.2 Client agrees to pay Olsson the amounts due for services rendered and expenses within thirty (30) days after Olsson has provided its invoice for such services. In the event Client disputes any invoice item, Client shall give Olsson written notice of such disputed item within fifteen (15) days after receipt of such invoice and shall pay to Olsson the undisputed portion of the invoice according to the provisions hereof. If Client fails to pay any invoiced amounts when due, interest will accrue on each unpaid amount at the rate of thirteen percent (13%) per annum from the date due until paid according to the provisions of this Agreement. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

3.2.1 If Client fails to make any payment due Olsson for services and expenses within thirty (30) days after receipt of Olsson's statement therefore, Olsson may, after giving seven (7) days written notice to Client, suspend services to Client under this Agreement until Olsson has been paid in full all amounts due for services, expenses and charges and Client will not obtain any license to any Work Product or be entitled to retain or use any Work Product pursuant to Section 7.1 unless and until Olsson has been paid in full and Client has fully satisfied all of its obligations under this Agreement.

3.3 Payments to Olsson shall not be withheld, postponed or made contingent on the construction, completion or success of the Project(s) or upon receipt by the Client of offsetting reimbursements or credit from other parties who may have caused the need for additional services. No withholdings, deductions or offsets shall be made from Olsson's compensation for any reason unless and until Olsson has been found to be legally liable for such amounts.

3.4 Client shall also do the following and pay all costs incident thereto:

3.4.1 Furnish to Olsson any existing and/or required borings, probings or subsurface explorations; hydrographic surveys; laboratory tests or inspections of samples, materials or equipment; appropriate professional interpretations of any of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic or

utility surveys; property descriptions; and/or zoning or deed restrictions; all of which Olsson may rely upon in performing services hereunder.

3.4.2 Guarantee access to and make all provisions for Olsson to enter upon public and private property reasonably necessary to perform its services on the Project(s).

3.4.3 Provide such legal, accounting, independent cost estimating or insurance counseling services as may be required for the Project(s); any auditing service required in respect of contractor(s)' applications for payment; and/or any inspection services to determine if contractor(s) are performing the work legally.

3.4.4 Provide engineering surveys to establish reference points for construction unless specifically included in Olsson's Scope of Services.

3.4.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project(s).

3.4.6 If more than one prime contractor is to be awarded the contract for construction, designate a party to have responsibility and authority for coordinating and interfacing the activities of the various prime contractors.

3.5 Client shall pay all costs incident to obtaining bids or proposals from contractor(s).

3.6 Client shall pay all permit application review costs for government authorities having jurisdiction over the Project(s).

3.7 Contemporaneously with the execution of this Agreement, Client shall designate in writing an individual to act as its duly authorized Project(s) representative.

3.8 Client shall bear sole responsibility for:

3.8.1 Jobsite safety. Neither the professional activities of Olsson, nor the presence of Olsson or its employees or sub-consultants at the Project shall impose any duty on Olsson relating to any health or safety laws, regulations, rules, programs or procedures.

3.8.2 Notifying third parties including any governmental agency or prospective purchaser, of the existence of any hazardous or dangerous materials located in or around the Project(s) site.

3.8.3 Providing and updating Olsson with accurate information regarding existing conditions, including the existence of hazardous or dangerous materials, proposed Project(s) site uses, any change in Project(s) plans, and all subsurface installations, such as pipes, tanks, cables and utilities within the Project(s) site.

3.8.4 Providing and assuming all responsibility for: interpretation of contract documents; Construction Observations; Certifications; Inspections; Construction Cost Estimating; project observations; construction management; construction scheduling; construction phasing; and review of Contractor's performance, means and methods. Client waives any claims against Olsson and releases Olsson from liability relating to or arising out of such services and agrees, to the

fullest extent permitted by law, to indemnify and hold Olsson harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to such actions and services.

3.9 Client releases Olsson from liability for any incorrect advice, judgment or decision based on inaccurate information furnished by Client or others.

3.10 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site, Olsson may immediately stop work in the affected area and report the condition to Client. Client shall be solely responsible for retaining independent consultant(s) to determine the nature of the material and to abate or remove the material. Olsson shall not be required to perform any services or work relating to or in the area of such material until the material has been removed or rendered harmless and only after approval, if necessary of the government agency with jurisdiction.

SECTION 4—MEANING OF TERMS

4.1 The "Cost of Construction" of the entire Project(s) (herein referred to as "Cost of Construction") means the total cost to Client of those portions of the entire Project(s) designed and specified by Olsson, but it will not include Olsson's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Client's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project(s) or the cost of other services to be provided by others to Client pursuant to Section 3.

4.2 The "Salary Costs": Used as a basis for payment mean salaries and wages (base and incentive) paid to all Olsson's personnel engaged directly on the Project(s), including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.

4.3 "Certify" or "a Certification": If included in the Scope of Services, such services shall be limited to a statement of Olsson's opinion, to the best of Olsson's professional knowledge, information and belief, based upon its periodic observations and reasonable review of reports and tests created by Olsson or provided to Olsson. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that any certifications based upon discrete sampling observations and that such observations indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services and certification does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any

laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Olsson shall sign pre-printed form certifications only if (a) Olsson approves the form of such certification prior to the commencement of its services, (b) such certification is expressly included in the Scope of Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. It is understood that any certification by Olsson shall not relieve the Client or the Client's contractors of any responsibility or obligation they may have by industry custom or under any contract.

4.4 "Opinion of Probable Cost": An opinion of probable construction cost made by Olsson. In providing opinions of probable construction cost, it is recognized that neither the Client nor Olsson has control over the costs of labor, equipment or materials, or over the contractor's methods of determining prices or bidding. The opinion of probable construction costs is based on Olsson's reasonable professional judgment and experience and does not constitute a warranty, express or implied, that the contractor's bids or the negotiated price of the work on the Project(s) will not vary from the Client's budget or from any opinion of probable cost prepared by Olsson.

4.5 "Day": A calendar day of 24 hours. The term "days" shall mean consecutive calendar days of 24 hours each, or fraction thereof.

4.6 "Construction Observation": If included in the Scope of Services, such services during construction shall be limited to periodic visual observation and testing of the work to determine that the observed work generally conforms to the contract documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of Construction Observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor. Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees shall notify Olsson at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.

4.7 "Inspect" or "Inspection": If included in the Scope of Services, such services shall be limited to the periodic visual observation of the contractor's completed work to permit Olsson, as an experienced and qualified professional, to determine that the observed work, generally conforms to the contract

documents. Olsson shall not be responsible for constant or exhaustive observation of the work. Client understands and agrees that such visual observations are discrete sampling procedures and that such procedures indicate conditions that exist only at the locations and times the observations were performed. Performance of such observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the work may occur. Olsson shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor(s) or for the contractor's safety precautions and programs nor for failure by the contractor(s) to comply with any laws or regulations relating to the performance or furnishing of any work by the contractor(s). Client shall hold its contractor(s) solely responsible for the quality and completion of the Project(s), including construction in accordance with the construction documents. Any duty under this Agreement is for the sole benefit of the Client and not for any third party, including the contractor(s) or any subcontractor(s). Client, or its designees, shall notify Olsson at least twenty-four (24) hours in advance of any inspections required by the construction documents.

4.8 "Record Documents": Drawings prepared by Olsson upon the completion of construction based upon the drawings and other data furnished to Olsson by the Contractor and others showing significant changes in the work on the Project(s) made during construction. Because Record Documents are prepared based on unverified information provided by others, Olsson makes no warranty of the accuracy or completeness of the Record Documents.

SECTION 5—TERMINATION

5.1 Either party may terminate this Agreement, for cause upon giving the other party not less than seven (7) calendar days written notice of default for any of the following reasons; provided, however, that the notified party shall have the same seven (7) calendar day period in which to cure the default:

5.1.1 Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

5.1.2 Assignment of this Agreement or transfer of the Project(s) by either party to any other entity without the prior written consent of the other party;

5.1.3 Suspension of the Project(s) or Olsson's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate.

5.2 In the event of a "for cause" termination of this Agreement by either party, the Client shall, within fifteen (15) calendar days after receiving Olsson's final invoice, pay Olsson for all services rendered and all reimbursable costs incurred by Olsson up to the date of termination, in accordance with the payment provisions of this Agreement.

5.2.1 In the event of a "for cause" termination of this Agreement by Client and (a) a final determination of default is entered against Olsson under Section 6.2 and (b) Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product pursuant to Section 7.1.

5.3 The Client may terminate this Agreement for the Client's convenience and without cause upon giving Olsson not less than seven (7) calendar days written notice. In the event of any termination that is not the fault of Olsson, the Client shall pay Olsson, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by Olsson in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs, any fees, costs or expenses incurred by Olsson in preparing or negotiating any proposals submitted to Client for Olsson's Scope of Services or Optional Additional Services under this Agreement and all other expenses directly resulting from the termination and a reasonable profit of ten percent (10%) of Olsson's actual costs (including overhead) incurred.

SECTION 6—DISPUTE RESOLUTION

6.1. Mediation

6.1.1 All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting.

6.1.2 Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third party mediator shall be qualified to evaluate the performance of both of the parties, and shall be familiar with the design and construction progress. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

6.1.3 Each party shall pay the fees and expenses of the third party mediator and such costs shall be borne equally by both parties.

6.2 Arbitration or Litigation

6.2.1 Olsson and Client agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the services of Olsson, the Project(s), or this Agreement (hereinafter collectively referred to as "Disputes") which may not be resolved through mediation. Therefore, Olsson and Client agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Olsson. If Olsson chooses arbitration, the arbitration proceeding shall proceed in accordance with the Construction Industry Arbitration Rules of the AAA.

6.2.2 Client hereby agrees that Olsson shall have the right to include Client, by consolidation, joinder or other manner, in any arbitration or litigation involving Olsson and a subconsultant or subcontractor of Olsson or Olsson and any other person or entity, regardless of who originally initiated such proceedings.

6.2.3 If Olsson chooses arbitration or litigation, either may be commenced at any time prior to or after completion of

the Project(s), provided that if arbitration or litigation is commenced prior to the completion of the Project(s), the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Lincoln, Nebraska, the location of Olsson's home office.

6.2.4 The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

6.3 Certification of Merit

Client agrees that it will not assert any claim, including but not limited to, professional negligence, negligence, breach of contract, misconduct, error, omission, fraud, or misrepresentation ("Claim") against Olsson, or any Olsson subconsultant, unless Client has first provided Olsson with a sworn certificate of merit affidavit setting forth the factual and legal basis for such Claim (the "Certificate"). The Certificate shall be executed by an independent engineer ("Certifying Engineer") currently licensed and practicing in the jurisdiction of the Project site. The Certificate must contain: (a) the name and license number of the Certifying Engineer; (b) the qualifications of the Certifying Engineer, including a list of all publications authored in the previous 10 years and a list of all cases in which the Certifying Engineer testified within the previous 4 years; (c) a statement by the Certifying Engineer setting forth the factual basis for the Claim; (d) a statement by the Certifying Engineer of each and every act, error, or omission that the Certifying Engineer contends supports the Claim or any alleged violation of any applicable standard of care; (e) a statement by the Certifying Engineer of all opinions the Certifying Engineer holds regarding the Claim or any alleged violation of any applicable standard of care; (f) a list of every document related to the Project reviewed by the Certifying Engineer; and (g) a list of every individual who provided Certifying Engineer with any information regarding the Project. The Certificate shall be provided to Olsson not less than thirty (30) days prior to any arbitration or litigation commenced by Client or not less than ten (10) days prior to the initial response submitted by Client in any arbitration or litigation commenced by someone other than Client. The Certificate is a condition precedent to the right of Client to assert any Claim in any litigation or arbitration and Client's failure to timely provide a Certificate to Olsson will be grounds for automatic dismissal of the Claim with prejudice.

SECTION 7—MISCELLANEOUS

7.1 Reuse of Documents

All documents, including drawings, specifications, reports, boring logs, maps, field data, data, test results, information, recommendations, or opinions prepared or furnished by Olsson (and Olsson's independent professional associates and consultants) pursuant to this Agreement ("Work Product"), are all Olsson's instruments of service, do not constitute goods or products, and are copyrighted works of Olsson. Olsson shall retain an ownership and property interest in such Work Product whether or not the Project(s) is completed. If Client has fully satisfied all of its obligations under this Agreement, Olsson shall grant Client a limited license to use the Work Product and Client may make and retain copies of Work Product for use in

connection with the Project(s); however, such Work Product is for the exclusive use and benefit of Client or its agents in connection with the Project(s), are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the Project(s). Such Work Product is not intended or represented to be suitable for reuse by Client or others on extensions of the Project(s) or on any other Project(s). Client will not distribute or convey such Work Product to any other persons or entities without Olsson's prior written consent which shall include a release of Olsson from liability and indemnification by the third party. Any reuse of Work Product without written verification or adaptation by Olsson for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Olsson, or to Olsson's independent professional associates or consultants, and Client shall indemnify and hold harmless Olsson and Olsson's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation of Work Product will entitle Olsson to further compensation at rates to be agreed upon by Client and Olsson.

7.2 Electronic Files

By accepting and utilizing any electronic file of any Work Product or other data transmitted by Olsson, the Client agrees for itself, its successors, assigns, insurers and all those claiming under or through it, that by using any of the information contained in the attached electronic file, all users agree to be bound by the following terms. All of the information contained in any electronic file is the work product and instrument of service of Olsson, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights, unless the same have previously been transferred in writing to the Client. The information contained in any electronic file is provided for the convenience to the Client and is provided in "as is" condition. The Client is aware that differences may exist between the electronic files transferred and the printed hard-copy original signed and stamped drawings or reports. In the event of a conflict between the signed original documents prepared by Olsson and the electronic files, which may be transferred, the signed and sealed original documents shall govern. Olsson specifically disclaims all warranties, expressed or implied, including without limitation, and any warranty of merchantability or fitness for a particular purpose with respect to any electronic files. It shall be Client's responsibility to confirm the accuracy of the information contained in the electronic file and that it accurately reflects the information needed by the Client. Client shall not retransmit any electronic files, or any portion thereof, without including this disclaimer as part of any such transmissions. In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Olsson, its officers, directors, employees and sub consultants against any and all damages, liabilities, claims or costs, including reasonable attorney's and expert witness fees and defense costs, arising from any changes made by anyone other than Olsson or from any reuse of the electronic files without the prior written consent of Olsson.

7.3 Opinion of Probable Cost

Since Olsson has no control over the cost of labor, materials, equipment or services furnished by others, or over the

contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Olsson's Opinion of Probable Cost provided for herein is made on the basis of Olsson's experience and qualifications and represent Olsson's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Client acknowledges and agrees that Olsson cannot and does not guarantee proposals or bids and that actual total Project(s) or construction costs may reasonably vary from Olsson's Opinion of Probable Cost. If prior to the bidding or negotiating phase Client wishes greater assurance as to total Project(s) or construction costs, Client shall employ an independent cost estimator as provided in paragraph 3.4.3. If Olsson's Opinion of Probable Cost was performed in accordance with its standard of care and was reasonable under the total circumstances, any services performed by Olsson to modify the contract documents to bring the construction cost within any limitation established by Client will be considered Optional Additional Services and paid for as such by Client. If, however, Olsson's Opinion of Probable Cost was not performed in accordance with its standard of care and was unreasonable under the total circumstances and the lowest negotiated bid for construction of the Project(s) unreasonably exceeds Olsson's Opinion of Probable Cost, Olsson shall modify its work as necessary to adjust the Project(s)' size, and/or quality to reasonably comply with the Client's budget at no additional cost to Client. Under such circumstances, Olsson's modification of its work at no cost shall be the limit of Olsson's responsibility with regard to any unreasonable Opinion of Probable Cost.

7.4 Prevailing Wages

It is Client's responsibility to determine whether the Project(s) is covered under any prevailing wage regulations. Unless Client specifically informs Olsson in writing that the Project(s) is a prevailing wage project and is identified as such in the Scope of Services, Client agrees to reimburse Olsson and to defend, indemnify and hold harmless Olsson from and against any liability, including costs, fines and attorneys' fees, resulting from a subsequent determination that the Project(s) was covered under any prevailing wage regulations.

7.5 Samples

All material testing samples shall remain the property of the Client. If appropriate, Olsson shall preserve samples obtained no longer than forty-five (45) days after the issuance of any document that includes the data obtained from those samples. After that date, Olsson may dispose of the samples or return them to Client at Client's cost.

7.6 Standard of Care

Olsson will strive to perform its services in a manner consistent with that level of care and skill ordinarily exercised by members of Olsson's profession providing similar services in the same locality under similar circumstances at the time Olsson's services are performed. This Agreement creates no other representation, warranty or guarantee, express or implied.

7.7 Force Majeure

Any delay in the performance of any of the duties or obligations of either party hereto (except the payment of money) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the

period of such delay, provided that such delay has been caused by or is the result of any acts of God, acts of the public enemy, insurrections, riots, embargoes, labor disputes, including strikes, lockouts, job actions, boycotts, fires, explosions, floods, shortages of material or energy, or other unforeseeable causes beyond the control and without the fault or negligence of the party so affected. The affected party shall give prompt notice to the other party of such cause, and shall take promptly whatever reasonable steps are necessary to relieve the effect of such cause.

7.8 Equal Employment Opportunity

Olsson and any sub-consultant or subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

7.9 Confidentiality

In performing this Agreement, the parties may disclose to each other written, oral, electronic, graphic, machine-readable, tangible or intangible, non-public, confidential or proprietary data or information in any form or medium, including but not limited to: (1) information of a business, planning, marketing, conceptual, design, or technical nature; (2) models, tools, hardware, software or source code; and (3) any documents, videos, photographs, audio files, data, studies, reports, flowcharts, works in progress, memoranda, notes, files or analyses that contain, summarize or are based upon any non-public, proprietary or confidential information (hereafter referred to as the "Information"). The Information is not required to be marked as confidential.

7.9.1 Therefore, Olsson and Client agree that the party receiving information from the other party to this Agreement (the "Receiving Party") shall keep Information confidential and not use the Information in any manner other than in the performance of this Agreement without prior written approval of the party disclosing Information (the "Disclosing Party") unless Client is a public entity and the release of Information is required by law or legal process.

7.9.2 The existence of discussions between the parties, the purpose of this Agreement, and this Agreement shall be considered Information subject to the confidentiality provisions of this Agreement.

7.9.3 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Information which:

7.9.3.1 was previously known to the Receiving Party free of any obligation to keep it confidential; or

7.9.3.2 is or becomes publicly available by other than unauthorized disclosures; or

7.9.3.3 is independently developed by the Receiving Party without a breach of this Agreement; or

7.9.3.4 is disclosed to third parties by the Disclosing Party without restrictions; or

7.9.3.5 is received from a third party not subject to any confidentiality obligations.

7.9.4 In the event that the Receiving Party is required by law or legal process to disclose any of Information of the Disclosing Party, the Receiving Party required to disclose such Information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy.

7.9.5 Nothing contained in this Agreement shall be construed as altering any rights that the Disclosing Party has in the Information exchanged with or disclosed to the Receiving Party, and upon request, the Receiving Party will return all Information received in tangible form to the Disclosing Party, or at the Receiving Party's option, destroy all such Information. If the Receiving Party exercises its option to destroy the Information, the Receiving Party shall certify such destruction to the Disclosing Party.

7.9.6 The parties acknowledge that disclosure or use of Information in violation of this Agreement could cause irreparable harm for which monetary damages may be difficult to ascertain or constitute an inadequate remedy. Each party therefore agrees that the Disclosing Party shall be entitled in addition to its other rights to seek injunctive relief for any violation of this Agreement.

7.9.7 The obligations of confidentiality set forth herein shall survive termination of this Agreement, but shall only remain in effect for a period of one (1) year from the date the Information is first disclosed.

7.10 Damage or Injury to Subterranean Structures or Utilities, Hazardous Materials, Pollution and Contamination

7.10.1 To the extent that work pursuant to this Agreement requires any sampling, boring, excavation, ditching or other disruption of the soil or subsurface at the Site, Olsson shall confer with Client prior to such activity and Client will be responsible for identifying, locating and marking, as necessary, any private subterranean structures or utilities and Olsson shall be responsible for arranging investigation of public subterranean structures or utilities through an appropriate utility one-call provider. Thereafter, Olsson shall take all reasonable precautions to avoid damage or injury to subterranean structures or utilities which were identified by Client or the one-call provider. Olsson shall not be responsible for any damage, liability or costs, for any property damage, injury or economic loss arising or allegedly arising from damages to subterranean structures or utilities caused by subsurface penetrations in locations approved by Client and/or the one call provider or not correctly shown on any plans, drawings or utility clearance

provided to Olsson, except for damages caused by the negligence of Olsson in the use of such information.

7.10.2 It is understood and agreed that any assistance Olsson may provide Client in the disposal of waste materials shall not result in Olsson being deemed as a generator, arranger, transporter or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Title to all samples and waste materials remains with Client, and at no time shall Olsson take title to the above material. Client may authorize Olsson to execute Hazardous Waste Manifest, Bill of Lading or other forms as agent of Client. If Client requests Olsson to execute such documents as its agent, the Hazardous Waste Manifest, Bill of Lading or other similar documents shall be completed in the name of the Client. Client agrees to indemnify and hold Olsson harmless from any and all claims that Olsson is a generator, arranger, transporter, or disposer of hazardous waste as a result of any actions of Olsson, including, but not limited to, Olsson signing a Hazardous Waste Manifest, Bill of Lading or other form on behalf of Client.

7.10.3 At any time, Olsson can request in writing that Client remove samples, cuttings and hazardous substances generated by the Project(s) from the project site or other location. Client shall promptly comply with such request, and pay and be responsible for the removal and lawful disposal of samples, cuttings and hazardous substances, unless other arrangements are mutually agreed upon in writing.

7.10.4 Client shall release Olsson of any liability for, and shall defend and indemnify Olsson against any and all claims, liability and expense resulting from operations under this Agreement on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas, or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss or impairment, said substance had not been reduced to physical possession above the surface of the earth, and for any loss or damage to any formation, strata, reservoir beneath the surface of the earth.

7.10.5 Notwithstanding anything to the contrary contained herein, it is understood and agreed by and between Olsson and Client that the responsibility for pollution and contamination shall be as follows:

7.10.5.1 Unless otherwise provided herein, Client shall assume all responsibility for, including control and removal of, and protect, defend and save harmless Olsson from and against all claims, demands and causes of action of every kind and character arising from pollution or contamination (including naturally occurring radioactive material) which originates above the surface of the land or water from spills of fuels, lubricants, motor oils, pipe dope, paints, solvents, ballast, bilge and garbage, except unavoidable pollution from reserve pits, wholly in Olsson's possession and control and directly associated with Olsson's equipment.

7.10.5.2 In the event a third party commits an act or omission which results in pollution or contamination for which either Olsson or Client, for whom such party is performing work, is held to be legally liable, the responsibility therefore shall be considered as between Olsson and Client, to be the same as if the party for whom the work was performed had performed the same and all of the obligations regarding defense, indemnity,

holding harmless and limitation of responsibility and liability, as set forth herein, shall be specifically applied.

7.11 Controlling Law and Venue

The parties agree that this Agreement and any legal actions concerning its validity, interpretation or performance shall be governed by the laws of the State of Nebraska. It is further agreed that any legal action between the parties arising out of this Agreement or the performance of services shall be brought in a court of competent jurisdiction in Nebraska.

7.12 Subconsultants

Olsson may utilize as necessary in its discretion subconsultants and other subcontractors. Olsson will be paid for all services rendered by its subconsultants and other subconsultants as set forth in this Agreement.

7.13 Assignment

7.13.1 Client and Olsson each are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Olsson (and to the extent permitted by paragraph 7.12.2 the assigns of Client and Olsson) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.13.2 Neither Client nor Olsson shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Olsson from employing such subconsultants and other subcontractors as Olsson may deem appropriate to assist in the performance of services under this Agreement.

7.13.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than Client and Olsson, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Olsson and not for the benefit of any other party. There are no third-party beneficiaries of this Agreement.

7.14 Indemnity

Olsson and Client mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, relating to third party personal injury or third party property damage and arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, but only to the extent that each party is responsible for such damages, liabilities or costs on a comparative basis of fault.

7.15 Limitation on Damages

7.15.1 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party's individual employees, principals, officers or directors shall be subject to personal liability or damages arising out of or connected in any way to the Project(s) or to this Agreement.

7.15.2 Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Client nor Olsson, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any delay damages, any punitive damages or any incidental, indirect or consequential damages arising out of or connected in any way to the Project(s) or to this Agreement. This mutual waiver of delay damages and consequential damages shall include, but is not limited to, disruptions, accelerations, inefficiencies, increased construction costs, increased home office overhead, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other delay or consequential damages that either party may have incurred from any cause of action including, but not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. Both the Client and Olsson shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project(s).

7.15.3 Notwithstanding any other provision of this Agreement, Client agrees that, to the fullest extent permitted by law, Olsson's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claims expenses of any kind arising from any services provided by or through Olsson under this Agreement, shall not exceed the amount of Olsson's fee earned under this Agreement. Client acknowledges that such causes include, but are not limited to, negligence, statutory violations, misrepresentation, fraud, deceptive trade practices, breach of fiduciary duties, strict liability, breach of contract and/or breach of strict or implied warranty. This limitation of liability shall apply to all phases of Olsson's services performed in connection with the Project(s), whether subsequent to or prior to the execution of this Agreement.

7.16 Entire Agreement

This Agreement supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by the Client and Olsson.

SCOPE OF SERVICES

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated September 25, 2018 between City of Weeping Water ("Client") and Olsson Associates ("Olsson") providing for professional services. Olsson's Scope of Services for the Agreement is indicated below.

PROJECT DESCRIPTION AND LOCATION

Project will be located at: City of Weeping Water – Gospel Run between H and G Street

Project Description: Design of Gospel Run Bank Stabilization Project Between H Street and G Street

SCOPE OF SERVICES

Olsson shall provide the following services (Scope of Services) to Client for the Project:

DESIGN SERVICES

Phase 100 – Project Management and Coordination

Task 100001 – Project Management

Coordination and communication with the Client, including project updates, meeting minutes, and design options.

Task 100002 – Project Meetings

Meetings with Client will be required throughout the project. One meeting will be required during the design. The meeting will review repair plans with both the City of Weeping Water staff and discuss the options moving forward into Final Design. One meeting will be required during Final Design. These meetings will discuss and review final plans to completion.

Time and expense basis anticipated fee - \$3,000

Phase 200 - Site Investigation

Task 200001 – Survey

Perform topographic survey of the site to establish existing conditions and provide topography for use in the design.

Task 200002 – Prepare a Site Plan

Prepare a site plan showing the information obtained during the field survey a site plan showing the information obtained during the field survey. The utility locations and sizes will be determined by surveying the flagged 'One Call' locations of the visible features and using record information from the utility owners. No underground exploration for utilities will be provided.

Time and expense basis anticipated fee - \$3,000

Phase 300 – Environmental Assessment and Permitting

This component involves the planning, and coordination of design elements for the project with an emphasis on soils, environmental impacts, wetlands, floodplains, and stormwater. Engagement of and working with natural resources agencies, including the U.S. Army Corps of Engineers (USACE), will be a critical part of this work component. The project team will strive to prepare and provide designs for the Project elements that minimize impacts to “waters of the United States” and meet the requirements of a Nationwide 404 permit, thereby avoiding the much more detailed and lengthy Individual Permit process if possible.

Task 300001 – USACE Pre-Application Meeting

Olsson will conduct a pre-application meeting with the USACE to inform them of the project and request their comments/feedback in regard to potential permitting issues and permitting strategy.

Task 300002 – Wetland Delineation

Olsson shall perform a Wetland Delineation in accordance with the methodology of the USACE 1987 Wetland Delineation Manual and the 2010 Mid-West Region Supplement. Olsson assumes that the delineation will include the project area of Gospel Run. The delineation will include:

- Review of available information sources prior to field investigation, including National Wetlands Inventory maps, county soil surveys, topographic maps, and aerial photos;
- Survey of vegetation to determine presence/absence of hydrophytic species;
- Observation of project area to determine presence/absence of wetland hydrology;
- Assessment of the stream and drainage channel banks, and;
- Assessment of soils by digging small soil pits to determine presence/absence of hydric soils.

Routine USACE Wetland Determination Data Forms will be completed for each sample point. Wetland acreage will be mapped in the field with hand-held sub-meter accuracy GPS. If other waters of the U.S. are identified, the Ordinary High Water Mark (OHWM) will be marked by GPS. Photos will be taken of all wetlands and waters. Elevation surveying of the wetland boundaries is not included in the basic services. A wetland delineation report will be prepared compiling the field data to be used in support of a Nationwide 404 permit application.

Task 300003 – Agency Coordination

As part of the permitting process, coordination with agencies including U.S. Fish and Wildlife Service, Nebraska Game and Parks Commission, and the Nebraska State Historical Preservation Office may be required.

Task 300004 – Nationwide 404 Permit(s)

If the wetland delineation indicates that wetlands/waters are present on the site and will be impacted, a Nationwide 404 permit application Pre-Construction Notification will be prepared and submitted to the USACE. The Pre-Construction Notification will include text describing the project and impacts to wetlands or other “waters of the United States”, color photographs of the site, and maps depicting wetland location(s) and acreage(s) of impacts.

It is assumed that impacts to waters of the U.S. will meet the criteria for a

Nationwide Permit, and thus fees are based on this level of permitting. If an Individual Permit is required, additional fees will apply.

This project scope and associated fees do not include other surveys or permits that may be required by the USACE or other agencies. Specifically, this scope excludes detailed threatened and endangered species surveys, migratory bird surveys, cultural resource survey, Section 6(f) coordination, or Mitigation Design or Compensatory Mitigation documentation. If specialized biological and/or cultural studies, or design or monitoring of mitigation for impacts, are required by agencies, additional fees also may apply.

Time and expense basis anticipated fee - \$12,000

Phase 400 – Design

Task 400001 – Design Plans

Repair plans will be used to develop plans to stabilize the banks of Gospel Run along Commercial Street between H Street and G Street. This will include developing Storm Water Pollution Prevention Plan including the NDPEs General Permit along with a Floodplain Development Permit.

Task 400002 – Preliminary Opinion of Probable Cost

Develop Opinion of Probable Costs associated with construction cost for the proposed repair options.

Task 400003 – Quality Control/Quality Assurance and Constructability Review and Discussion

A formal in-house quality control review will be made during design. The review will include verification of compliance with design parameters, and regulatory agency standards.

Time and expense basis anticipated fee - \$10,000

Phase 500 – Bid Phase Services

Task 500001 – Prepare Notice to Bidders and Issue Documents

Olsson will coordinate the issuance of notices to bidders and the production and distribution of bidding documents. Notices will be placed in the official publications directed by the Client, and in bidding services known to provide data to contractors in the area. In addition, invitations will be mailed directly to contractors whom Olsson and/or the Client know will be interested in the project. Documents will be available for inspection at Olsson offices.

Olsson will coordinate answering questions raised by bidders. Addenda will be prepared, if needed, to provide clarification to questions. The Client will be informed on a regular basis of project changes resulting from bidders' questions.

Task 500002 – Review and Evaluate Bids

Olsson will attend the bid opening. Bids properly received will be reviewed. Inconsistencies or irregularities found in the bids will be reported to the Client. Olsson will prepare a bid tabulation of bids received and will make the bid tabulation available to bidders. Olsson will evaluate the bids and make a written recommendation to the Client concerning contract award.

Task 500003 – Conform Documents

Conformed copies of the contract documents, including insurance and bond forms, will be prepared by Olsson. Olsson will review the documents to confirm that procedures have been properly followed. Copies of the conformed documents will be provided to the Client for review. Executed copies will be distributed to the Client, the contractor, and Olsson. These documents form the official contract between the Client and the contractor, as well as the basis for decisions concerning the work.

Time and expense basis anticipated fee - \$2,500

Total anticipate fee for all phases - \$30,500

CONSTRUCTION SERVICES – FUTURE SERVICES

The final scope and fee for construction services will be negotiated and added by contract amendment at a later date, once final plans and specifications have been completed.

CONSTRUCTION SERVICES

Phase 600 – Construction Phase Services

Task 601 - Construction Administration

Olsson shall perform the following construction administration services:

1. Conduct a pre-construction meeting. Olsson will prepare and distribute minutes of the meeting.
2. Receive, log and review contractor submittals (i.e. shop drawings, cut sheets).
3. Review contractor pay applications.
4. Answer contractors' questions and interpret construction documents. Questions and interpretations will be answered with a written Request for Information (RFI) or similar process.

Task 602 – Construction Observation

Olsson will conduct ____ site visits (State number and frequency. For example: one day per week for sixteen weeks) to observe construction activities. Olsson will prepare and distribute field reports on a (state weekly, bi-weekly, monthly) basis.

Task 603 – Project Close Out

Olsson will conduct a final walkthrough of the project. A "punch list" of deficiencies will be prepared and distributed.

Task 604 - Record Drawings

Olsson will prepare record drawings, based on contractors' "red lines." A PDF version of the record drawings will be submitted to the Client.

Task 605 – Warranty Walk-through

Olsson will conduct a Warranty walk-through with the Client and contractor(s) to remedy deficiencies prior to the expiration of the warranty period. A "punch list" of deficiencies will be prepared and distributed.

Should Client request work in addition to the Scope of Services, Olsson shall invoice Client for such additional services (Optional Additional Services) at the standard hourly billing labor rate charged for those employees actually performing the work, plus reimbursable expenses if any. Olsson shall not commence work on Optional Additional Services without Client's prior written approval.

Olsson agrees to provide all of its services in a timely, competent and professional manner, in accordance with applicable standards of care, for projects of similar geographic location, quality and scope.







PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
LOWER PLATTE SOUTH NATURAL RESOURCE DISTRICT
FOR
DESIGN AND CONSTRUCTION
OF THE
DEADMANS RUN, LINCOLN, NEBRASKA SECTION 205 PROJECT

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Omaha District and the Lower Platte South Natural Resource District (hereinafter the "Non-Federal Sponsor"), represented by its General Manager.

WITNESSETH, THAT:

WHEREAS, Section 205 of the Flood Control Act of 1948, as amended (33 U.S.C. 701s) (hereinafter "Section 205"), authorizes the Secretary to undertake construction of small structural flood risk management projects not specifically authorized by Congress;

WHEREAS, pursuant to the authority provided in Section 205, design and construction of the Deadmans Run, Lincoln, Nebraska Section 205 Project (hereinafter the "Project", as defined in Article I.A. of this Agreement) was approved by the Division Engineer for Northwestern Division on August 9th, 2018.

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, total Federal costs associated with planning, design, and construction of a project pursuant to Section 205 may not exceed \$10,000,000;

WHEREAS, 33 U.S.C. 701h authorizes the Government to undertake, at the Non-Federal Sponsor's full expense, additional work while the Government is carrying out the Project; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Project” means increasing the channel capacity to convey the flows associated with the 1% Annual Chance Exceedance (ACE) event, constructing a concrete flume under the existing railroad structures, reconfiguring the access road and underlying culvert to a series of commercial properties along the bank of the channel, and environmental mitigation throughout the project footprint to ensure there is no negative impact on the existing local ecosystem, as generally described in the Deadmans Run, Lincoln, Nebraska Section 205 Flood Risk Management Integrated Feasibility Report and Environmental Assessment dated August, 2018 and approved by the Commander, Northwestern Division on August 9th, 2018 (hereinafter the “Decision Document”).

B. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes, but is not necessarily limited to: the Government’s costs of engineering, design, and construction; the Government’s supervision and administration costs; the Non-Federal Sponsor’s creditable costs for providing real property interests, placement area improvements, and relocations and for providing in-kind contributions, if any; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; dispute resolution; participation in the Project Coordination Team; audits; betterments; or additional work; or the Non-Federal Sponsor’s cost of negotiating this Agreement.

C. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

D. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding existing railroad bridges and approaches thereto), or public facility when such action is required in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

E. The term “placement area improvements” means the improvements required on real property interests to enable the ancillary placement of material that has been dredged or excavated during construction, operation, and maintenance of the Project, including, but not limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes.

F. The term “functional portion thereof” means a portion of the Project that has been completed and that can function independently, as determined in writing by the U.S.

Army Engineer, Omaha District (hereinafter the "District Engineer"), although the remainder of the Project is not yet complete.

G. The term "in-kind contributions" means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Engineer for Northwestern Division. To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any investigations performed by the Non-Federal Sponsor to identify the existence and extent of any hazardous substances that may exist in, on, or under real property interests required for the Project.

H. The term "betterment" means a difference in design or construction of an element of the Project that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to design or construction of that element.

I. The term "fiscal year" means one year beginning on October 1st and ending on September 30th of the following year.

J. The term "Federal Participation Limit" means the \$10,000,000 statutory limitation on the Government's financial participation in the planning, design, and construction of the Project.

K. The term "additional work" means items of work related to, but not included in, the Project that the Government will undertake on the Non-Federal Sponsor's behalf while the Government is carrying out the Project, with the Non-Federal Sponsor responsible for all costs and any liabilities associated with such work.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake design and construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall contribute a minimum of 35 percent of construction costs, up to a maximum of 50 percent of construction costs, as follows:

1. The Non-Federal Sponsor shall pay 5 percent of construction costs.

2. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project. If the Government determines that the Non-Federal Sponsor's estimated credits for real property interests, placement area improvements, and relocations will exceed 45 percent of construction costs, the

Government, in its sole discretion, may acquire any of the remaining real property interests, construct any of the remaining placement area improvements, or perform any of the remaining relocations with the cost of such work included as a part of the Government's cost of construction. Nothing in this provision affects the Non-Federal Sponsor's responsibility under Article IV for the costs of any cleanup and response related thereto.

3. In providing in-kind contributions, if any, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsor shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government and provide the Government with a copy of as-built drawings for the work.

4. After determining the amount to meet the 5 percent required by paragraph B.1., above, for the current fiscal year and after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.2. and B.3., above, the Government shall determine the estimated additional amount of funds required from the Non-Federal Sponsor to meet its minimum 35 percent cost share for the current fiscal year. No later than 30 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.

5. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsor with a written estimate of the full amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. Not later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on solicitations for contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including, but not limited to, the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act (NHPA) of 1966, as amended. All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1

percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, the Government and Non-Federal Sponsor shall consult with each other and reach an agreement on how to fund such data recovery costs. Upon agreement in accordance with 54 U.S.C. 312508, the Government may seek a waiver from the 1 percent limitation under 54 U.S.C. 312507.

E. When the District Engineer determines that construction of the Project, or a functional portion thereof, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and the Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. The Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") and copies of all as-built drawings for the completed work.

1. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the authorized purpose of the Project and in accordance with applicable Federal laws and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent updates or amendments thereto.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsor is failing to perform its obligations under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

F. Not less than once each year, the Non-Federal Sponsor shall inform affected interests of the extent of risk reduction afforded by the Project.

G. The Non-Federal Sponsor shall participate in and comply with applicable Federal floodplain management and flood insurance programs.

H. In accordance with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), the Non-Federal Sponsor shall prepare a floodplain management plan for the Project within one year after the effective date of this Agreement and shall implement such plan not later than one year after completion of

construction of the Project. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood risk reduction provided by such work. The Non-Federal Sponsor shall provide an information copy of the plan to the Government.

I. The Non-Federal Sponsor shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with the Project.

J. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the level of flood risk reduction the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

K. The Non-Federal Sponsor shall not use Federal Program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

L. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

M. In addition to the ongoing, regular discussions of the parties in the delivery of the Project, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Federal Participation Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

N. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of the Federal Participation Limit.

O. The Non-Federal Sponsor may request in writing that the Government perform betterments on behalf of the Non-Federal Sponsor. Each request shall be subject to review and written approval by the Division Engineer for the Northwestern Division. If

the Government agrees to such request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of such work in advance of the Government performing the work.

**ARTICLE III - REAL PROPERTY INTERESTS, PLACEMENT AREA
IMPROVEMENTS, RELOCATIONS, AND COMPLIANCE WITH PUBLIC LAW 91-
646, AS AMENDED**

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests needed for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. The Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto in accordance with the Government's schedule for construction of the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the placement area improvements necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements and shall provide the Non-Federal Sponsor with a written notice to proceed with such improvements. The Non-Federal Sponsor shall construct the improvements in accordance with the Government's construction schedule for the Project.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

D. To the maximum extent practicable, not later than 30 calendar days after the Government provides to the Non-Federal Sponsor written descriptions and maps of the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real

property interests, construct placement area improvements, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of the acquisitions, placement area improvements, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, construct the placement area improvements, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's providing real property interests, placement area improvements, or performing relocations on behalf of the Non-Federal Sponsor does not alter the Non-Federal Sponsor's responsibility under Article IV for the costs of any cleanup and response related thereto.

E. As required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4630 and 4655), and Section 24.4 of the Uniform Regulations contained in 49 C.F.R. Part 24, the Non-Federal Sponsor assures that (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Sections 4622, 4623 and 4624 of Title 42 of the U.S. Code; (2) relocation assistance programs offering the services described in Section 4625 of Title 42 of the U.S. Code shall be provided to such displaced persons; (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with Section 4625(c)(3) of Title 42 of the U.S. Code; (4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 4651 and the provision of Section 4652 of Title 42 of the U.S. Code; and (5) property owners will be paid or reimbursed for necessary expenses as specified in Sections 4653 and 4654 of Title 42 of the U.S. Code.

ARTICLE IV - HAZARDOUS SUBSTANCES

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project. However, for real property interests that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

B. In the event it is discovered that hazardous substances regulated under CERCLA exist in, on, or under any of the required real property interests, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under CERCLA and determine whether to initiate construction, or if already initiated, whether to continue construction, suspend construction, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction, but may undertake any actions it determines necessary to avoid a release of such hazardous substances.

D. The Non-Federal Sponsor and the Government shall consult with each other in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, PLACEMENT AREA IMPROVEMENTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of Non-Federal Sponsor provided real property interests, placement area improvements, and relocations, and the costs of in-

kind contributions determined by the Government to be required for construction, operation, and maintenance of the Project.

B. To the maximum extent practicable, no later than 6 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interest in accordance with paragraphs C.1. of this Article. To the maximum extent practicable, no less frequently than on a biannual basis, the Non-Federal Sponsor shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. For real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement, the date the Non-Federal Sponsor provides the Government with authorization for entry thereto shall be used to determine the fair market value, except for such real property interests for in-kind contributions covered by an In-Kind Memorandum of Understanding, the date of initiation of construction shall be used to determine the fair market value. The fair market value of real property interests acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

(2) Except for real property interests acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable

to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings and submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the property to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the property, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the property proposed for acquisition is estimated at \$10,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the incidental costs the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for construction, operation, and maintenance of the Project within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, that are documented to the satisfaction of the Government. Such incidental costs shall include closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.E., and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest pursuant to Article III.

2. Placement Area Improvements. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of placement area improvements required for construction, operation, and maintenance of the Project. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide any placement area improvements required for construction, operation, and maintenance of the Project. Such costs shall include, but not necessarily be limited to, actual costs of constructing the improvements; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs associated with betterments, as determined by the Government.

3. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of the Project.

a. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of Nebraska would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

c. Relocation costs include actual costs of performing the relocation; planning, engineering, and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, as determined by the Government. Relocation costs do not include any costs associated

with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

4. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of in-kind contributions that are integral to design, construction, operation, and maintenance of the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions. Such costs shall include, but not necessarily be limited to, actual costs of constructing the in-kind contributions; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the in-kind contributions, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

b. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor; or for costs that exceed the Government's estimate of the cost for such in-kind contributions if they had been provided by the Government.

5. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to credit for real property interests that were previously provided as an item of local cooperation for another Federal project or for costs associated with betterments or additional work.

ARTICLE VI – PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs are projected to be \$14,288,000, with the Government's share of such costs projected to be \$9,287,000 and the Non-Federal Sponsor's share of such costs projected to be \$5,001,000, which includes the 5 percent contribution of funds projected to be \$250,000, costs for creditable

real property interests, relocations, and placement area improvements projected to be \$1,743,000, costs for creditable in-kind contributions projected to be \$200,000, and the additional amount of funds required to meet the minimum 35 percent cost share projected to be \$3,058,000. Costs for additional work are projected to be \$150,000, and costs for betterments are projected to be \$500,000. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests, placement area improvements, and relocations; the estimated amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. The Non-Federal Sponsor shall provide the funds required to meet its share of construction costs by delivering a check payable to "FAO, USAED, OMAHA DISTRICT (G6)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's required share of such construction costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

E. Upon conclusion of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting. If the final accounting determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its share of construction costs, the Government shall refund such excess amount, subject to the availability of funds for the

refund. In addition, if the final accounting determines that the Non-Federal Sponsor's credit for real property interests, placement area improvements, and relocations combined with credit for in-kind contributions exceed its share of construction costs for the Project, the Government, subject to the availability of funds, shall enter into a separate agreement to reimburse the difference to the Non-Federal Sponsor.

F. If there are real property interests, placement area improvements, relocations, additional work, or betterments provided on behalf of the Non-Federal Sponsor, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 30 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to "FAO, USAED, OMAHA DISTRICT (G6)" to the District Engineer, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.

ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume.

C. If hazardous substances regulated under CERCLA are found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to design and construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant

to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE VIII - HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE IX - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the Federal Participation Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsor, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of non-Federal audits shall

be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:

General Manager
Lower Platte South Natural Resource District
3125 Portia Street
Lincoln, NE 68501

If to the Government:

District Engineer
Omaha District
1616 Capitol Avenue Suite 9000
Omaha, NE 68102-4901

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

ARTICLE XIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XIV - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

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

DEPARTMENT OF THE ARMY

Lower Platte South Natural Resource
District

BY: _____
John L. Hudson, P.E.
Colonel, Corps of Engineers
District Engineer

BY: _____
Paul Zillig
General Manager, Lower Platte
South Natural Resource District

DATE: _____

DATE: _____



Lancaster County/City of Lincoln GIS Map

Mutual Access Easement EADO, LLC; City of Lincoln; LPSNRD



Printed Jul 27, 2018

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email ags@lincoln.ne.gov and you will be directed to the appropriate department.

Return to:
City Attorney's Office
Attention: Tim Sieh
555 S. 10th Street
Lincoln, Nebraska 68508

MUTUAL ACCESS EASEMENT

This Mutual Access Easement ("**Agreement**") is made and entered into as of this ____ day of _____, 2018 ("**Effective Date**"), by and between EADO, LLC, a Nebraska limited liability company and its successors and assigns (collectively "**EADO**"), whose address is 121 S. 13th Street, Suite 101, Lincoln, Nebraska 68508, the CITY OF LINCOLN, NEBRASKA, a municipal corporation, and its successors and assigns (collectively "**City**"), whose address is 555 S. 10th Street, Lincoln, Nebraska 68508, and the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT, a political subdivision of the State of Nebraska and its successors and assigns, (collectively "**NRD**") whose address is 3125 Portia Street, Lincoln, Nebraska 68521. EADO, the City, and the NRD are sometimes referred to herein individually as "**Party**" and collectively as "**Parties**".

1. City Tracts. The City is the current record owner of Lot 2, Block 7, Outlot G and Outlot I, Antelope Valley 2nd Addition, Lincoln, Lancaster County, Nebraska (collectively "**City Tracts**").

2. EADO Tracts. EADO is the current record owner of the real estate legally described on Exhibit 1 and herein referred to as the "**EADO Tracts**".

3. Property. The City Tracts and EADO Tracts are sometimes referred to herein individually and collectively as "**Property**".

4. Conveyance of Mutual Access Easement. In consideration of one dollar and other valuable consideration, the receipt whereof is hereby acknowledged, and the further consideration

of the performance of the covenants and agreements by EADO and the City as hereinafter set out and expressed, EADO and the City do hereby GRANT, REMISE AND RELINQUISH unto each other Party, the RIGHT, PRIVILEGE and PERMANENT NONEXCLUSIVE MUTUAL EASEMENT (“Access Easement”) to reconstruct, maintain, operate, repair and replace a driveway, and appurtenances thereto belonging (collectively “Driveway”), over and through those portions of the Property as shown as the hatched easement area on Exhibit 2.

TO HAVE AND TO HOLD UNTO the Parties, their successors and assigns, together with the right of ingress and egress to and from “L” Street/Capitol Parkway and South 21st Street over said Property the EADO Tracts and the City Tracts as shown on Exhibit 2 to provide access for the purpose of reconstructing, inspecting, repairing, maintaining, operating and replacing said Driveway located on the Property, in whole or in part, it being the intention of the Parties hereto that the Parties are hereby granting the access and uses herein specified without divesting either Party of title and ownership of the rights to use and enjoy the above described Property for any purpose except the construction thereon of permanent buildings and improvements upon or over the Driveway that would block or interfere with the flow of traffic.

5. Driveway Design and Construction. EADO, at its expense, has caused the construction and pavement of the Driveway based upon plans as approved by EADO and the Public Works & Utilities and Parks and Recreation Departments of the City.

6. Additional Public Parking. EADO, at its expense, shall: (i) install updated landscaping that is located on the west side of the Muny Building between said building and parking area; and (ii) complete the paving of the north row of public parking on Outlot I, Antelope Valley 2nd Addition, Lincoln, Lancaster County, Nebraska and the east row of public parking abutting the Muny Building that is located on the west side of the Muny Building (collectively “Additional Public Parking”).

7. Temporary Easements. The Parties agree to fully support and cooperate on the reconstruction, maintenance, operation, repair and replacement of the Driveway and hereby grants any and all necessary temporary easements for reconstruction, maintenance, repair or replacement of the Driveway and Additional Public Parking (collectively “Temporary Easements”) to each other, without additional consideration, with specifications that at a minimum the Temporary Easements will meet the City of Lincoln’s Design Standards.

8. City Reservation of Turnaround Easement on Lot 2 Parking Lot. Simultaneous with the execution of this Agreement, the City is conveying to EADO via Special Warranty Deed the real estate known as Lot 2, Block 7, Antelope Valley 2nd Addition, Lincoln, Lancaster County, Nebraska (“Lot 2”). EADO and the City have entered into a Redevelopment Agreement (Resolution No. A 91004,) (“Redevelopment Agreement”), dated May 3, 2018. Under the terms of the Redevelopment Agreement, EADO is required to design and construct the Telegraph Lofts

East building as defined in the Redevelopment Agreement on a portion of Lot 2 and other real estate. The remaining portion of Lot 2 not used for the Telegraph Lofts East building have or will be designed and constructed with parking stalls, driving aisles and driveways (collectively "**Lot 2 Parking Lot**") and opens space. Furthermore, the City, along with the NRD via agreements with the City, have responsibilities to timely complete the (i) maintenance, repair, reconstruction and replacement of the Antelope Creek stormwater weir improvements and (ii) removal of sedimentation from said weir improvements (collectively "**Weir Maintenance**"), located on Outlot G, Antelope Valley 2nd Addition, Lincoln, Lancaster County, Nebraska. In order to carry out the Weir Maintenance, the City and NRD need to use and authorize the use of large and oversized vehicles and equipment (collectively "**Oversized Vehicles**") for said Weir Maintenance, and such Oversized Vehicles will need to use the Access Easement for said Weir Maintenance. In addition, Oversized Vehicles will need to use a portion of the Lot 2 Parking Lot to turnaround, change directions and reposition (collectively "**Turnaround**") in order to safely use the Access Easement. The City hereby reserves unto itself and its successors and assigns as well as the NRD the RIGHT, PRIVILEGE and NONEXCLUSIVE MUTUAL EASEMENT to allow Oversized Vehicles to Turnaround on the Lot 2 Parking Lot in order to safely use the Access Easement ("**Turnaround Easement**"), subject to the following terms and conditions:

a. Prior to the City and/or the NRD, or either entity's authorized users or assigns exercising the rights under the Turnaround Easement, the City and/or NRD must deliver written notice to the owner of Lot 2. The written notice shall include:

i. A map or drawing showing the most necessary and practical route and area that needs to be used within the Lot 2 Parking Lot and the requested time period, including starting time and ending times, to use the designated route and area within the Lot 2 Parking Lot; and

ii. Actual receipt of the City's written notice by the owner or Lot 2 Parking Lot with as much advance notice as reasonable possible, but at least a minimum of forty-eight hours advance notice, to allow the owner to use its best efforts to notify tenants of the Telegraph Flats East building and parkers of the Lot 2 Parking Lot to not park in the required portion of the Lot 2 Easement area during the requested time period.

b. The Turnaround Easement shall (i) be required only for the most necessary and practical route reasonably feasible and in conformity with applicable codes and regulations, (ii) be limited to areas or routes so as to minimize the interfere with the operation of permitted activities in Lot 2 or adjacent to such Turnaround Easement, (iii) provide for or permit reasonable and timely Weir Maintenance, (iv) shall be subject to EADO or the owner of Lot 2 not being responsible for payment of any damages or expenses caused by or related to the use of the Turnaround Easement by the Oversized Vehicles, and

(v) shall be to the extent necessary to assure the Weir Maintenance to be in compliance with applicable codes and laws, and to provide a reasonable and beneficial use to the Weir Maintenance for the required purposes.

c. To the fullest extent permitted by law, the City and the NRD shall each indemnify, defend, and hold harmless EADO, the owner of Lot 2, their officers, agents, and employees from and against claims, damages, losses, and expenses, including but not limited to attorney's fees to the extent permitted by law, arising out of or resulting from the uses, damages or expenses arising from or caused respectively by the City or the NRD and each entity's duly authorized users activities or use of the Turnaround Easement on Lot 2 that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, any injury to or destruction of tangible or intangible property. This paragraph will not require the City or the NRD to indemnify or hold harmless the owner of Lot 2 for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the owner of Lot 2 or intentional misconduct of the owner of Lot 2 or its users.

9. Driveway On-going Responsibilities. EADO, at its expense, shall be responsible for the reconstruction, maintenance, repair, and replacement of the Driveway in a commercially reasonable fashion. EADO, at its expense, shall provide snow removal to the Driveway.

10. Public Parking On-going Responsibilities. City, at its expense, shall be responsible for the reconstruction, maintenance, repair, and replacement of the existing public parking areas and Additional Public Parking in a commercially reasonable fashion. City, at its expense, shall provide snow removal to the existing public parking areas and the Additional Public Parking.

11. Non-Interference. The Parties shall not do anything so as to interfere with the reasonable use of the Access Easement and Temporary Easements herein granted. No barricade, fence or other obstruction or improvement shall be erected or maintained on the Property so as to impair the free flow of vehicular and/or pedestrian traffic on the Driveway (the foregoing shall not prohibit the temporary erection of a barricade by EADO or City which is reasonably necessary for the reconstruction, maintenance, repair or replacement of the Driveway; provided, that any such work shall be conducted in a manner calculated to cause the least interference to the use of the Access Easement as is reasonably possible).

12. Payment Indemnification. EADO agrees to indemnify and hold City harmless to the extent of any payments in connection with the Access Easement and Additional Public Parking that the City may be required to make for failure of EADO to make payments of all amounts lawfully due to all persons, firms, or organizations who performed labor or furnished labor, materials, equipment, or supplies used for the Access Easement.

13. Operation Indemnification. To the fullest extent permitted by law, EADO shall indemnify, defend, and hold harmless the City, its officers, agents, and employees from and against claims, damages, losses, and expenses, including but not limited to attorney's fees to the extent permitted by law, arising out of or resulting from the reconstruction, maintenance, repair or replacement of the Driveway that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional misconduct or negligent act or omission of EADO. This paragraph will not require EADO to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City or intentional misconduct of the City or its users.

14. Successors. This Agreement, and the covenants and agreements herein contained, shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the respective parties.

15. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

16. Construction. Whenever used herein including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

17. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

19. Entire Agreement. This Agreement contains the entire agreement of the parties and there are no other different agreements or understandings related to this Agreement between EADO and the City.

20. Exhibits. Exhibit 1 and Exhibit 2 are attached to this Agreement and are incorporated herein by this reference.

"EADO"

EADO, LLC, a Nebraska limited liability company

By: _____

Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, _____ of **EADO, LLC**, a limited liability company, on behalf of the limited liability company.

(Seal)

Notary Public

“City”

CITY OF LINCOLN, NEBRASKA, a municipal corporation

By: _____
Chris Beutler

Title: Mayor, City of Lincoln, Nebraska

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by **Chris Beutler**, Mayor, **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, on behalf of the municipal corporation.

(Seal)

Notary Public

“NRD”

**LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT, a political
subdivision of the State of Nebraska**

BY: _____

Name, Title

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by _____, _____, **LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT**, a political subdivision of the State of Nebraska, on behalf of the political subdivision.

(Seal)

Notary Public

EXHIBIT "1"

EADO Tract

Parcel 1: A portion of Lot 2, Block 4, Avondale Addition, Lincoln, Lancaster County, Nebraska, more particularly described as follows: Referring to the Northwest corner of said Block 4, thence 90°00'34" (assumed azimuth), in an Easterly direction, along the North line of said Block 4, a distance of 200.00 feet to the Northeast corner of Lot 3, thence 180°01'09", in a Southerly direction, along the East line of said Lot 3, a distance of 94.57 feet to the Point of Beginning; thence 138°08'33", in a Southeasterly direction, parallel with and 55.00 feet Northeasterly of the Northeasterly 10.00 feet Right-of-Way line of said Chicago, Rock Island and Pacific Railroad (now abandoned and hereinafter referred to as the C.R. & P. RR.), a distance 75.09 feet, thence 270°02'24", in a Westerly direction, along the South line of Lot 2, a distance of 50.13 feet, thence 00°01'09", in a Northerly direction, along the East line of said Lot 3, a distance of 55.89 feet to the Point of Beginning;

-AND- All of Lots 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 4, Avondale Addition, Lincoln, Lancaster County, Nebraska, together with the vacated East-West Alley abutting thereon, EXCEPT those portions more particularly described as follows: A part of Lot 6, beginning at the Northwest corner of said Block 4, thence 90°00'34" (assumed azimuth), in an Easterly direction, along the North line of said Block 4, a distance 14.52 feet to the Southwesterly 10.00 feet R.O.W. line of the C.R. & P. RR., thence 138°08'33", in a Southeasterly direction, along said R.O.W. line, a distance of 20.14 feet, thence 270°00'34", in a Westerly direction, parallel with and 15.00 feet Southerly from the North line of said Block 4, a distance of 27.96 feet to a point on the West line of said Block 4, thence 00°00'00", in a Northerly direction, along the West line of said Block 4, a distance of 15.00 feet to the Point of Beginning - AND- EXCEPT a Part of Lots 3, 4, 5, and 6, referring to the Northwest corner of said Block 4, thence 90°00'34" (assumed azimuth), in an Easterly direction, along the North Line of said Block 4, a distance of 41.38 feet to a point on the Northeasterly 10.00 feet R.O.W. line of said C.R. & P. RR., on the North line of said Block 4 and the Point of Beginning, thence continuing 90°00'34", in an Easterly direction, along the North line of said Block 4, a distance of 158.62 feet to the Northeast corner of said Lot 3, thence 180°01'09", in a Southerly direction, along the East line of said Lot 3, a distance of 94.57 feet to a point 55.00 feet Northeasterly of the Northeasterly 10.00 feet R.O.W. line of said C.R. & P. RR., thence 318°08'33", in a Northwesterly direction, parallel with and 55.00 feet Northeasterly from said 10.00 feet R.O.W. line, a distance of 106.85 feet to a point 15.00 feet South of the North line of said Block 4, thence 270°00'34", in a Westerly direction, parallel with and 15.00 feet Southerly from the North line of said Block 4, a distance of 73.86 feet to a point on the Northeasterly R.O.W. line of said C. R. & P. RR., thence 318°08'33", along the 10.00 feet R.O.W. line of said C.R. & P. RR., a distance of 20.14 feet to the point of beginning; -AND- EXCEPT a part of Lot 12 and East-West alley, referring to the Northwest corner of said Block 4, thence 90°00'34" (assumed azimuth), in an Easterly direction, along the North line of said Block 4, a distance of 301.30 feet to the Northeast corner of said Block 4, thence 179°56'37", in a Southerly direction, along the East line of said Block 4, a distance of 150.52 feet to the Southeast corner of Lot 1, on the North line of a 16.00 feet wide East - West Alley (now vacated) and the point of beginning, thence continuing 179°56'37", in a Southerly direction, along the East line of said Block 4, a distance of 58.08 feet to a point on curve, thence along a 3,884.83 feet radius curve to the left, parallel with and 55.00 feet Northeasterly of the 10.00 feet R.O.W. line of said C.R. & P. RR.,

having a chord azimuth of $318^{\circ}35'35''$, in a Northwesterly direction, a chord distance of 60.89 feet and an arc length of 60.89 feet to the point of tangency, thence $318^{\circ}08'33''$, in a Northwesterly direction, parallel with an 55.00 feet Northeasterly from said Northeasterly 10.00 feet R.O.W. line of said C.R. & P. RR., along the final tangent of the previously described curve, a distance of 16.72 feet to the North line of said vacated alley, thence $90^{\circ}02'24''$, in an Easterly direction, along the North line of said vacated alley, a distance of 51.37 feet to the point of beginning.

-AND- The 20.00 foot Right-of-Way line of said Chicago, Rock island and Pacific Railroad (now abandoned), from a point 15.00 feet South of the North line of Block 4 to the East line of said Block 4 and the 40.00 feet R.O.W. line from the East line of said Block 4 to a point 11.00 East of the East line of said Block 4, Avondale Addition, Lincoln, Lancaster County, Nebraska, more particularly described as follows: Referring to the Northwest corner of said Block 4, thence $90^{\circ}00'34''$ (assumed azimuth), in an Easterly direction, along the North line of said Block 4, a distance of 14.52 feet to the Southwesterly 10.00 feet R.O.W. line of said C.R. & P. RR., thence $138^{\circ}08'33''$, in a Southeasterly direction, along the Southwesterly 10.00 feet R.O.W. line of said C.R. & P. RR., a distance of 20.14 feet to the point of beginning, thence $90^{\circ}00'34''$, in an Easterly direction, parallel with and 15.00 feet Southerly of the North line of said Block 4, a distance of 26.86 feet, thence $138^{\circ}08'33''$, in a Southeasterly direction, along the Northeasterly 10.00 feet R.O.W. line of said C.R. & P. RR., a distance of 247.95 feet to a point of curvature, thence along a 3,829.83 feet radius curve to the right, having a chord azimuth of $139^{\circ}04'19''$, in a Southeasterly direction, a chord distance of 124.13 feet to a point on the East line of said Block 4, thence $359^{\circ}56'37''$, in a Northerly direction, along the East line of said Block 4, a distance of 15.58 feet to a point on curve, thence along a 3,839.83 feet radius curve to the right, having a chord azimuth of $140^{\circ}00'51''$, in Southeasterly direction, a chord distance of 17.14 feet, thence $179^{\circ}56'37''$, in a Southerly direction, parallel with and 11.00 feet Easterly of the East line of said Block 4, a distance of 62.88 feet to a point on curve, thence along a 3,799.83 radius curve to the left, having a chord azimuth of $320^{\circ}26'41''$, in a Northwesterly direction, a chord distance of 47.78 feet, thence $90^{\circ}04'23''$, in an Easterly direction, along the South line of said Block 4, a distance of 13.04 feet to a point on curve, thence along a 3,809.83 feet radius curve to the left, having a chord azimuth of $319^{\circ}10'38''$, in a Northwesterly direction, a chord distance of 137.50 feet to the point of tangency, thence $318^{\circ}08'33''$, in a Northwesterly direction, along the final tangent of the previously described curve and on the Southwesterly 10.00 feet R.O.W. line of said C.R. & P. RR., a distance of 265.88 feet to the point of beginning.

-AND- Portions of vacated "L" Street located in the Northeast Quarter of Section 25, Township 10 North, Range 6 East in the City of Lincoln, Lancaster County, Nebraska as contained in Warranty Deeds Book 627, Page 347 and Book 724, Page 395 as recorded in the office of the Register of Deeds of Lancaster County, Nebraska; more particularly described as follows: That part of "L" Street lying between the West line of 22nd Street and a line described as beginning at a point on the South line of "L" Street a distance of 183.9 feet West of the West line of 22nd Street; running thence Northwesterly along the arc of a circular curve, concave southwesterly whose radius is 994.83 feet, whose central angle is $5^{\circ}19'01''$ and whose tangent line deflects $20^{\circ}01'41''$ right from the South line of "L" Street, a distance of 92.3 feet to a point of tangency with a reverse circular curve, concave Northeasterly, whose radius is 39.7 and whose central angle is $75^{\circ}17'40''$, thence running along the arc of said reverse circular curve a distance of 52.2 feet to a point of tangency with the East line of 21st Street on the North line of "L" Street, except a part thereof described as beginning at a point on said West line of 22nd Street which is the Northeast corner of Lot 1, Block 5, Avondale Addition; thence running Northwesterly in a straight line a distance of 83.9 feet to the Southwest corner of Lot 12, Block 4, Avondale Addition, thence running East along the South line of said Lot 12 a distance of 51.8 feet to a point on said West line of 22nd Street which is the Southeast corner of said Lot 12; thence running South along said West line of 22nd Street a distance of 66 feet to the point of beginning -AND- Beginning at the

Northeast corner of Lot 1, Block 5, Avondale Addition; thence Northwesterly 83.9 feet to the Southwest corner of Lot 12, Block 4, Avondale Addition, thence East along the South line of said Lot 12, a distance of 25 feet, more or less, to a line 20 feet Southwesterly of and parallel with the centerline of said Railroad Company's main track; thence Southeasterly along last said parallel line 620 feet; thence Southwesterly at right angles 30 feet to the Southwesterly right of way line of said Railroad Company, said right of way line being 50 feet Southwesterly of and parallel with the centerline of said Railroad Company's main track; thence Northwesterly along said right of way line 535 feet, more or less, to the East line of Lot 1, Block 5, Avondale Addition, thence North along the East line of Lot 1, Block 5, Avondale Addition, 15 feet, more or less, to the point of beginning.

-AND- Portions of Lots 1, 2, 3, and 4, Block 5, Avondale Addition, Lincoln, Lancaster County, Nebraska, more particularly described as follows: a part of Lot 1, beginning at the Northeast corner of said Lot 1; running thence South along the East line of said Lot 1 a distance of 89.57 feet to a point to intersection with a circular curve; thence Northwesterly along the arc of said circular curve bearing to the left, whose radius is 994.93 feet and whose long chord is 59.90 feet, to a point on the West line of said Lot 1; thence North along the West line of said Lot 1 a distance of 59.50 feet to the Northwest corner of Lot 1; thence East along the North line of said Lot 1 a distance of 51.75 feet to the point of beginning; -AND- a part of Lot 2, beginning at the Northeast corner of said Lot 2; running thence South along the East line of said Lot 2 a distance of 59.50 feet to a point to intersection with a circular curve; thence Northwesterly along the arc of said circular curve bearing to the left, whose radius is 994.83 feet and whose long chord is 55.90 feet, to a point on the West line of said Lot 2; thence North along the West line of said Lot 2 a distance of 34.52 feet to the Northwest corner of Lot 2; thence East along the North line of said Lot 2 a distance of 50.0 feet to the point of beginning; -AND- a part of Lot 3, beginning at the Northeast corner of said Lot 3; running thence South along the East line of said Lot 3 a distance of 34.52 feet to a point to intersection with a circular curve; thence Northwesterly along the arc of said circular curve bearing to the left, whose radius is 994.93 feet and whose long chord is 54.66 feet, to a point on the West line of said Lot 3; thence North along the West line of said Lot 3 a distance of 12.37 feet to the Northwest corner of Lot 3; thence East along the North line of said Lot 3 a distance of 50.0 feet to the point of beginning; -AND- a part of Lot 4, beginning at the Northeast corner of said Lot 4; running thence South along the East line of said Lot 4 a distance of 12.37 feet to a point to intersection with a circular curve; thence Northwesterly along the arc of said circular curve bearing to the left, whose radius is 994.93 feet and whose long chord is 34.50 feet, to a point on the North line of said Lot 4; thence East along the North line of said Lot 4 a distance of 32.19 feet to the point of beginning; EXCEPT those portions of Lots 1 through 4, Block 5, Avondale Addition, Lincoln, Lancaster County, Nebraska as contained in the Corporation Quitclaim Deed filed April 11, 2011 as Instrument Number 2011016533 in the office of the Register of Deeds of Lancaster County, Nebraska.

-AND- That part of 22nd Street ^{lying} between the Southwest Right-of-Way line of said Chicago, Rock Island and Pacific Railroad described as beginning at a point on the West line of 22nd Street a distance of 2.86 feet South of the South line of "L" Street; running thence Southeasterly long the arc of a circular curve, concave Southwesterly, whose radius is 3,771.96 feet, whose central angle is 1°50' and whose tangent line deflects 39°15' left from the West line of 22nd Street, a distance of 120.92 feet to the East line of 22nd Street and a line described as beginning at a point on the West line of 22nd Street a distance of 89.57 feet South of the South line of "L" Street; running thence Southeasterly along the arc of a circular curve, concave Southwesterly, whose radius is 994.93 feet; whose central angle is 5°14', and whose tangent line deflects 58°06' left from the West line of 22nd Street, a distance of 91.0 feet to a point of intersection on the East line of 22nd Street located 43.34 feet South of the -Southwest R.O.W line of the C. R. & P. RR. Vacated by Ordinance No. 7353 passed by the City Council on December 5, 1690, -AND - EXCEPT a portion of

vacated 22nd Street Right-of-Way (Ord. #7353) as contained in the Corporation Quitclaim Deed filed April 11, 2011 as Instrument Number 2011016533 in the office of the Register of Deeds of Lancaster County, Nebraska.

EXHIBIT "2"
Access Easement Legal Description & Site Plan

THAT PARTS OF LOT 2, BLOCK 7, OUTLOTS 'I' AND 'G', ANTELOPE VALLEY 2nd ADDITION; THAT PARTS OF LOT 12, BLOCK 4 AND LOT 1, BLOCK 5, AVONDALE ADDITION; THAT PART OF VACATED 'L' STREET; AND THAT PART OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD ADJACENT THERETO, ALL LOCATED IN THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6th P.M., LINCOLN, LANCASTER COUNTY, NEBRASKA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF LOT 2, BLOCK 7, ANTELOPE VALLEY 2nd ADDITION, SAID POINT BEING ON THE EAST RIGHT OF WAY LINE FOR SOUTH 21st STREET; THENCE NORTHERLY ON THE WEST LINE OF SAID LOT 2 AND SAID EAST RIGHT OF WAY LINE, N 0°19'45"E 3.91', TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHERLY ON SAID LINE, N 0°19'45"E 76.00'; THENCE EASTERLY, S 89°40'50"E 295.39'; THENCE NORTHERLY, N 0°10'32"E 109.67'; THENCE EASTERLY, S 89°40'47"E 133.05'; THENCE SOUTHERLY, S 0°17'39"W 24.00'; THENCE WESTERLY, N 89°42'21"W 109.00'; THENCE SOUTHERLY, S 0°10'32"W 589.67'; THENCE SOUTHWESTERLY, S 27°50'09"W 38.22', TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE FOR CAPITOL PARKWAY, SAID POINT BEING ON A CIRCULAR CURVE TURNING IN A COUNTER CLOCKWISE DIRECTION, HAVING A RADIUS OF 994.93', A CENTRAL ANGLE OF 2°52'51" AND AN ARC LENGTH OF 50.02'; THENCE NORTHWESTERLY ON SAID CURVE, HAVING A CHORD OF N 59°26'48"W 50.02'; THENCE NORTHEASTERLY, N 43°49'48"E 53.45'; THENCE NORTHERLY, N 0°10'32"E 398.00'; THENCE WESTERLY, N 89°40'50"W 295.58', TO THE POINT OF BEGINNING, SAID TRACT CONTAINING AN AREA OF 41,408.0 SQUARE FEET OR 0.95 ACRES, MORE OR LESS.

