




LOWER PLATTE SOUTH

natural resources district

Agenda Item #8

3125 Portia Street | P.O. Box 83581 • Lincoln, Nebraska 68501-3581 | P: 402.476.2729 • F: 402.476.6454 | www.lpsnrd.org

Memorandum

Date: October 12, 2018
To: Board of Directors
From: Ed Ubben 
Subject: Urban Subcommittee Minutes

The Urban Subcommittee met on October 11, 2018 at the District office at 5:30 pm. There was five items on the agenda. Present at the meeting was Bruce Johnson, (Chair), Mike DeKalb, Richard Bolte, Milt Schmidt, Anthony Schutz, Ron Svoboda and Chairman of the Board, Ray Stevens. There was a quorum. Staff present was; Paul Zillig, David Potter, Kyle Hauschild, Al Langdale and Ed Ubben. Also present was Bob Lannin with Baylor Evens, Ross Lawrence with JEO Consulting and Teresa Hruza with Hamann Meadows Townhome Association.

- a. **Consideration of a Quiet Title Agreement with Baylor Evens & Olston & Manske at 35th & Salt Creek.** – Zillig stated that just north of 35th & Cornhusker/Adams there is the abandoned “old” channel of Salt Creek that is not legally owned by anyone (see pink area on the attached aerial photo). The Salt Creek Levee is situated on a portion of this property (in red). Our neighbor to the south (Jim Olston) is interested in clearing up the ownership of this parcel and has talked to his neighbors to the north (NRD) and south about working together on this project. We will consider joining two neighboring landowners in hiring Baylor Evnen to file and pursue a quiet title action on this property, with the NRD paying for our pro-rated portion (approximately 13%) of the cost based on square footage of property acquired/neighbor (see attached engagement letter).

It was moved by DeKalb, seconded by Svoboda, and unanimously approved by the subcommittee to recommend the Board of Directors approve the engagement letter with Baylor Evnen to file and pursue a quiet title action to settle title to that portion of the Old Salt Creek Channel near 35th and the Salt Creek Levee.

- b. **Consideration of Deadmans Run Flood Reduction Project Interlocal Agreement with the City of Lincoln.** – The Interlocal Agreement will set forth the activities of the partners for the Deadmans Run Flood Reduction Project. See attachment.
It was moved by DeKalb, seconded by Bolte, and unanimously approved by the subcommittee to recommend the Board of Directors approve the Deadmans Run Flood Reduction Project Interlocal Agreement with the City of Lincoln, pending legal counsel review.
- c. **Consideration of Engineering Services Agreement from FYRA Engineering for the Salt Creek pipe repair, right bank, above 27th Street.** – A sink hole was found above a stormwater pipe in the levee during spring inspections. The COE also gave the pipe an Unacceptable rating during their annual inspection. There is also a circular slip on the bank at this location above the pipe, most likely caused by saturated embankment. We assume a leaking pipe joint in one of the elbows of the broken-back pipe assembly caused the problem. FYRA will investigate and design a repair.
It was moved by Bolte, seconded by DeKalb, and unanimously approved by the subcommittee to recommend the Board of Directors approve the Engineering Services Agreement with FYRA Engineering for the repair of the levee penetration at Sta. 347+15 R on Salt Creek in an amount, not to exceed, \$33,325.00.
- d. **Consideration of Engineering Services Agreement from JEO for the repair of the weir located below 14th Street on Salt Creek.** – There is a weir (grade control structure) that protects the 14th & Oak Creek Bridge that has started to unravel at the banks. This feature is part of the Salt Creek Levee, but was constructed prior the levee. The weir is very near the mouth of Oak Creek. Originally we started design on two weirs in 2015. The other is located below 1st Street. That project was repaired and completed last year. Because of budget constraints we held off on this repair. Design is 30% complete. This Amendment will take us through completion of the repair. JEO has submitted an amendment to the original contract in an amount, not to exceed, \$28,789.00 to complete this portion of the work.
It was moved by DeKalb, seconded by Svoboda, and unanimously approved by the subcommittee to recommend the Board of Directors approve the Amendment #2 with JEO Consulting for the 14th Street Oak Creek Weir Repair, as part of the Salt Creek Flood Reduction Project, in an amount, not to exceed \$28,789.00.
- e. **Community Assistance Program – Consideration of an application from the Hamann Meadow’s Townhome Association for the Hamann Meadow’s South Detention Pond and Dam Reconstruction Project in the Holms Lake Watershed.** - When Hamann Meadows Townhome Association was developed, the developer used an existing farm pond as a detention basin feature, a natural fit. Over time the corrugated metal pipe has failed. The structure has failed. The structure not only functioned as a flood control feature but as sediment

control for Holms Lake as well. The townhome association is in the process of rehabilitating the structure and is asking the NRD for assistance through the Community Assistance Program. The project is intending to be completed in phases. The first phase of the project is to investigate the problem by videoing the existing pipe and design engineering by Olsson Associates for the repair. The total cost of this phase is \$8,100. The association is asking for a 50% cost share from the NRD, or \$4,500.

It was moved by Schmidt, seconded by Bolte, and voted 4-2 with Svoboda and DeKalb voting nay, but approved by the subcommittee to recommend the Board of Directors to approve the Community Assistance program application from Hamann Meadows Townhomes Association for 50% of the Engineering and Design, for the Hamann Meadows Dam Rehabilitation project up to and not to exceed \$4,050 NRD funds.

With no other business the meeting was adjourned at 6:40 pm.

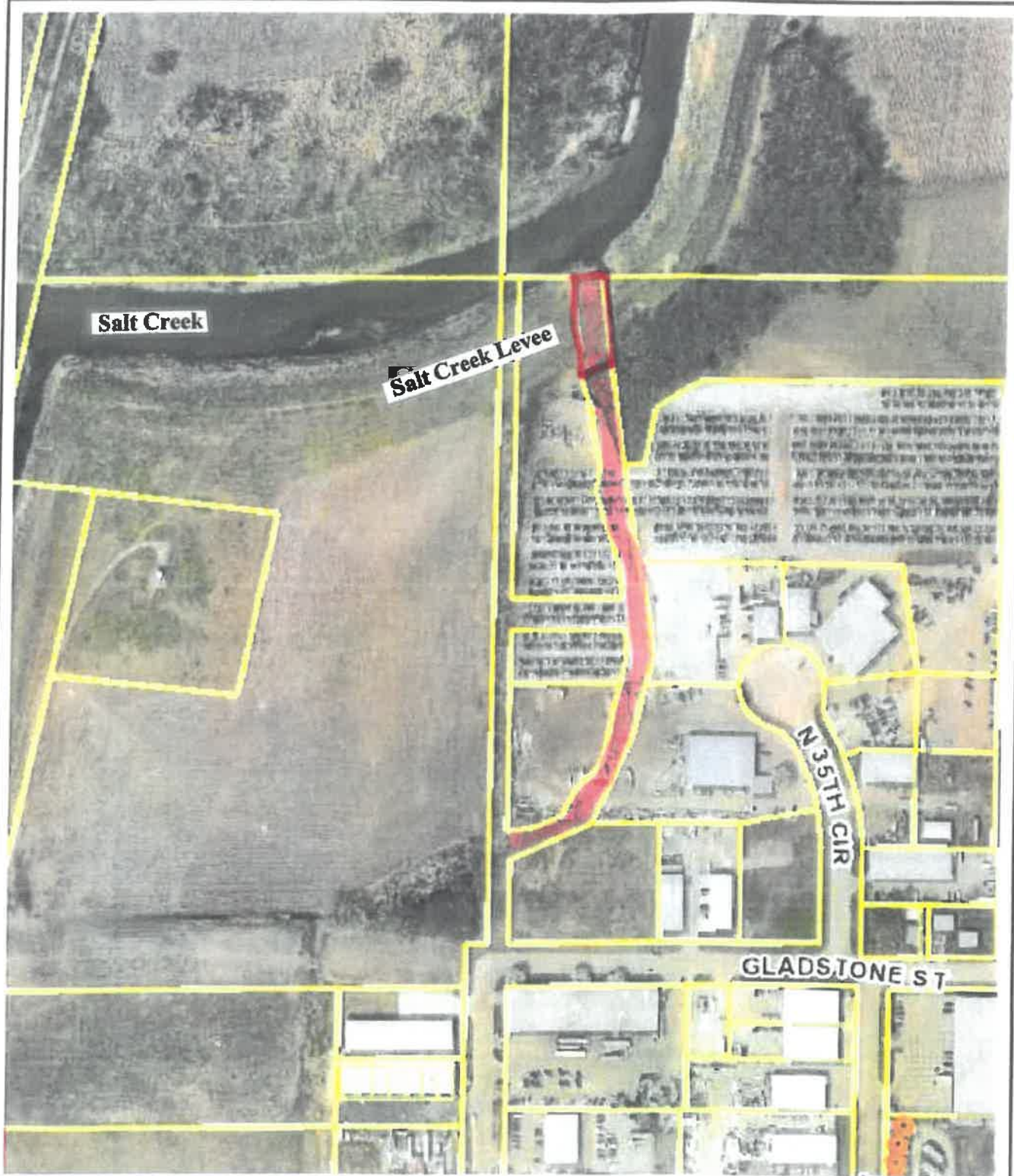
Ed Ubben

From: Paul Zillig
Sent: Monday, October 08, 2018 8:30 AM
To: Urban SC
Cc: Ray Stevens; SGS@CrosbyLawFirm.COM; Ed Ubben; Al Langdale
Subject: Urban Subcommittee Meeting (10/11) Item #1
Attachments: Scanned PDF18100808220.pdf

The NRDs Salt Creek Levee Project is situated on property owned by the NRD, City and some private property where the NRD has easements. Just north of 35th & Cornhusker/Adams there is the abandoned "old" channel of Salt Creek that is not legally owned by anyone (see pink area on the attached aerial photo). The Salt Creek Levee is situated on a portion of this property (in red). Our neighbor to the south (Jim Olston) is interested in clearing up the ownership of this parcel and has talked to his neighbors to the north (NRD) and south about working together on this project. At this Thursday's Urban Subcommittee Meeting we will consider joining two neighboring landowners in hiring Baylor Evnen to file and pursue a quiet title action on this property, with the NRD paying for our pro-rated portion of the cost based on square footage of property acquired/neighbor (see attached engagement letter).

Staff is recommending the Urban Subcommittee **recommend the Board of Directors approve the engagement letter with Baylor Evnen to file and pursue a quiet title action to settle title to that portion of the Old Salt Creek Channel near 35th and the Salt Creek Levee.**

Paul



Lancaster County/City of Lincoln GIS Map



Printed: Aug 09, 2018

DISCLAIMER: The information 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.



Randall L. Goyette [IA]*
Stephen S. Gealy
Dallas D. Jones
David A. Dudley
Brenda S. Spilker
Mark A. Hunzeker
Timothy E. Clarke [IA]*

Robert S. Lannin [KS, MO]*
Andrew M. Loudon
Christina L. Ball [KS]*
Susan J. Spahn
Jenny L. Panko
Caroline M. Westerhold [IA]*
Jarrod P. Crouse

Andrea D. Snowden
Jenniffer S. Caswell [CO]*
Paul T. Barta [IA]*
Torrey J. Gerdes [IA]*
Michael D. Reisbig [IA]*
Brett E. Ebert
Emily R. Motto [IA]*

Thomas B. Shires [IA]*
Ann K. Post
Kara E. Brostrom
Christopher M. Schmidt
Eric J. Sutton [IA]*
Phoebe L. Gydesen
Katherine Q. Martz [IA]*

Of Counsel:
Peter W. Kett
W. Scott Davis
Walter E. Zink II
Donald R. Witt
Robert T. Gimit

*Admitted In Other States

September 20, 2018

Delivered via email to pzillig@lpsnrd.org

Lower Platte South Natural Resources District
c/o Paul Zillig, Executive Director
3125 Portia Street
Lincoln, NE 68521

Re: Quite Title Action Regarding Abandoned Salt Creek Channel

To the Board of Directors of the Lower Platte South Natural Resources District:

This letter is in response to our recent discussion regarding Baylor Evnen LLP's representation of the Lower Platte South Natural Resources District (LPSNRD) in the above described legal matters. The purpose of this letter is to acknowledge our engagement, to set forth the anticipated scope of our services, to describe the billing policies and practices that will apply to the engagement and to set forth other basic terms of our representation.

1. **Scope of Engagement.** We will file and pursue a quiet title action to settle title to the that portion of the Old Salt Creek Channel on the LPSNRD levy Nebraska, in the LPSNRD.

2. **No Conflict of Interest.** We have reviewed the firm's client list, and based upon our understanding of the scope of engagement, this representation does not conflict with any of the firm's other clients.

3. **Billing Policies and Procedures.** It has been our experience that the relationship of this firm with its clients is best served when there is a mutual understanding of our billing policies and procedures. All attorneys and legal assistants in our firm are assigned hourly rates commensurate with their respective level of skill and experience.

In this matter we will represent you and two other adjacent landowners. Our legal fees and expenses will be prorated between adjacent landowners/plaintiffs proportionally on the basis of the square footage of real estate anticipated to be settled in each plaintiff.

We will charge you on the basis of our hourly rates in effect when the services are performed. We anticipate that Robert Lannin will perform the primary services related to this matter and will make staffing decisions regarding this matter with the objective of rendering services in the most efficient and cost-effective basis.

Omaha Office
619 North 90th Street
Omaha, NE 68114
Phone 402.934.5468

Lincoln Main Office
Wells Fargo Center
1248 O Street, Suite 600, Lincoln, NE 68508
Phone 402.475.1075 | Fax 402.475.9515

Syracuse Office
920 12th Street
Syracuse, NE 68446
Phone 402.269.3200

Our current hourly rates are as follows:

Partner	\$240
Associate	\$180 to \$205
Law Clerk	\$125
Legal Assistant	\$100

In addition to our fees for legal services, we charge separately for certain costs and expenses, including filing fees, fax and messenger services, copying charges, document retrieval, computer research, court reporter transcripts and other costs and expenses incurred throughout the course of our representation. We will bill you for routine expenses, but certain larger expenses by third-party vendors may be forwarded by us to you for direct payment to that vendor.

Any estimate of anticipated fees or expenses that we have provided are an estimation of potential fees. Actual fees will be determined in accordance with the policies set forth above.

4. **General Responsibilities of Attorney and Client.** We will provide you the legal services described above. We will keep you apprised of developments as necessary to perform our services and will consult with you as necessary to ensure timely, effective, and efficient completion of our work. In turn, please do not hesitate to contact us at any time with questions or concerns you may have.

5. **Place of Performance and Governing Law.** The legal services we will provide will be performed in the State of Nebraska and our relationship will be governed by the laws of the State of Nebraska.

We will look forward to working with you on this matter. If you have any questions concerning the relationship as outlined in this letter, please let me know promptly. Otherwise, if its terms appear acceptable to you, please sign and return a copy of this engagement letter. Once we have received the signed letter back from all potential plaintiffs we will proceed with the quiet title action.

Sincerely,



Robert S. Lannin
For the Firm
rlannin@baylorevnen.com

APPROVED AND AGREED BY _____

ITS _____

Date: _____

Draft October 9, 2018

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

This Interlocal Cooperation Agreement ("Agreement") is made and entered into on this ____ day of 2018 by and between **the City of Lincoln, Nebraska**, a municipal corporation ("City"), 555 North 10th Street, Lincoln, NE 68508, and **the Lower Platte South Natural Resources District**, a political subdivision of the State of Nebraska ("NRD"), 3215 Portia St, Lincoln, NE 68521, hereinafter individually sometimes referred to as a "Party" and collectively as the "Parties.")

WITNESSETH:

RECITALS

- A. The Parties are authorized by the statutes of the State of Nebraska, including the Interlocal Cooperation Act, Neb. Rev. Stat. §13-801 et. seq., as amended, to enter into cooperative agreements for the mutual benefit of the Parties and to provide services in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities;
- B. The Parties have a common interest in the management of storm water, the protection of property, and the safety of the public, that may result from flooding in the City of Lincoln;
- C. The Parties agree that the risk of flooding in the Deadman’s Run Watershed is a real threat and actions by the Parties are need to reduce the risk of flooding;
- D. Deadman’s Run Watershed is within the boundaries of the City and the NRD.
- E. The Parties desire to work together to implement projects to reduce flooding in the Deadman’s Run Watershed;
- F. The Parties equally shared the cost of preparing the Deadman’s Run Basin Master Plan (“Plan”) during the years 2006 and 2007, utilizing an 18 member Advisory Committee that updated floodplain maps and developed solutions to the flooding problems along Deadman’s Run;
- G. The Parties approved the Plan in the years 2007 and 2008 which identified approximately \$50,000,000 of improvements to reduce flood damages;
- H. The Parties worked with the U.S. Army Corps of Engineers (“Corps”) during the period of 2008 to 2014 to obtain approval of the potential projects identified in the Plan;

- I. The Parties in 2014 agreed to equally share the cost of the Corps 3-year Section 205 Feasibility Study on flooding in the Deadman’s Run Watershed (the “Study”), with the NRD serving as the lead “non-federal sponsor”;
- J. Between 2014 and 2018 at least 3 public meetings were held, informing the public of the status of the Study and to receive public comments/input;
- K. In 2018, the Parties and the Corps identified a \$25,500,000 flood reduction project that would greatly reduce the flood threat to a majority of the Deadman’s Run Watershed, called the Deadman’s Run Flood Reduction Project (the “Project”);
- L. The Project includes a \$15,000,000 Section 205 Corps Project and \$10,500,000 Local Project;
- M. The Parties desire to work together under the auspices of the Interlocal Cooperation Agreement Act and desire to equally share the cost of the Local Project and the local part of the Section 205 Corps Project, in accordance with the terms, conditions, and guidance of this Agreement.

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

1. Purpose.

The purpose of this Agreement is to protect the public interest by reducing future flood damages within the City of Lincoln thereby saving lives and damages to public and private property and businesses located within the floodplain. Other projects within the Plan may be the subject of future amendments to this Agreement. No separate legal or administrative entity is created under this Agreement.

3. Duration.

This Agreement shall expire on December 31, 2025 unless mutually extended by the Parties. Prior to the expiration of this Agreement, the Parties intend to agree on an Operation & Maintenance Agreement for the Deadman’s Run Flood Reduction Project, which will provide for all operations and maintenance responsibilities for the Project.

4. Project Components.

The Deadman's Run Flood Reduction Project ("Project") includes a Section 205 Corps Project in the amount of \$15,000,000 and a Local Project in the amount of \$10,500,000. The major project components for each project to be undertaken by this Agreement include:

- a. Section 205 Corps Project
 - i. Conveyance Channel
 - ii. Concrete Flume at railroad bridges
 - iii. Baldwin Street Termination
 - iv. Access Road Relocation at State Fair Park Drive
- b. Parties Local Project
 - i. 33rd Street Bridge (City bridge)
 - ii. 38th Street Bridge (UNL bridge)
 - iii. 48th Street Bridge (City bridge)
 - iv. Fleming Fields Detention Basin

Each Project Component will include design, permitting, land acquisitions, construction observation, construction, and operation & maintenance.

5. Project Management.

Coordination of both the Section 205 Corps Project and the Local Projects will require extensive planning, coordination, and communication. The agreed upon manager for local projects will lead the local efforts necessary to successfully complete the Project, including but not limited to design, constructability schedule, land acquisitions, construction documents, bidding, and construction. A project management team to assist the Project Manager will be agreed upon by the Parties and consist of staff from the Parties.

6. Financial Management.

The City shall serve as the Administrator for this Agreement and the Project and will administer all financial accounting and records for the Parties. Local Project costs will include all work related to the completion of the 33rd Street Bridge, the 38th Street Bridge, the 48th Street Bridge, the Fleming Fields Detention Basin, work-in-kind

services for the Section 205 Corps Project, the cost of project management, the cost of financial management, and other related costs. .

The Parties shall review on a quarterly basis the financial status of the Project and local funds expended by the Parties. If requested by either Party, the other Party shall forward funds to the Administrator in order to maintain an equal split of the costs of the Local Project including the local costs of the Section 205 Corps Project.

7. Funding Assistance.

The Section 205 Corps Project will be managed and constructed by the Corps with a total cost of \$15,000,000. Each Party shall provide one half (1/2) of the local cost share amounting to \$2,500,000 each. The local cost share of each Party may include cash or work-in-kind services approved by the Corps.

The \$10,500,000 Local Project will not receive Corps funding assistance. The NRD will apply for Nebraska Water Sustainability Funding (WSF) assistance and the NRD and City will consider applying for other funding assistance. Any and all additional funding assistance received will be credited to the total locally funded portion of the Project and 50% of any additional funding assistance received will be credited by the Administrator to each Party.

8. City Responsibilities.

The City shall:

- (a) Serve as the financial administrator for the Project ("Administrator");
- (b) Provide the Project Manager (Kris Humphrey);
- (c) Contribute one half (1/2) of the cost share of the Local Project;
- (d) Contribute one half (1/2) of the local share of the Section 205 Corps Project;
- (e) Obtain the design, permits, bidding, and construction of the 33rd & 48th Street Bridges;
- (f) Maintain the 33rd & 48th Street Bridges;
- (g) Acquire all private right-of-way; and
- (h) Assist the NRD in the acquisition or use of public right-of-way.

8. 9. NRD Responsibilities.

The NRD shall:

- (a) Contribute one half (1/2) of the cost share of the Local Project;
- (b) Contribute one half (1/2) of the local share of the Section 205 Corps Project;
- (c) Serve as the local project sponsor for the Section 205 Corps Project;
- (d) Contract for survey and geotechnical sampling for the Section 205 Corps Project;
- (e) Contract with UNL to model the concrete flume for the Section 205 Corps Project, if needed.
- (f) Enter into an agreement with UNL for the 38th Street Bridge component of the Local Project and land acquisitions for the Project;
- (g) Apply for Water Sustainability funding from the Natural Resources Commission;
- (h) Obtain the design, permits, bidding, and construction of the Fleming Field Detention Basin; and
- (i) Operate and maintain the Fleming Field Detention Basin.

10. Terms

(a) **Hold Harmless.** Each Party agrees to save and hold harmless, to the fullest extent allowed by law, the other Party and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the negligent or wrongful acts or omissions of their principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, each Party shall maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require either Party to indemnify or hold harmless the other Party from liability for the negligent or wrongful acts or omissions of said other Party or its

principals, officers, or employees.

(b) Contractors and Subcontractors. Each Party agrees to require any contractors or subcontractors, providing services under this Agreement, to indemnify and hold the Parties harmless to the same extent and as provided in subsection (a) above. .

(c) Severability. If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

(d) Equal Employment Opportunity. In connection with the carrying out of the activities provided herein, neither Party shall discriminate against a bidder or employee because of race, color, religion, sex, disability, national origin, age, marital status or receipt of public assistance.

Each Party further agrees that it shall require its contractors or subcontractors, providing services under this Agreement, to agree to the following clause by including it in its contractor and subcontractor agreements:

(e) Independent Contractor. It is the express intent of the Parties that this Agreement shall not create an employer-employee relationship, and the Contractor, or any employees or other persons acting on behalf of the Contractor in the performance of this Agreement, shall be deemed to be independent contractor(s) during the entire term of this Agreement or any renewals thereof. It is agreed between the Parties that the designated staff shall at all times continue to be employees, of the Contractor for the duration of the Agreement. The Contractor shall be responsible for all salary and benefits payable under this Agreement and the Contractor's employees shall not be entitled to any salary from either Party or to any benefits made to either Party's employees, including, but not limited to, overtime, vacation, retirement benefits, workers' compensation, sick

leave or injury leave. The Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance and any applicable malpractice insurance coverage for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to the employee's compensation.

- (i) The District shall require any contractors or subcontractors, providing services under this Agreement, to agree to the insurance clause to be used for all contracts, as provided in Exhibit "A" attached hereto and incorporated by this reference.
- (ii) The Contractor shall not commence work under this Agreement until it has obtained all insurance required pursuant to Exhibit "A" and has provided each Party with a Certificate of Insurance showing the specific limits of insurance required by Exhibit "A" and showing the Parties as additional insured. Such certificate shall specifically state that Insurance policies are to be endorsed to require the insurer to provide the each Party thirty (30) days-notice of cancellation, non-renewal of any material reduction of insurance coverage.
- (iii) It is expressly understood by each Party that budgetary or fund limitations may limit their ability to comply with all or part of this Agreement. If either Party experiences budgetary or fund limitations which interferes with their ability to comply with all or part of this Agreement, such Party will immediately notify the other Party and the Parties shall in good faith mutually decide how they will proceed to fulfill their obligations under this Agreement.
- (iv) This Agreement constitutes the entire agreement between the Parties with

respect to the subject matter herein and merges all prior discussions between them. It shall not be modified except by written agreement dated subsequent to the date of this Agreement and signed by both Parties.

- (v) The Parties shall financially contribute one half (1/2) each to the payment of expenses associated with land acquisitions.
- (vi) Either Party has the right to terminate this Agreement if the other party fails to perform as required by this Agreement. Termination for failure to perform shall be effective only after the non-breaching party provides written notice to the breaching party of the failure to perform ninety (90) days in advance of termination and allows the breaching party an opportunity to cure during that time period. If one or more of the parties lacks sufficient funding for this Project, each party has the right to terminate this Agreement. Either party may also terminate this Agreement for any reason for its own convenience. Termination for convenience or lack of funding shall be effective only after terminating party provides written notice six (6) months in advance of the effective date and after the parties meet to discuss options for termination of the Agreement. Termination shall require a formal vote by the board or council of the party initiating the termination in order to be effective. Each party shall be responsible for its share of accumulated cost of the Project up to the time of termination.

11. Acquisition of Land and/or Easements.

The Parties agree that the City will acquire all necessary land acquisitions with the exception of the land acquisitions from UNL, which will be obtained by agreement between the Parties in addition to other services required for the Project. Upon completion of the Project all land or easements acquired will be transferred to the appropriate sponsor.

12. Amendments.

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

13. Governing Law and Interpretation.

This Agreement shall be subject to the laws of the State of Nebraska and ordinances of the City. 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 and interpretation of contracts generally. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns. The Parties agree to comply with fair employment and fair labor standards under Nebraska and federal law and with federal immigration verification system standards under Nebraska law.

14. Capacity.

The undersigned do hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind his or her represented party to this Agreement.

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

CITY OF LINCOLN, NEBRASKA,
A Municipal corporation,

DATED: _____ BY: _____

Chris Beutler, Mayor
City of Lincoln

DATED: _____ BY: _____

Paul Zillig, General Manager
Lower Platte South Natural Resources District



C.

PROFESSIONAL SERVICES AGREEMENT

PROJECT: Salt Creek Penetration Repair – Sta 347+15 R **FYRA Engineering, LLC JOB #:** 002-18-01

CLIENT: Lower Platte South NRD

ADDRESS: 3125 Portia Street, Lincoln, NE 68521

CONTACT: Ed Ubben/Al Langdale **TEL:** 402.476.2729 **FAX:** 402.476.6454

CONSULTANT: FYRA Engineering, LLC

ADDRESS: 12702 Westport Pkwy, Suite 300, Omaha, NE 68138

CONTACT: Lindy Rogers, P.E. **TEL:** 402.502.7131 **FAX:** 402.932.6940

PROJECT DESCRIPTION: Preliminary design, wetland delineation, permitting, final design and construction services for the repair of 1 (one) levee penetration.

SCOPE OF SERVICES (See Attachment)

SCHEDULE (See Attachment)

COMPENSATION:

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

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

TIME AND MATERIALS. Compensation for these services will not exceed \$33,325.00 without written authorization and will be based on the following option (per the attached Budget or List of Hourly Rates), and Reimbursable Expenses based on actual costs incurred and approved by FYRA Engineering, LLC and as authorized in writing by Client.

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

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

COMPENSATION DETAIL (See Following Pages)

SCHEDULE OF PAYMENTS (See Following Pages)

SERVICES AUTHORIZED BY:

Execution of Agreement

or

Amendment(s) and/or NTP

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

CONSULTANT: FYRA Engineering, LLC **CLIENT:** Lower Platte South NRD

BY: Melinda C. Rogers, P.E. **BY:** Paul Zillig

SIGNATURE: Melinda C. Rogers **SIGNATURE:** _____

TITLE: Owner/Project Engineer **TITLE:** General Manager

DATE: 9 October 2018 **DATE:** _____



FYRA ENGINEERING, LLC STANDARD CONDITIONS

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

WAIVER OF SUBROGATION. FYRA Engineering, LLC affirmatively agrees to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that FYRA Engineering will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



Engineer's Fee Estimate
Salt Creek Penetration Repair Sta 347+15 R
 Lower Platte South Natural Resources District
 Lancaster County, Nebraska

Tasks	FYRA Engineering							Expenses	Total
	Prj Manager	Sr Engineer	Prj Engineer	Prj Engineer	El	El	El		
	Rogers	Sotak	Gregalunas	Kaufman	Miller	Petrow	Roenigk		
	\$155	\$190	\$160	\$135	\$95	\$95	\$95		
No. Project Management									
1.1 Client Meetings (1 meeting)	3							\$140	
1.2 Monthly Invoicing & Project/Schedule Update (4 months)	3								
1.3 USACE Levee Safety Coordination Meetings (1 meeting)	1							\$25	
1.4 USACE Regulatory Coordination Meeting (1 meeting)				1			2	\$10	
1.5 Project Team QA/QC		1	3	1					
Project Management Task Total	\$1,085	\$190	\$480	\$270	\$0	\$190	\$190	\$175	\$2,580
No. Preliminary Design									
2.1 Penetration, Utilities, Site Investigation and Survey	1				5		5	\$450	
2.2 Alternatives Constructability Review	1						2		
2.4 Preliminary Plan and Profiles	3						30		
2.5 Preliminary Cost Estimate							1		
Preliminary Design Task Total	\$775	\$0	\$320	\$0	\$1,045	\$0	\$4,180	\$450	\$6,770
No. Permitting									
3.1 Wetland Delineation/Ordinary High Water Mark Field Work and Reporting				10			18	\$300	
3.2 408 Permitting/PL 84-99 Approvals	3						4	\$400	
3.3 Regulatory Permitting (404 permit application)	1			8			10		
3.4 NPDES/Stormwater Permits	1						3		
Permitting Task Total	\$775	\$0	\$0	\$2,430	\$0	\$2,660	\$665	\$700	\$7,230
No. Final Design									
4.1 Final Hydraulic Analysis	2		1				10		
4.2 Final Opinion of Costs	1						5		
4.3 Construction Documents and Specifications	6	1					20	\$250	
Final Design Task Total	\$1,395	\$190	\$160	\$0	\$0	\$0	\$3,325	\$250	\$5,320
No. Construction									
5.1 Pre-Bid Coordination and Meeting	3						3		
5.2 Project Bidding	4	1					4		
5.3 Pre-Construction Meeting	3						3		
5.4 Construction Observation	8	1			20		20		
5.5 Construction Reporting					3		3		
5.6 Final Walkthrough	3						3		
5.7 As-Built Data							5	\$450	
5.8 As-Built Drawings	1						4		
5.9 O&M Modifications and Submittal	1				2		4		
Construction Task Total	\$3,565	\$380	\$0	\$0	\$2,375	\$0	\$4,655	\$450	\$11,425
Subtotal Hours	49	4	6	20	36	30	137	\$2,025	
Subtotal Costs	\$7,595	\$760	\$960	\$2,700	\$3,420	\$2,850	\$13,015	\$2,025	\$33,325

Assumptions: 2 weeks of construction observation with on-site observation of 20 hours/week

d.



ENGINEERING ■ ARCHITECTURE ■ SURVEYING ■ PLANNING

October 8, 2018

Lower Platte South NRD
Attn: Paul Zillig, General Manager
3125 Portia Street
Lincoln, NE 68521

RE: **Oak Creek Weirs – Amendment #2: 14th Street Oak Creek Weir Repair**
Lincoln, NE
JEO Project No. 141077.00

Mr. Zillig:

JEO Consulting Group, Inc. (JEO) is pleased to submit this amendment proposal to the LPS NRD (Owner) for engineering services for the 14th Street Oak Creek Weir Repair project. The following is our scope of services, fee, timeframe, and a list of items that will need to be provided by the Owner.

REFERENCE:

The standard form of agreement between Owner and Engineer for professional services dated October 31, 2014 and Amendment #1 dated July 10, 2015. Except as noted below, all other terms and conditions remain unchanged.

PROJECT UNDERSTANDING:

JEO Consulting Group has previously provided full design and construction engineering services for repair of a weir on Oak Creek near 1st Street along with preliminary design of repairs for a weir on Oak Creek near 14th Street. The Lower Platte South NRD is now looking to proceed with final design and construction of this 14th Street Weir.

Due to changes in project timing and scope, the previous scope of services from Amendment #1 shall be considered obsolete. The following is a breakdown of services remaining to be completed.

Work to date at the 14th Street Weir site includes:

- Topographic survey
- Geotechnical exploration
- Preliminary (30%) design

Work remaining includes:

- Final design and specifications
- Permitting, including USACE 404, USACE 408, floodplain, NPDES/SWPPP
- Bidding
- Construction

AMENDMENT #2 SCOPE OF SERVICES:

1 DESIGN PHASE

1.1 Provide Project Management throughout all Phase of this project, to include:

- a. Coordination of all design disciplines including facilitating communication and transfer of documents between disciplines to minimize errors in the technical memos, plans and specifications, as well as ensure a timely project design.
 - b. Provide timely and coordinated communication to and from the Owner for requests for information, providing progress updates, scheduling meetings, and receiving and providing feedback.
 - c. Provide oversight to ensure scope of services and schedule is met.
 - d. Work with disciplines to identify potential risks and how to mitigate those risks.
 - e. Review billed hours by design team and prepare invoice statements for Owner.
 - f. Provide monthly progress reports.
- 1.2 Prepare 90% complete plans and specifications. Plans and specifications to include:
- a. General location maps.
 - b. Survey control sheets.
 - c. Removal plan.
 - d. Plan and preliminary profile including geometrics and grades
 - e. Cross sections
 - f. Phasing plan, if necessary
 - g. Erosion control plan
 - h. Front end specifications complete with bidding, contract, and any required funding requirement documentation.
 - i. Insertion of design detail sheets.
 - j. Completion of the special provisions section of the specifications.
 - k. Complete all forms for Contract Documents including proposals, advertisements for bids, construction contracts, and payment and performance bonds as required.
- 1.3 Perform an internal QA/QC review of the 90% complete plans and specifications.
- 1.4 Conduct a plan-in-hand review in the field with the Owner and landowner to confirm the proposed layout, survey information and opinion of probable construction cost.
- 1.5 Perform geotechnical review of proposed design. JEO will contract with a subconsultant to provide geotechnical design and testing services. See attached.
- 1.6 Submit the proposed bidding documents, construction contract, and payment and performance bonds to the Owner's legal counsel for review and comments.
- 1.7 Finalize construction drawings and specifications subject to Owner's approval.
- 1.8 Prepare a list of final construction quantities and furnish a final opinion of probable construction cost.
- 1.9 Provide completed final documents (Plans, Specifications, and Contract Documents) signed and sealed by a professional engineer registered in the State of Nebraska to Owner.
- 1.10 Attend up to one (1) meeting to review final design documents and opinions of probable construction cost, obtain approval of the final plans, specifications and bid documents and receive authorization to submit final plans, specifications and bid documents to the appropriate agencies for review and approval.

2 PERMITTING PHASE

- 2.1 Prepare a Storm Water Pollution Prevention Plan (SWPPP) complying with state regulations.
- 2.2 Coordinate the Owner's signature and submit a Notice of Intent (NOI) to the NDEQ to obtain an NPDES Storm Water permit. Owner to pay all permit fees.
- 2.3 Conduct a "No Rise" analysis and submit a floodplain permit application.
- 2.4 USACE 404 Permitting:
 - a. It is assumed that the project will require a USACE Nationwide (NW) 404 Permit.
 - b. A wetland delineation will be performed and associated report will be developed for the site. In addition to the wetland delineation, a Threatened and Endangered species review will take place, as well as a Nebraska State historical society review.
 - c. Substantial changes to design or multiple permit application submittals based upon Corps of Engineers comments are not anticipated. If needed, a contract amendment will be required.
 - d. Substantial changes to design based upon Nebraska State Historical Society comments are not anticipated. If needed, a contract amendment will be required.
- 2.5 USACE 408 Permitting:
 - a. Coordinate the design with USACE Levee Safety department to review 408 permit requirements.
 - b. Submit 408 permit application

3 BIDDING AND NEGOTIATION PHASE

- 3.1 Obtain approval of plans and specifications and authorization to advertise for bids from Owner.
- 3.2 Provide assistance with authorizing the advertisement for bids and setting the bid date and time.
- 3.3 Send Notice to Bidders to Contractors, Builder Bureaus and Plan Rooms.
- 3.4 Furnish electronic or paper copies of plans, specifications, and contract documents of the project to prospective bidders, material suppliers, and other interested parties upon their request and payment of the non-refundable purchase cost established by the Engineer for the documents.
- 3.5 No pre-bid meeting is anticipated.
- 3.6 Respond to inquiries from prospective bidders and prepare any addenda required.
- 3.7 Assist the Owner in securing construction bids for the project.
- 3.8 Assist the Owner at the bid opening consisting of one (1) meeting to ensure proper rules are followed and adhered to during the process to ensure all requirements of State and Federal law are fulfilled.
- 3.9 Tabulate and analyze construction bids and report on them to the Owner, together with advice and assistance to the Owner in award of construction contract.
- 3.10 Present and review all bids received and assist the Owner in award of the construction contract.
- 3.11 Prepare and submit necessary information to the Owner for project award approval.
 - a. Assumed attendance at one (1) NRD committee meeting to present bid

and make a recommendation of award.

- 3.12 Prepare Contract Documents (Construction Contract and Notice to Proceed) for execution by the Prime Contractor(s) and the Owner; provide cursory reviews of all insurance and bonds submittals; then advise the Owner to proceed with execution of all documents.
- 3.13 Provide copies of all executed Contract Documents to the Owner and Prime Contractor(s).

4 CONSTRUCTION PHASE

- 4.1 Schedule and conduct a Pre-construction Conference, consisting of one (1) meeting prior to construction beginning. This conference (Pre-Con) will review the required timelines set forth in the specifications, lines of communication, key contacts of those involved, review any conflicts with utilities or schedules, review the schedule proposed by the Contractor, review any requirements of the Contractor for locates and staking needs, etc. Minutes of the Pre-construction Conference will be provided to all participants by the Engineer.
- 4.2 Provide baseline survey for horizontal and vertical controls for the proposed improvements, to be referenced by both the Engineer and Contractor during the construction of the project.
- 4.3 Provide construction staking of the proposed improvements; including location and grade of the proposed improvements. Staking of all the proposed improvements will be completed during one trip.
- 4.4 Review shop drawings and related data supplied by the Contractor.
- 4.5 Provide interpretation of the plans and specifications, when necessary.
- 4.6 Review and process Contractor's monthly payment applications and change orders (if necessary) and provide to Owner for review and approval.
- 4.7 Attend up to one (1) NRD Board meeting during construction to provide project updates and assistance with pay applications, change orders, etc.
- 4.8 Consult with and advise Owner during construction in regard to all aspects of the project.
- 4.9 Geotechnical and material testing during construction is included with this scope of services via subconsultant. See attached.
- 4.10 Perform measurement of final as-built quantities.
- 4.11 Conduct a final inspection of project with the Contractor and Owner.
- 4.12 Prepare a final punch list of outstanding items needing completion prior to finalization of the project based on field observations and reviews by the Resident Project Representative, Contractor, and Owner.
- 4.13 Recommend to the Owner the acceptance of the project, and complete the necessary certificate(s). This recommendation will be based on the Engineer's observation of construction utilizing professional judgment and accepted tests to determine that the Contractor has completed their contract in substantial compliance with the plans, specifications and contract documents.
- 4.14 If the construction timeline is extended, an amendment may be required for additional construction administration services.

5 RESIDENT PROJECT REPRESENTATION

- 5.1 JEO will furnish a part-time Resident Project Representative (RPR) to observe construction progress and quality of the work. Estimated at 40 hours (10 visits at 4 hours per visit).

- 5.2 The duties and responsibilities of the RPR are described as follows:
 - a. Review of contractors work for general compliance with the plans and specifications.
 - b. Complete Construction Observation Reports when on site.
 - c. Coordinate pay quantities with contractor and engineer.
 - d. Review of materials delivered to the site for specification compliance.
 - e. Assist the engineer in interpretation of the plans and specifications to the contractor.
 - f. Review and coordinate materials testing by assigned testing firm, if necessary.
 - g. Attend progress meetings.
 - h. Compile records for use in preparing record drawings.
- 5.3 If the construction timeline is extended, an amendment may be required for additional RPR services.

6 POST CONSTRUCTION PHASE

- 6.1 Prepare Record Drawings.
- 6.2 Prepare Report of Total Cost.
- 6.3 Assist the Owner during the 12-month warranty period with questions and coordination with the contractor for warranty period correction items.
- 6.4 Issue 11-month warranty letter to the Owner and Contractor. Conduct field reviews of project should a field inspection be necessary.
- 6.5 Issue a warranty period correction letter to the contractor for warranty repair items if necessary.

7 FEE

- 7.1 The cost to provide the Design Phase, Permitting Phase, Bidding and Negotiation Phase, and Construction Phase Services added with this amendment will be an hourly not to exceed fee of \$28,789.00.
 - a. These fees include subconsultant fees for geotechnical design and testing during construction. Subconsultant tasks and fees are outlined in the attachment.
- 7.2 The above-mentioned fees include JEO's billable time and overhead expenses including telephone calls, copying, postage, travel and meals that are included in our hourly rates and fees. Any additional services beyond the Scope of Services will be provided at an agreeable lump sum or hourly rates, only when authorized by the Owner.

7.3	Tasks	Fee
	a. Design Phase	\$ 9,460.00
	b. Permitting Phase	\$ 7,280.00
	c. Bidding and Negotiation Phase	\$ 3,130.00
	d. <u>Construction Phase (with RPR and Post-Construction)</u>	<u>\$ 8,919.00</u>
	Total (Not to Exceed)	\$ 28,789.00

7.4	Revised Contract	
	a. Original Contract	\$ 53,999.00
	b. Amendment #1	\$ 52,100.00
	c. <u>Amendment #2</u>	<u>\$ 28,789.00</u>
	Revised Contract Total (Not to Exceed)	\$ 134,888.00

2 PAYMENT:

2.1 We will invoice you monthly for work completed to date, payment is due upon receipt. Invoices unpaid after 30 days will accrue interest at 12% per annum (1.0%/month).

3 TIME FRAME:

- 3.1 Design and Permitting Phase – 330 days from notice to proceed.
 - a. Schedule is dependent upon regulatory reviews
- 3.2 Bidding and Negotiation Phase – 30-45 days from authorization to advertise.
- 3.3 Construction Phase – Winter 2019 – Spring 2020.
- 3.4 Post Construction Phase – 12 months after project acceptance.

4 OWNER RESPONSIBILITY:

- 4.1 The Owner must provide the following information to the Engineer:
 - a. Access to the project site
 - b. Contact information for utility companies within the right-of-way near the project site, if necessary
- 4.2 Owner (NRD) will lead any discussion and/or coordination with landowners
- 4.3 Timely plan reviews, criteria for project requirements
- 4.4 Negotiation of easements

5 EXCLUSIONS:


- 5.1 Additional geotechnical explorations
- 5.2 Land rights and ownership
- 5.3 Appraisals of affected properties
- 5.4 Individual USACE 404 permitting activities
- 5.5 SWPPP administration and inspections
- 5.6 Any permit fees associated with permit applications
- 5.7 Special meetings and meetings not outlined in the Scope of Services
- 5.8 Site visits not outlined in the Scope of Services
- 5.9 Easements negotiations, deed/title searches
- 5.10 Services beyond the scheduled project completion period
- 5.11 Section 106 review and/or archeological investigation
- 5.12 Signing, marking, and traffic control plans

If the above Scope of Services meets with your approval, please return one signed copy of this letter to our office and retain the original for your records. If you have any further questions or comments, please do not hesitate to call.

Respectfully submitted,



John G. Petersen
Project Manager



Lalit K. Jha
Vice President, Water Resources

PROPOSAL ACCEPTED:
Lower Platte South NRD

Attest

By _____ Date _____

By _____ Date _____

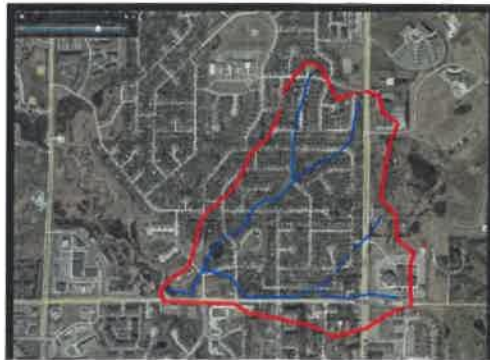
Title _____

Hamann Meadow's South Detention Pond and Dam Reconstruction

Hamann Meadows is located north of Pioneers Blvd., south of Holmes Lake Road, east of Antelope Creek and west of South 76th Street in Lincoln. At the southwest corner of the HAMANN MEADOWS TOWNHOMES ASSOCIATION property is a detention pond, as designated on the City of Lincoln. The pond is intended to be a sediment trap for Holmes Lake. This detention pond receives water from the east and north as designated by the red border (picture 1).



Picture 2 Hamann Meadows south detention pond



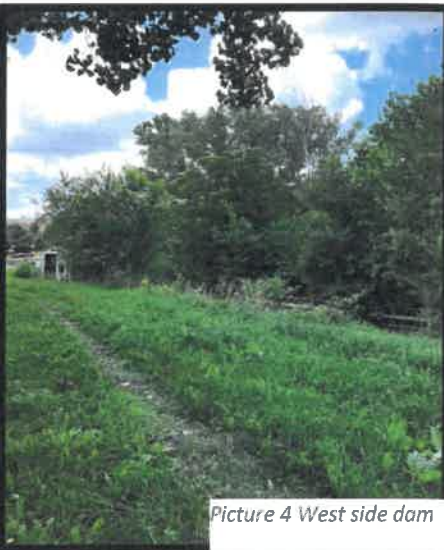
Picture 1

The riser, vertical tube and the dam are located at the west end of the pond. Currently the dam also acts as an access road to the west side of the Hamann Meadows Townhome Association properties.

These overlapping pictures are of the dam, facing south, on the access road, towards Pioneers Blvd. There are numerous trees growing on both sides of the dam.



Picture 3 East side of dam



Picture 4 West side dam

To use the pond as intended, as the City requires, it should maintain a designated level of water. The pond does not detain water as the corrugated pipes in the “dam” have failed. The water from the pond flows freely through the dam due to the erosion around the pipe. It has created an outlet around the



Picture 5 Erosion and failure of

pipe, through the dam into Antelope Creek. The water from the creek flows into Holmes Lake. This may contribute to the flooding of the bike path running parallel to the creek going under South 70th Street into Holmes Lake Park.

The free-flowing water erodes not only under the dam, but as depicted in picture 5, the face of the dam has eroded significantly.

The other area of concern we are addressing is the number of large trees and the root system that is on and in the dam as a contributing factor to the erosion problems. The root system is visible in the eroded area in picture 5. The debris from the trees collect in the riser. If the riser would be functioning, it would be inhibited by the debris.

The outlet from the pond was extended by the City of Lincoln when they developed the bike path that goes over the outlet. A portion of this project involves City property.

The Board of Directors for Hamann Meadows Townhomes Association is initiating the South Retention Pond and Dam Reconstruction Project. This project will be in several phases. To prepare for this project, we have consulted with the following people:

Ben Higgins – City of Lincoln Public Works-

JJ Yost- City of Lincoln Public Works

Mike Placke -Olsson Associates (engineer)

Kyle Hauschild- Natural Resource District

City of Lincoln Parks and Recreation Department

The project is intended to move the overflow to the south of the dam to protect the homes located on the north side of the pond. The plat indicates the overflow is directly over the middle of the dam, however; when it has flooded the natural overflow is to the north of the dam. Water levels were within 5-10’ of the houses located on the north side the pond. Again, in late summer of this year, the water levels approached within 5-10’ of the houses back doors.

The repair of the dam and removal of the trees will allow for continued safe access of pedestrians and vehicles to the west side of the properties without concern for continuing erosion due to the declining health of the trees and free flow of water.

The project will provide more control of the water in the pond allowing for detention and controlled release into Antelope Creek.

Lastly, the trees removed provided for a sound barrier and visual barrier between the homes and Pioneer Blvd. We would replace those trees not on the dam, but along the south side and at the northwest corner. This would help regain the visual and sound barrier. The root systems would slow down the water's absorption into the ground preventing harmful waterside erosion and reduces the risk of over-saturation and flooding.

The project is based on the conversations with all parties listed above. Some items have been completed to determine how much damage exists.

The attached Scope of services provided by Olsson Associates lists the projected costs for the engineering and design Phase of the project.

On the next pages are the steps we have taken to this point and some of the known steps to be taken.

The last document attached is two pages. It is the Olsson Associates estimate for the design and engineering. Our request is for 50% of the \$7800 estimate from OA, 50% of the \$300 cost of the video of the outlet. Total request on this first phase of the project is 50% of \$8100 or \$4050.

I have been working closely with Kyle Hauschild (NRD), he can also answer questions regarding the project.

Step I

√ Contact City of Lincoln

- Ben Higgins met HAMANN MEADOWS TOWNHOMES ASSOCIATION representatives at site

√ Obtain engineering design

- Olsson Associates representative met with HAMANN MEADOWS TOWNHOMES ASSOCIATION representatives at site
- City of Lincoln, Olsson Associates, NRD and HAMANN MEADOWS TOWNHOMES ASSOCIATION representatives met at site

√ Olsson Associates estimate of costs with description of possible options for project

- See attached (updated with City portion)

√ Contact Tinius Plumbing to obtain video footage of the interior of the outlet from the point it enters Antelope Creek toward the retention pond.

- Cost \$300 paid by HAMANN MEADOWS TOWNHOMES ASSOCIATION (see attached)
- Forward video to Olson Associates
 - Initial photos indicate damage starts 3-5' from outlet opening at Antelope Creek.
 - At 20-23' total failure of outlet.
 - See attached pictures

√ Obtain bids for tree removal (leave stumps)

- Hall Brothers bid of \$2495 accepted
- See attached
- October 25 & 26th 2018

√ Contact with City of Lincoln, Parks and Recreation

- City will pay their portion of the repairs
- All billings will be sent to JJ Yost

√ Updated cost estimates for project attached

√ Submit request to NRD for cost sharing

Determine financing

- Special Assessment
- Construction loan
 - Set date for special Meeting HAMANN MEADOWS TOWNHOMES ASSOCIATION

Step II

- Submit to NRD for cost sharing and approval
- Contact Construction Companies for bids on project (City list)
- Environmental Assessment
 - Corp of Engineers
- Special Meeting of HAMANN MEADOWS TOWNHOMES ASSOCIATION
 - Vote on financing repair of pond

Step III

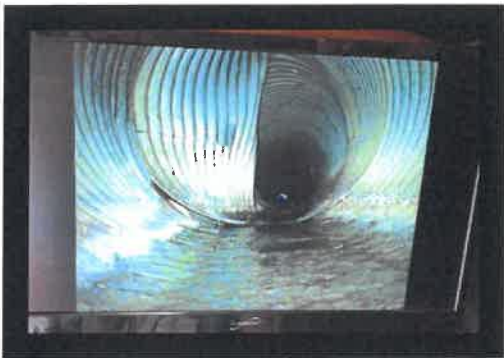
- Reconstruction/Repairs
 - Specifics of this phase will be determined once engineering design is finalized with additional information.
 - Approval from the City (Watershed)
 - Determine if repair of dam or repair for pass through channel



3'-4' into entrance via Antelope Creek 1



3'-4' into entrance via Antelope Creek floor out outlet. Hole in floor.



Picture 7 Collapse of outlet



Picture 6 Band separated



Picture 9 Floor of outlet



Picture 8 20'-23' in from outlet, unable to continue





Lancaster County/City of Lincoln GIS Map South detention pond

Printed: Jun 19, 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.

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Note: All opinions of costs are preliminary and based on conceptual level quantity take offs. Both quantities and unit costs assumptions will change during final design. Depending on project timing, inflation should be considered and added for project budgeting purposes. The engineer's opinion of probable costs represents the engineer's best judgment as an experienced qualified professional generally familiar with the industry. However, since the engineer has no control over cost of labor, materials, equipment or services furnished by others or the contractor's methods of determining prices or over competitive bidding or market conditions, the engineer cannot and does not guarantee the actual bid prices will not vary from the option of probable construction costs prepared by the engineer.

I hereby certify that this Opinion of Probable Construction Costs was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer under the laws of the State of Nebraska

PRELIMINARY

**Aug-
2018**

Michael W. Placke, PE

Date

Total				\$10,699.00

Note: All opinions of costs are preliminary and based on conceptual level quantity take offs. Both quantities and unit costs assumptions will change during final design. Depending on project timing, inflation should be considered and added for project budgeting purposes. The engineer's opinion of probable costs represents the engineer's best judgment as an experienced qualified professional generally familiar with the industry. However, since the engineer has no control over cost of labor, materials, equipment or services furnished by others or the contractor's methods of determining prices or over competitive bidding or market conditions, the engineer cannot and does not guarantee the actual bid prices will not vary from the option of probable construction costs prepared by the engineer.

I hereby certify that this Opinion of Probable Construction Costs was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer under the laws of the State of Nebraska

PRELIMINARY

**Aug-
2018**

Michael W. Placke, PE

Date

G:\Lincoln\Admin\LETPROP\Resources\Hamann Meadows\Opinion -Probable Costs-Parks

Hamann Meadows Home
Owners Association, Li
Dam between 75th & 76th



Hall Brothers Tree Service
PO Box 281
Walton, NE 68461
(402)840-3133
hallbrotherstrees.com

DATE 08/02/2018	TOTAL \$2,495.00	EXPIRATION DATE 08/16/2018
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Estimate 2783

ADDRESS

Teresa Hruza
and Pioneer Blvd
Lincoln, NE

ACTIVITY	QTY	RATE	AMOUNT
Remove Tree & Wood To Remove Trees along the front and backside of the damn. Front side includes mulberries, willows, elm and large cottonwood. Leave stumps up a couple feet. Back side of damn is mostly smaller trees. Stop at group of small locust trees.	1	2,495.00	2,495.00

*Will need to access damn with equipment.
Pricing valid for 14 days.

TOTAL \$2,495.00

THANK YOU.

Accepted By

Accepted Date



Vendor Ledger

1/1/2018 - 10/9/2018, Hamann Meadow Townhome Association

Concierge Realty Management
8410 Executive Woods Drive
Suite E
Lincoln, NE 68512
402-904-7806

Tinius Plumbing, INC.

Date	Property or company	Reference number	Description	Bill	Payment
8/20/2018	Hamann Meadow Townhome Association	27858	Camera/Inspect Pipe for Pond Drain Order by Teresa Scholl-Hruza 7516 Diamond Ct TV Camera/Locate	300.00	
8/31/2018	Hamann Meadow Townhome Association	27858	Camera/Inspect Pipe for Pond Drain Order by Teresa Scholl-Hruza 7516 Diamond Ct TV Camera/Locate		300.00
Total for Tinius Plumbing, INC.				\$300.00	\$300.00

SCOPE OF SERVICES

This exhibit is hereby attached to and made a part of the Letter Agreement for Professional Services dated October 5, 2018 between Hamann Meadows Home Owners Association ("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: Lancaster County, Nebraska

Project Description: Olsson will develop plans for replacement and repair of the stormwater detention cell located near 75th street and Diamond Court in Lincoln Nebraska. The existing structure has several grown trees on the embankment and the corrugated metal pipe and riser is in need of replacement. It is assumed that the pipe and riser will be replaced with a concrete box riser and concrete pipe. It is assumed that the entire length of pipe will need to be replaced. Pipe replacement will be the same size as existing pipe.

SCOPE OF SERVICES

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

Phase 100 – Engineering Services

Task 101 – Site Visit

- Visit the site and collect necessary photos, drainage structure inventory, land use data, stream assessment data, and other information required to create hydrologic and hydrologic models. Assumes 2 people for one day surveying, and one day for modeling, total of 24 hrs.
- Collect aerial photography, Lancaster County LiDAR, soils maps, and other information to aide in conceptual design.
- Visually inspect apparent deficiencies in flow capacity or embankment stability, such as deteriorated riser and spillway pipe, overgrown vegetation, channel obstructions, or signs of scour and erosion.
 - Assumptions: 2 people for one day surveying, and one day for modeling, total of 24 hrs. for this task. LiDAR data will be used and survey will not be required.

Task 102 – Conceptual Design

- Analyze the outlet to determine size and grades.
- Design improvements to correct deteriorated conditions. Improvement options need to also consider aesthetic value near neighborhoods and backwater effects.
- Prepare concept level plans with typical channel cross sections.
- One site meeting with client to review conceptual design and preliminary opinion of probable cost.
 - Assumptions: total of 30 hours for this task. Existing pipe will be replaced with class III reinforced concrete pipe at the existing lines and grades.

Task 203 – Final Design

- Develop final plans in accordance with city of Lincoln standards for detention cells. It is assumed that all project specifications will be contained with the plan set and will consist of not more than one standard size sheet.
- Client will distribute plans to prospective bidders.
 - Assumptions: Total of 16 hours for this task. Project specifications will be contained within the plan set. Owner will distribute plans to prospective bidders and perform all bidding services.

Task 204 – Construction Services

- Olsson will provide part-time construction services. The engineer will visit the site twice during construction. This task assumes a total of 8 hours.

Tasks not included with this scope:

The following tasks are not included, should the client request additional services a separate fee can be developed depending on the tasks requested:

- Geotechnical investigation
- Welland investigation or environmental permitting
- Survey
- Bidding services
- As constructed drawings

Total project hours = 78 hours

Total project fee = \$7,800.00

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.

OLSSON ASSOCIATES, INC.

By _____
Michael W. Placke

Brian P. Dunnigan

If you accept this Scope of Services, please sign:

Hamann Meadows Home Owners Association

By _____
Signature

Print Name _____

Title _____

Dated: _____