



LOWER PLATTE SOUTH natural resources district

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Memorandum

Date: September 14, 2023
To: Board of Directors
From: Mike Murren Projects Coordinator
Subject: Water Resources Subcommittee Meeting Minutes - September 2023

The Water Resource Subcommittee met on Tuesday September 12, 2023, at NRD office, at 5:30 pm. Subcommittee members present included Larry Ruth, Melissa Baker, Luke Peterson, Gary Hellerich, Susan Seacrest, Don Jacobson, Mark Spangler, and Bob Andersen. Staff present were Mike Sousek, Dave Potter, Steve Herdzina, Mark Lindeman, Dick Ehrman, Craig Matulka, Drew Raktovec, and Mike Murren. Mike Sotak from Houston Engineering was also present. There were three agenda items for action and one report given. A quorum was present for the meeting.

A. Consideration of a Professional Service Agreement with Houston Engineering Inc. for the Upper Salt 3-2 Watershed Dam Rehabilitation Project (Action)

A recent inspection of the Upper Salt 3-2 structure by staff indicated the corrugated metal pipe is rusted out and replacement of the riser, and principal spillway pipe is required. This is a watershed dam that was built in the late fifty's that is located just South of Sprague. Staff reached out to Houston Engineering for an engineering services proposal for design, permitting, bidding, and construction oversight of this project. Staff negotiated the attached Professional Services Agreement for the sum of \$37,071.00. This project is in the FY 24 budget for design and construction.

It was moved by Hellerich, seconded by Andersen to recommend that the Board of Directors approve the Professional Service Agreement with Houston Engineering Inc. for engineering services for design, permitting, bidding, and construction oversight of the Upper Salt 3-2 watershed dam rehabilitation project at a cost not to exceed \$37,071.00. Roll call vote taken with Seacrest, Andersen, Hellerich, Baker, Jacobson, Spangler, and Ruth voting aye, and Peterson abstaining. Motion passed.

B. Consideration of a Professional Service Agreement with Houston Engineering Inc. for the Harshman Road Structure (Action)

The Harshman Road structure dam is located four miles east of Avoca Nebraska on County Road A. This project was built as part of a 1990 agreement between the LPSNRD and Cass County. The agreement states that upon notice, maintenance of the structure will be cost shared between the NRD (75%) and Cass County (25%). Craig Matulka has sent the Cass County Roads Department a notice of the upstream wave berm and slope repair as well as the schedule and estimated cost of the project. Matulka mentioned this project will be in front of the Cass County Board next week. The design of the project will be completed in FY 24 and the construction phase of the project will occur in FY 25. The LPSNRD will ask for reimbursement from Cass County upon project completion. Staff reached out to Houston Engineering Inc. for engineering services for design, permitting, bidding, and construction oversight of the project. Staff negotiated the attached Professional Services Agreement for the sum of \$31,078.00.

It was moved by Andersen, seconded by Ruth to recommend that the Board of Directors approve the Professional Service Agreement with Houston Engineering Inc. for engineering, services for design, permitting, bidding, and construction oversight of the Harshman Road structure wave berm and slope repair project at a cost not to exceed \$31,078.00. Roll call vote taken and all present voting aye. Motion passed.

C. Consideration of Amendment Number 1 to the agreement for professional services with Schemmer Associates, Inc. for the Piening Dam Design Refresh and Permitting Project No. 09020.001.

In December 2022, the board approved a contract with Schemmer Associates Inc. for design and permitting of the Piening dam located along Hwy 34 on the Lancaster/Seward County line. Schemmer continues to work with the Dam safety division of the Nebraska Department of Natural Resources (DNR) to obtain approval of the design to meet the current design standards. DNR has provided comments about the soil boring data that was done back in 2006 and found that the previously advanced borings do not show the vertical and lateral extent of the sand and soft clays in the dam and emergency spillway. District engineer Mark Lindeman has also looked at the soil information from the old study and felt that some additional borings in those areas would provide better information to complete the final design of the project and meet DNR concerns.

Staff asked Schemmer for a proposal for additional soil borings and lab testing that would provide the data needed to finalize the plans and meet DNR's dam safety criteria. Schemmer's proposal is to complete six borings (three in the emergency spillway, three in the dam footprint), and analyze the soil data and provide the information to DNR. The total cost of the soil exploration will be \$13,375.00. Attached is the professional services scope and fee from Schemmer, Inc.

It was moved by Hellerich, seconded by Peterson to recommend that the Board of Directors approve Amendment Number 1 to the agreement for professional services with Schemmer Associates Inc, for the Piening Dam Refresh and Permitting Project No. 09020.001 in the amount of \$13,375.00. Roll call vote taken and all present voting aye. Motion passed.

Olson Site Visit Report

Herdzina reported on the site visit from August 25, 2023, that he and Ehrman made to the Don Olson farm. The inspection of the area found no violations of the Cease-and-Desist order. The committee discussed some possible solutions on how to handle this ongoing complaint by the landowner with staff, as well as conversation with legal counsel.

With no further business the meeting was adjourned at 6:45pm.

Enc.

cc: Steve Seglin
Corey Wasserburger
Dave Landis



PROFESSIONAL SERVICES AGREEMENT

PROJECT: Upper Salt Creek 3-2 Dam Rehab HOUSTON ENG JOB #: R000173-0006
CLIENT: Lower Platte South NRD
ADDRESS: 3125 Portia Street, Lincoln, NE 68521
CONTACT: Craig Matulka TEL: 402.476.2729 Tax ID:
CLIENT EMAIL: cmatulka@lpsnrd.org
CONSULTANT: Houston Engineering, Inc.
ADDRESS: 12702 Westport Parkway #300, Omaha, NE 68154
CONTACT: Michael K. Sotak, P.E., D. WRE TEL: 402.934.8328 FAX:
PROJECT DESCRIPTION: Rehabilitation of an aging dam conduit at Upper Salt Creek 3-2 Dam

[X] SCOPE OF SERVICES (By task assignment) [] SCHEDULE (See Attachment)

COMPENSATION:

The total compensation under this Agreement...

Task orders under this agreement can be ordered via email or written letter.

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

TIME AND MATERIALS. Compensation for these services will not exceed \$ 37,071 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 Houston Engineering and as authorized in writing by Client.

[X] Consultant's Direct Job Wages times a factor of [] Budget/List of Consultant'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 (As per task assignment)

SCHEDULE OF PAYMENTS (See Following Pages)

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

EXECUTION: Execution of this document by duly authorized representatives of Houston Engineering, Inc., and CLIENT, including Houston Engineering's Standard General Terms and Conditions (attached) and any other 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: Houston Engineering, Inc.
BY: Michael K. Sotak, P.E., D.WRE

CLIENT: Lower Platte South NRD
BY: Mike Sousek

SIGNATURE: [Handwritten Signature]

SIGNATURE:
TITLE: General Manager

TITLE: Senior Consultant
DATE: 24 August 2023

DATE:



HOUSTON ENGINEERING, INC STANDARD CONDITIONS

SERVICES. Houston Engineering will perform services for the Project as set forth in attachment and in accordance with these Terms & Conditions. Houston 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 Houston Engineering in performing their services.

AUTHORIZED REPRESENTATIVES. The officer assigned to the Project by Houston Engineering is the only authorized representative to make decisions or commitments on behalf of Houston 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 Houston Engineering at Project inception. Houston 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 Houston Engineering to access the Project site(s).

PERIOD OF SERVICE. Houston Engineering shall perform the services for the Project in a timely manner consistent with sound professional practice. Houston 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. Houston Engineering shall be entitled to an extension of time and compensation adjustment for any delay beyond Houston Engineering control.

COMPENSATION. In consideration of the services performed by Houston Engineering, the Client shall pay Houston 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 Houston Engineering.

PAYMENT TERMS. Houston 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. Houston Engineering shall be entitled to a 2% per month administrative charge in the event of payment delay. Client payment to Houston Engineering is not contingent on arrangement of project financing. Invoice payment delayed beyond sixty (60) days shall give Houston Engineering the right to stop work until payments are current. Non-payment beyond seventy (70) days shall be just cause for termination by Houston Engineering.

ADDITIONAL SERVICES. The Client and Houston 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, Houston 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. Houston Engineering shall serve as an independent consultant for services provided under this agreement. Houston 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 Houston Engineering.

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

COMPLIANCE WITH LAWS. HOUSTON 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, HOUSTON Engineering shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

PERMITS AND APPROVALS. Houston 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 Houston Engineering for the Project are Instruments of service and shall remain the property of Houston Engineering. Record documents of service shall be based on the printed copy. Houston Engineering will furnish documents electronically; however, the Client releases Houston Engineering from any liability that may result from documents used in this form. Houston Engineering shall not be held liable for reuse of documents for any purpose other than those intended under the Project.

INSURANCE. Houston 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.

Workers' Compensation As required by applicable state statute.

Commercial General Liability \$1,000,000 per occurrence (bodily injury including death & property damage)
\$2,000,000 aggregate.

Automobile Liability \$1,000,000 combined single limit for bodily injury and property damage.

Professional Liability \$1,000,000 each claim and in the aggregate.

Excess Liability/
Umbrella
Coverage \$2,000,000 per occurrence

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. Houston Engineering shall be a named insured on those policies where Houston Engineering may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

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

INDEMNIFICATION AND HOLD HARMLESS. Houston Engineering, INC 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 Houston Engineering, INC its employees, or Subconsultants and/or subcontractors. Client shall indemnify and hold harmless Houston Engineering, INC 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 Houston Engineering, INC, and the Client this indemnification applies only to the extent of the negligence of Houston Engineering, INC.

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 Houston Engineering shall be liable to the other for any consequential damages regardless of the nature or fault.

ENVIRONMENTAL MATTERS. The Client to its knowledge has disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Houston 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 Houston Engineering from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Houston Engineering.

COST OPINIONS. If included in the scope of service, Houston Engineering shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Houston Engineering acknowledge that actual costs may vary from the cost opinions prepared and that Houston 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 Houston Engineering does not furnish these services.

CONTRACTOR SELECTION. Houston 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, Houston 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. Houston 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, Houston 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 Houston 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. Houston Engineering may recommend that the Client reject work by construction contractors that does not conform to the requirements of the Project.

SAFETY. Houston 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 Houston Engineering acknowledge that Houston Engineering will rely on information furnished by other parties in performing its services under the Project. Houston 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, Houston 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, Houston 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 Houston 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. Houston 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 Houston Engineering with cause upon fourteen (14) days written notice. Houston Engineering shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Houston Engineering all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Houston Engineering shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

TERMINATION. The Client or Houston 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. Houston Engineering shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Houston 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. Houston Engineering warrants that it will deliver products under the Project within the standard of care. Houston 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 Houston 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 Houston Engineering shall survive the completion or termination of services for the project.

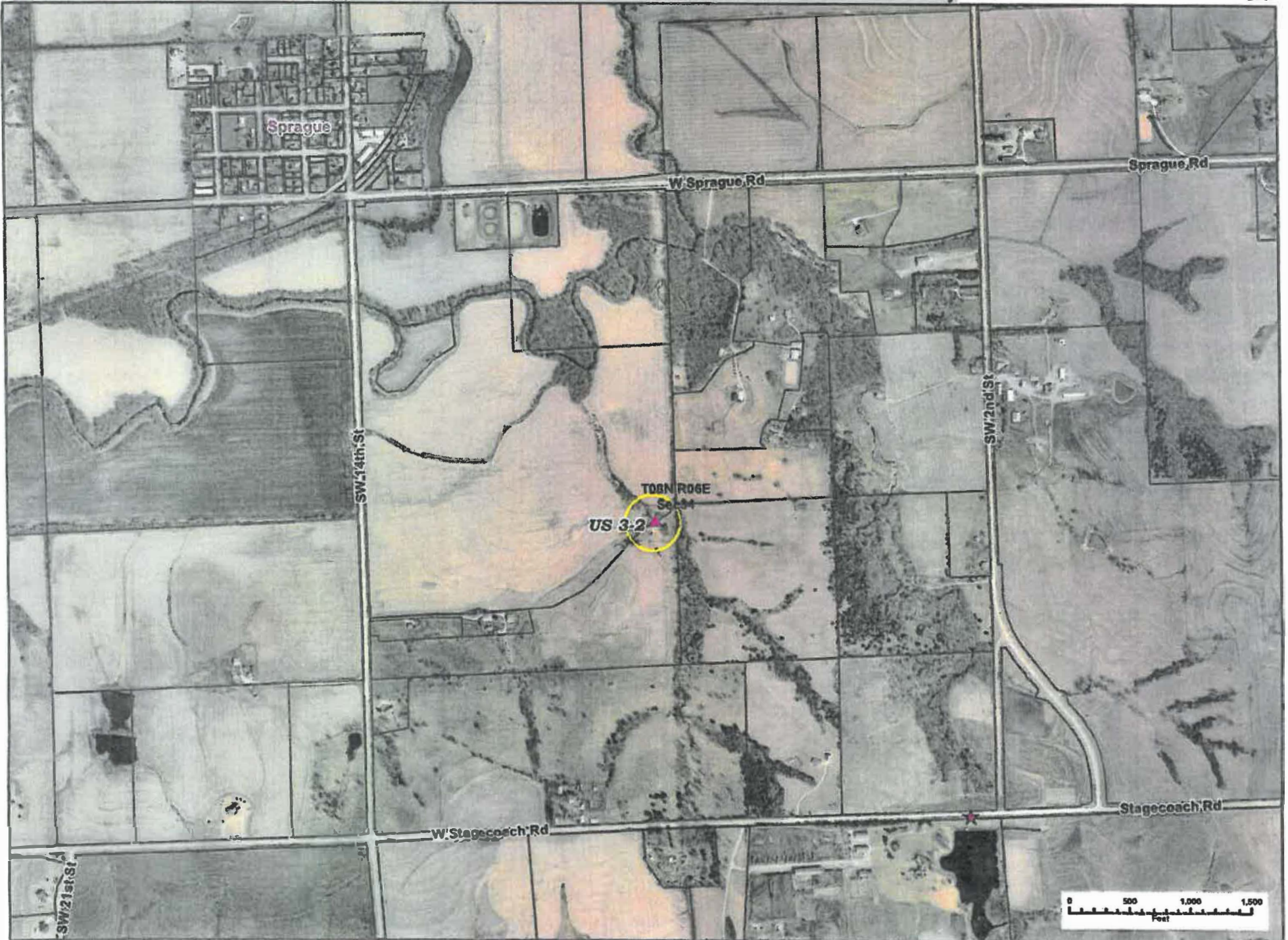
ANTI-DISCRIMINATION. Neither Houston Engineering or its subcontractors shall discriminate against any of their employees or applicants for employment, to be employed in the performance of this Agreement, with respect to their hire, tenure, terms, conditions, or privileges of employment, because of their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

Scope of Services
 Upper Salt Creek Dam Site 3-2
 Lower Platte South NRD



Tasks	12/14	1/15	2/15	3/15	Expenses	Total
Project Management/Project Direction						
Initial Site Visit	6					
Design Alternatives Correspondence	2					
Monthly Invoicing/PM Duties	2			4		
Project Management/Project Direction Task Total	\$2,580	\$0	\$0	\$316	\$0	\$2,896
Design						
Review As-builts / Bring into CADD	1		4			
Site Visit/Survey				6		
Create Base Map	0.5		5			
Conduct Hydrology Check	0.5		3			
Hydraulic Analysis	1		6			
Prepare Construction Plan Set	1		32			
Prepare Project Specifications	6		3			
Develop Engineer's Opinion on Costs	1		3			
Design Task Total	\$2,838	\$0	\$8,610			\$12,448
Permitting						
Prepare and Submit USACE Section 404 Nationwide Permits		8				
Agency Coordination		2				
Prepare NDNR Permit Application	1		2			
Correspondence with NDNR	1		2			
Permitting Task Total	\$516.00	\$2,050	\$620			\$3,186
Bid Phase						
Pre-Bid Coordination	4					
Project Bidding/Engineer's Recommendation	6		2			
Bid Phase Task Total	\$2,580	\$0	\$310			\$2,890
Construction Phase (Assuming 2 Weeks with No Delays)						
Pre-Construction Coordination	4		4			
Construction Observation	8		60		\$750	
Construction Reporting	2		4			
As-Built Drawings	0.5		4			
Construction Phase Task Total	\$3,741	\$0	\$11,160		\$750	\$15,651
Subtotal Hours	48	10	140			
Subtotal Costs	\$12,255	\$2,050	\$21,700		\$750	\$37,071

Upper Salt 3-2 in NE SW Sec 34, T8N-R6E, Lancaster County



Map Created: September 2022 - LPSNRD, sdr



PROFESSIONAL SERVICES AGREEMENT

PROJECT: Harsh man Dam Rehab HOUSTON ENG JOB #: R000173-0007
CLIENT: Lower Platte South NRD
ADDRESS: 3125 Portia Street, Lincoln, NE 68521
CONTACT: Craig Matulka TEL: 402.476.2729 Tax ID:
CLIENT EMAIL: cmatulka@lpsnrd.org
CONSULTANT: Houston Engineering, Inc.
ADDRESS: 12702 Westport Parkway #300, Omaha, NE 68154
CONTACT: Michael K. Sotak, P.E., D.WRE TEL: 402.934.8828 FAX:
PROJECT DESCRIPTION: Rehabilitation of the wave berm at Harshmann Dam

[X] SCOPE OF SERVICES (By task assignment) [] SCHEDULE (See Attachment)

COMPENSATION:

The total compensation under this Agreement.

Task orders under this agreement can be authorized via email or written letter.

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

TIME AND MATERIALS. Compensation for these services will not exceed \$ 31,078 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 Houston Engineering and as authorized in writing by Client.

[X] Consultant's Direct Job Wages times a factor of [] Budget/List of Consultant'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 (As per task assignment)

SCHEDULE OF PAYMENTS (See Following Pages)

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

EXECUTION: Execution of this document by duly authorized representatives of Houston Engineering, Inc., and CLIENT, including Houston Engineering's Standard General Terms and Conditions (attached) and any other 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: Houston Engineering, Inc.
BY: Michael K. Sotak, P.E., D.WRE

CLIENT: Lower Platte South NRD
BY: Mike Sousek

SIGNATURE: [Handwritten Signature]

SIGNATURE: General Manager

TITLE: Senior Consultant

DATE:

DATE: 24 August 2023



HOUSTON ENGINEERING, INC STANDARD CONDITIONS

SERVICES. Houston Engineering will perform services for the Project as set forth in attachment and in accordance with these Terms & Conditions. Houston 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 Houston Engineering in performing their services.

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

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

PERIOD OF SERVICE. Houston Engineering shall perform the services for the Project in a timely manner consistent with sound professional practice. Houston 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. Houston Engineering shall be entitled to an extension of time and compensation adjustment for any delay beyond Houston Engineering control.

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COMPLIANCE WITH LAWS. HOUSTON 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, HOUSTON Engineering shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

PERMITS AND APPROVALS. Houston 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.



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Workers' Compensation As required by applicable state statute.

Commercial General Liability \$1,000,000 per occurrence (bodily injury including death & property damage)
\$2,000,000 aggregate.

Automobile Liability \$1,000,000 combined single limit for bodily injury and property damage.

Professional Liability \$1,000,000 each claim and in the aggregate.

Excess Liability/
Umbrella
Coverage \$2,000,000 per occurrence

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

INDEMNIFICATION AND HOLD HARMLESS. Houston Engineering, INC 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 Houston Engineering, INC its employees, or Subconsultants and/or subcontractors. Client shall indemnify and hold harmless Houston Engineering, INC 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 Houston Engineering, INC, and the Client this indemnification applies only to the extent of the negligence of Houston Engineering, INC.

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 Houston Engineering shall be liable to the other for any consequential damages regardless of the nature or fault.

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

CONTRACTOR SELECTION. Houston 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, Houston 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. Houston 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, Houston 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 Houston 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. Houston Engineering may recommend that the Client reject work by construction contractors that does not conform to the requirements of the Project.

SAFETY. Houston 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 Houston Engineering acknowledge that Houston Engineering will rely on information furnished by other parties in performing its services under the Project. Houston 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, Houston 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, Houston 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 Houston 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. Houston 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 Houston Engineering with cause upon fourteen (14) days written notice. Houston Engineering shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Houston Engineering all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Houston Engineering shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

TERMINATION. The Client or Houston 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. Houston Engineering shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Houston 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. Houston Engineering warrants that it will deliver products under the Project within the standard of care. Houston 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 Houston 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 Houston Engineering shall survive the completion or termination of services for the project.

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

Scope of Services
Hershmann Rd Dam Site
Lower Platte South NRD



Tasks	Personnel				Expenses	Total
	Smith	Haldeman	Sung	Whitling		
	1252	523	1765	376		
Project Management/Project Direction						
Initial Site Visit	6					
Design Alternatives Correspondence	2					
Monthly Invoicing/PM Duties	2			4		
Project Management/Project Direction Task Total	\$2,580	\$0	\$0	\$316	\$0	\$2,896
Design						
Review As-builts / Bring into CADD	1		4			
Site Visit/Survey			6			
Create Base Map	0.5		2			
Calculate Lake Fetch	0.5		1			
Prepare Construction Plan Set	1		24			
Prepare Project Specifications	6		3			
Develop Engineer's Opinion on Costs	1		3			
Design Task Total	\$2,580	\$0	\$7,263			\$9,843
Permitting						
Prepare and Submit USACE Section 404 Nationwide Permits		2				
Agency Coordination		2				
Prepare NDNR Permit Application	1		2			
Correspondence with NDNR	1		2			
Permitting Task Total	\$516.00	\$2,050	\$620			\$3,186
Bid Phase						
Pre-Bid Coordination	4					
Project Bidding/Engineer's Recommendation	6		2			
Bid Phase Task Total	\$2,580	\$0	\$310			\$2,890
Construction Phase (Assuming 1 Week total time)						
Pre-Construction Coordination	4		4			
Construction Observation	8		40		\$750	
Construction Reporting	2		4			
As-Built Drawings	0.5		2			
Construction Phase Task Total	\$3,741	\$0	\$7,750		\$750	\$12,241
Subtotal Hours	47	10	103			
Subtotal Costs	\$11,997	\$2,050	\$15,965		\$750	\$31,076

Harshman Road Structure in SW Sec 26, T10N-R12E, Cass County



Map Created: September 2022 - LPSNRD, sdr

AMENDMENT NO. 1
To AGREEMENT for PROFESSIONAL SERVICES
Between THE SCHEMMER ASSOCIATES INC. and LOWER PLATTE SOUTH NRD
Piening Dam Design Refresh and Permitting
Project No. _____

This Contract Amendment is made by and between The Schemmer Associates, Inc. hereinafter called SCHEMMER, and the Lower Platte South NRD, hereinafter called LPSNRD, this _____ day of _____, 2023.

WHEREAS, it is the mutual desire of the parties hereto to amend an agreement approved by the LPSNRD Board of Directors on December 14, 2022 and executed by the LPSNRD General Manager on December 22, 2022 hereinafter called the existing Agreement.

NOW THEREFORE, it is hereby agreed that the existing Agreement be amended as follows:

Additional Work:
See Attached

Additional Fee:

Existing Agreement Fee:	\$136,916.00
Amendment #1:	\$13,375.00
Total Agreement:	\$150,291.00

This AMENDMENT shall be deemed a part of, and be subject to all terms and conditions of the existing Agreement. Except as modified above, the existing Agreement shall remain in full force and effect.

LPSNRD

General Manager, LPSNRD

By: 
The Schemmer Associates, Inc.



September 7, 2023

Mr. Mike Murren
Lower Platte South NRD
3125 Portia St.
Lincoln, NE 68521

RE: Amended Professional Services Proposal
Geotechnical Exploration, Soil Borings, and Recommendations
Piening Dam, Additional Analyses for Sand Subgrade
Lancaster County, Nebraska
Schemmer Project No. 09020.001

Dear Mr. Murren:

The Schemmer Associates Inc. (Schemmer) proposes to render professional geotechnical engineering services for exploration and analyses of soils below the proposed Piening Dam in Lancaster County, Nebraska. An existing design of the dam and emergency spillway exists. However, natural sand deposits on the east abutment of the dam have posed questions. Comments have been provided by the DNR concerning the soil boring data necessary to update the plans and specifications. DNR found the previously advanced borings do not show the vertical and lateral extent of the sand and soft clay deposits.

The development of this scope of services and compensation proposal was based in part on the following:

- Preliminary project plans, by Schemmer, dated March 16, 2023.
- Geotechnical Engineering Report, by In-Situ Engineering, dated August 4, 2004.

I. PROPOSED CONSTRUCTION and AVAILABLE SOIL DATA

A new dam will be constructed across an existing creek channel within the southwest quarter of Section 30, Range 5 East, Township 11 North in Lancaster County, Nebraska. This site is also described as being northeast of the intersection of US Highway 34 and NW 140th Street. A dam that is up to 27 feet tall above existing grade and 880 feet long is proposed. The emergency spillway will be excavated within the natural embankment beyond the east end of the dam.

The project is located within an area of soils derived from glacial till along the west edge of Lancaster County, Nebraska. Borings by In-Situ Engineer show soil consisting predominately of sand below the east abutment, where the emergency spillway will be constructed. However, the borings do not penetrate completely through the sand, providing uncertainty of the vertical and lateral extents of the sand deposits. Sand seams are also described in the borings at the west

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Amended Professional Services Proposal
Geotechnical Exploration, Soil Boring, and Recommendations
Piening Dam, Additional Analyses for Sand Subgrade
Lancaster County, Nebraska
September 7, 2023
Page 2 of 4

abutment. The borings below the proposed dam terminate within soft subgrade soils, leading to uncertainty concerning embankment support and consolidation estimates.

II. SCOPE OF GEOTECHNICAL SERVICES

Schemmer proposes to provide a geotechnical exploration consisting of the advancement of six soil borings, testing of soil samples in our laboratory, and analyses of the soil conditions encountered to compliment the data from a previously prepared geotechnical report prepared by In-Situ Engineering and provide sufficient information concerning the depth and extents of sand deposits and soft clay subgrades. This new data will be used to finalize the dam design and address comments from the DNR.

We propose to advance six borings: two to 20 feet, one to 25 feet, and three to 35 feet below existing grade. A total exploration and sampling of 170 lineal feet is proposed.

We will increase the depths of the three borings currently scoped in the emergency spillway to extend not less than 5 feet below the base of the existing natural sand deposits, an unknown depth.

A detailed scope of service is provided in Attachment A.

III. ASSUMPTIONS

1. Schemmer has access to the site. All boring tests will be done in a manner to minimize damage to area ground surfaces. Truck tires will leave minimal wheel tracks on the ground surface.
2. A 2-wheel drive truck will be able to access boring locations. Snow, fences, or other access restrictions will be removed by others.
3. There will be no special safety equipment needed due to site contamination of air or soil that would require additional health and safety equipment or personal protection for drill crew and laboratory testing personnel.
4. Soil samples will not be scanned for hydrocarbon content.

IV. EXPERIENCE

The Schemmer geotechnical engineering personnel have experience with this type of structure in eastern Nebraska. We have provided geotechnical recommendations for several dam projects in this area including evaluation of failed dam systems.

V. COMPENSATION

- A. *Geotechnical Exploration:*** Schemmer will provide the geotechnical exploration services enumerated above for the Lump Sum amount of ***Thirteen Thousand, Three Hundred Seventy-Five Dollars and No Cents (\$13,375.00)*** (including travel, and expenses) in accordance with the terms of the attached General Conditions and Supplemental General Conditions.
- B. *Additional Services:*** Schemmer will render Additional Services as approved and directed by our Client on an hourly rate cost and equipment fee basis as agreed to at the time such services are requested. Schemmer will invoice these approved services with our Schedule of Hourly rates in effect at the time the additional services are requested plus reimbursable expenses. We cannot determine if additional work to confirm boring depth of at least 5 feet below the sand will not increase the soil sampling work scope beyond 1 day. For total soil exploration depth of drilling greater than 170 feet, the work fee will be increased in accordance the unit soil boring costs of:

Soil Boring and Sampling	\$17.00 per foot
Extruder, per day	\$150.00 per day
Daily Mobilization	\$100.00 per day

VI. LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of these services to both the Client and Schemmer, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Schemmer and its sub-consultants for any and all claims, losses, damages of any nature whatsoever from any cause or causes.

Such limitation of liability shall be the total aggregate liability of The Schemmer Associates Inc. and its sub-consultants to all those named and shall not exceed \$50,000.00 or Schemmer's total fee for services rendered on this project, whichever is greater. Such claims and causes include, but are not limited to negligence, professional errors and omissions, strict liability, and breach of contractor warranty.

VII. SCHEDULE

Once Schemmer receives authorization and Notice-to-Proceed utility-locate services the boring can be advanced within 4 to 6 weeks after authorization. Verbal results for structural design input would be available within 10 working days after completion of drilling operations. The final geotechnical report will be available within 4 weeks after the soil borings are advanced.

VIII. ACCEPTANCE

This agreement shall be accepted by someone authorized by the Client, signing where indicated below or by providing an electronic mail written acceptance. Either means of acceptance

Amended Professional Services Proposal
Geotechnical Exploration, Soil Boring, and Recommendations
Piening Dam, Additional Analyses for Sand Subgrade
Lancaster County, Nebraska
September 7, 2023
Page 4 of 4

signifies an acceptance of all terms and conditions contained within this agreement. Any other form of agreement that may be proposed by the Client shall include these terms and conditions in full.

We look forward to working with you to contribute to the success of this project. If you have any questions regarding this proposal, please feel free to contact us at 402-493-4800.

Sincerely,

THE SCHEMMER ASSOCIATES INC.



Loras A. Klostermann, P.E.
Manager Geotechnical Engineering
Shareholder

ACCEPTED:

Lower Platte South NRD

BY _____

TITLE _____

DATE _____

Attachments:

Attachment A – Detailed Scope of Geotechnical Services
General Conditions
Supplemental General Conditions



Attachment A

Amended Detailed Scope of Geotechnical Services Piening Dam Lancaster County, Nebraska

Schemmer will advance a total of six borings. Two borings to 20 feet, one boring to 25 feet, and three borings to 35 feet will be advanced. A total of 170 lineal feet of boring and sampling is estimated. DNR has requested that the three borings along the emergency spillway be advanced to at least 5 feet below the natural sand deposits. Additional boring effort may be necessary.

The scope of geotechnical exploration will consist of the following:

1. Schemmer will provide project preparation services consisting of:
 - a. Prior to drilling, the soil boring locations will be staked by Schemmer personnel.
 - b. Area underground utility service representatives will be contacted by our drilling subcontractor through the One-Call system to mark area public utilities and remove conflicts between drilling and utilities in accordance with State law.
 - c. Locations of private utilities will be requested from the client-designated site representative since these are not located by the One-Call system. If our Client cannot determine private site utility locations, Schemmer will perform this necessary duty at additional costs. Soil borings cannot be advanced before utilities are cleared.
 - d. Site characteristics will also be noted, and the boring locations adjusted to fit the site characteristics and proposed construction characteristics.
2. Schemmer will obtain subsoil data from the field boring locations through:
 - a. Sampling of soils using a truck-mounted drilling and sampling rig. We will obtain four soil samples within the upper 10 feet of each boring and at 5-foot intervals below 10 feet to the maximum proposed depth at each drill location.
 - b. Obtaining undisturbed samples of cohesive soil using a thin-walled sampler tube in accordance with ASTM D1587, Standard Method for Thin-Walled Tube Sampling of Soils, using an open-tube (Shelby Tube) sampler having an outside diameter of 3.0 inches.
 - c. Retrieving sand or other granular soil samples with a split-barrel sampler. Standard Penetration Test (SPT) measurements will be made during the retrieval of each split-barrel sample in accordance with ASTM D1586, Standard Method for Penetration Test and Split-Barrel Sampling of Soils to determine the relative density of the granular materials.
 - d. Providing field logs of the soil types and characteristics encountered at the boring locations and recorded in the field.
 - e. Recording groundwater levels at the time of drilling and after completion of drilling.
 - f. Filling the borings with soil cutting. Excess soil cuttings will be removed from the drill locations and spread at an owner acceptable location on site.
3. A field log of each boring will be written and will contain:
 - a. Personnel used for the drilling.
 - b. Date of field work.
 - c. Thicknesses of existing fill or other disturbed soil layers, where encountered.

**Attachment A
Piening Dam
Lancaster County, Nebraska
Page 2 of 2**

- d. **Approximate locations of changes in soil type with depth.**
 - e. **Groundwater levels when encountered during drilling within the depth of boring.**
 - f. **Identification of the subsurface materials described in accordance with ASTM D2488, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure).**
 - g. **Any other observed site conditions that we estimate may affect the engineering recommendations.**
 - h. **Graphical presentation of the soil data.**
4. **Appropriate laboratory testing of recovered samples will be completed at the direction of the licensed project geotechnical engineer.**
- a. **Measurements of in-place water content, unit weight, shear strength, unconfined compressive strength, soil gradation, Atterberg limits, and visual soil classification will be conducted on selected soil samples.**
 - b. **Laboratory tests will be completed in accordance with ASTM procedures within the Schemmer soil testing laboratory by trained technicians using calibrated test equipment. The Schemmer geotechnical laboratory is certified by USACE and other public entities.**
5. **An experienced geotechnical engineer with Schemmer will analyze the data and prepare a written report to contain the following:**
- a. **Description of site soil conditions and significance of area geology.**
 - b. **Tabulation of test data, a boring location plan and soil boring logs.**
 - c. **Dam foundation and site preparation recommendations to provide embankment support.**
 - d. **Recommendations for ground improvement if inadequate subgrade is determined.**
 - e. **Recommendations to seal the dam due to sand deposits.**
 - f. **Recommended types of soil fill and backfill materials and compaction requirements for support of structures.**
 - g. **Review of existing soil data and existing recommendations.**
 - h. **Dam base cutoff trench recommendations.**
 - i. **Anticipation of, management of, and recommendations for drainage of surface water and groundwater.**
 - j. **Seismic design parameters required by building code, and**
 - k. **Potential for consolidation and recommendations to control potential settlement of embankment and piping.**

Environmental assessment and study are outside the scope of our geotechnical exploration. However, any subsurface contamination found by Schemmer during our field exploration as defined by the laws and regulations of the State of Nebraska, which is detected by odor or visual examination of the soil samples, will be reported to our Client with a written recommendation to consult an environmental specialist to evaluate any environmental compliance and/or property development issues. Schemmer will not act on or report any such occurrence beyond this statement within the scope of this geotechnical exploration.

