

Agenda Item: 13.

## **MEMORANDUM**

**TO:** Programs, Projects and Operations Subcommittee

**FROM:** Martin P. Cleveland

**SUBJECT:** Elk Creek Emergency Watershed Protection Project--  
NRCS Cooperative Agreements

**DATE:** May 25, 2012

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The Elk Creek Channel Project is part of the District's Elk/Pigeon Creek Improvement Project Area, which includes a 2 ¼ mile leveed reach between US Hwy 20 and 137<sup>th</sup> Street in Dakota County, east of Jackson, Nebraska. This creek includes spoil bank levees. The levees protect adjacent farmland between Highway 20 and 137<sup>th</sup> Street, downstream of Jackson, Nebraska from Elk Creek flood events and backwater from Missouri River, such as during summer 2011. It has been estimated by the Natural Resources Conservation Service (NRCS) that these levees protect 3,840 acres and the potential flood damage is \$1,494,300 per year.

In 2010, the the District made an Emergency Watershed Protection (EWP) application to NRCS for repair assistance. The 2010 EWP application was approved by NRCS, but never funded.

In 2011, the District made a renewed EWP application to NRCS for Elk Creek Levee Project, which experienced additional creek bank and levee damage due to the 4 month period of high stage due to Missouri River flood event. The NRCS accepted the District's Elk Creek 2011 EWP Application and funds are currently available for a portion of the project. The EWP provides for 75% Federal/25% Local cost share and the sponsor must acquire land rights, necessary permits and operate/maintain the improvements.

At the May 10, 2012 meeting of the Board of Directors, the General Manager was authorized to sign a cooperative agreement with the Natural Resources Conservation Service for Phase 1 of the Elk Creek EWP Project. Phase 1 project was estimated to cost \$1,000,000 with \$750,000 to be funded by the NRCS and \$250,000 by the District (Dakota County to reimburse \$35,000 of the local cost associated with protecting the County 137<sup>th</sup> Street Bridge). Enclosed is a copy of the NRCS cooperative agreement.

It has been concluded by the NRCS that there is an additional \$1,380,300 of repairs needed on the referenced project, due to damage that was noticed after the original damage survey. The federal share (75%) of this additional work would be \$1,035,225 and the local share (25%) would be \$345,075. The Nebraska NRCS has requested additional funding for this work (see enclosed "in scope modification funding justification") and has proposed to complete it in phases as funding becomes available. The additional work would be split up as follows:

1. Phase 1 of Additional Work: **\$308,015**
2. Phase 2 of Additional Work: **\$548,905**
3. Phase 3 of Additional Work: **\$178,305**
4. **Total Additional Work Cost: \$1,380,300, Federal share(75%) = \$1,035,225, Local Share (25%) = \$345,075**
5. **Overall Repair Work Cost (original+additional): \$2,380,300, Federal share(75%) = \$1,785,225, Local Share (25%) = \$595,075 (Dakota County to reimburse \$35,000 of Local Share)**

Management proposes that additional cooperative agreements with NRCS be signed for up to \$1,400,000 of additional work as described above, as additional EWP funding becomes available. This would be in addition to the \$1,000,000 of work approved at the May 2012 Board meeting.

**Management recommends that the Programs, Projects and Operation Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute Cooperative Agreements with the Natural Resources Conservation Service for up to \$1,400,000 of additional work for the Elk Creek Emergency Watershed Protection Project near Jackson, NE, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

## Elk Creek - EWP Streambank Stabilization project

Dakota County, Nebraska

IN SCOPE MODIFICATION FUNDING JUSTIFICATION:

5/16/12

### BACKGROUND

The Elk Creek Drainage channel EWP funded project was reviewed for EWP program eligibility in late December 2011. The site was found to meet program eligibility requirements and a Damage Survey Report was developed for the site. EWP funding has been received by Nebraska to support the original funds request. A project agreement has not been signed with the project sponsors to complete the work identified in the original DSR due to additional damage that has occurred and additional funds are required to complete the work. The project can be split into 3 phases if the total amount of funding for the project is not received.

### ADDITIONAL DAMAGE

Additional stream bank damage has occurred since the original DSR was completed. During the 2011 Missouri River Flood event, the high flows of water in the river saturated the banks of the Elk Creek drainage channel. The subsidence of the flood water created unstable slope conditions in the channel banks and slope failures occurred. This deposited soil and debris in the channel creating an impairment to the watershed and jeopardized a new bridge and dike's along the drainage channel. The exposed saturated stream banks went through freeze and thaw cycles during the winter months which may also have contributed to the additional slope failure. The funds received for the original scope of the project are not adequate to fund the damage repair costs identified in the original Damage Survey Report since additional damage occurring to the site.

The Missouri River channel has scoured to a deeper channel bottom elevation during the 2011 flood event and the normal releases of water from Gavin's Point Dam upstream of the project on the Missouri River do not fill the channel as high in elevation as past years. The stream banks of the project area do not have river back water against the slopes as in normal operating conditions which has created additional slope failures of stream banks upstream of the original limits of the project area. The new damage has exposed additional infrastructure at risk damage which includes a large diameter gas pipeline and an additional reach/length of drainage district dike's.

**The repair of the additional stream banks is critical to the function and operation of the drainage district drainage channel and protection of a downstream bridge in the original DSR which funding has been received for construction of the project.**

The estimated total construction cost of the additional damage is estimated at \$1,380,300. The NRCS would be responsible for 75% of the construction costs and the sponsor is responsible for 25% of the additional cost. The NRCS share of is estimated additional project cost would be \$1,035,225 and the sponsors cost would be \$345,075.

Fred Reaves was contacted about the additional funding needed to address the additional damage and recommended development of a funding proposal which contained certain phases or reaches which could be funded independently since the availability of funds to cover the total funding request may not be available at this time to complete the project.

**FUNDING REQUEST**

NE NRCS requests a total of \$1,035,225 EWP 17F funds for the ELK Creek Stream bank stabilization in-scope modification for additional damages identified to complete this project. The funds requested for Phase I of the project listed below as a minimum are needed for the NRCS to sign the project agreement for the site.

The following breakdown of this additional funding request by reach is intended to identify funding allotments which could be received for the project if the total amount is not available at one time.

Funding needs to complete Phase I are \$308,015. Immediate need to continue with project

Funding needs to complete Phase II are \$548,905.

Funding needs to complete Phase III are \$178,305

Total	\$1,035,225
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STATE: Nebraska  
 PROJECT: Elk Creek, Dakota County  
 AGREEMENT NO.: 69-6526-2-812

UNITED STATES DEPARTMENT OF AGRICULTURE  
 NATURAL RESOURCES CONSERVATION SERVICE

COOPERATIVE AGREEMENT  
LOCALLY LED CONTRACTING

THIS AGREEMENT is entered into by and between the Papio-Missouri River Natural Resources District, called the NRD, hereinafter called the Sponsor and Contracting Local Organization; and the Natural Resources Conservation Service, United States Department of Agriculture, called NRCS.

WITNESSETH THAT:

WHEREAS, under the provisions of Section 216 of Public Law 81-516, Emergency Watershed Protection Program, and Title IV of the Agriculture Credit Act of 1978, Public Law 95-334, NRCS is authorized to assist the Sponsor in relieving hazards created by natural disasters that caused a sudden impairment due to channel bank erosion and sediment deposition threatening levees and a county bridge.

WHEREAS, NRCS and the Sponsor agree to install emergency watershed protection measures to relieve hazards and damages created by excessive rainfall causing flooding on May 24 through August 1, 2011.

NOW THEREFORE, in consideration of the premises and of the several promises to be faithfully performed by the parties hereto as set forth, the Sponsors and NRCS do hereby agree as follows:

- A. It is agreed that the following-described work is to be constructed at an estimated cost of \$1,000,000.00.

<u>DSR No.</u>	<u>Description of Work</u>	<u>Estimated Construction Cost</u>
1. Papio001	Reshape banks, install	\$1,000,000.00
Station 99+00 to	rock riprap, seed and mulch,	(Cost Shared)
Station 101+00	and rock riffle grade control	
and Station 163+00	structures.	

to Station 208+00

**B. The Sponsor will:**

1. Provide 25 percent of the cost of the emergency watershed protection measures described in Section A.1. This cost to the Sponsor is estimated to be \$250,000.00.
2. Provide in-kind contribution to let and administer the contract.

The maximum value of in-kind contribution will not exceed \$25,000.00. The Sponsor will retain records to support costs incurred by the Sponsor equal to the amount of the in-kind contribution.

3. Designate the following individual as the liaison between the Sponsor and NRCS, listing the duties, responsibilities and authorities. Furnish this information in writing to the NRCS State Administrative Officer.

Name: Martin Cleveland  
 Address: 8901 South 154<sup>th</sup> Street  
 Omaha, NE 68138-3621  
 Telephone No.: 402-444-6222  
[mcleveland@papiionrd.org](mailto:mcleveland@papiionrd.org)

4. The construction plans shall be reviewed and approved by the Sponsor.
5. Accept all financial and other responsibility for excess cost resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measures described in A.
6. Provide certification that real property rights have been obtained for installation of planned measures. Certification will be provided on form SCS-ADS-78, Assurances Relating to Real Property Acquisition, as amended. An Attorney's opinion as to the adequacy of landrights is required.
7. Contract(s) for professional services and construction of the measures described in Section A in accordance with 7 CFR 3016.36, applicable state requirements and the Sponsor's procurement regulations. The Sponsor will provide NRCS State Administrative Officer with a copy of each solicitation (Invitation for Bids, Request for Quotations), bid abstract and awarded contract.
8. Issue an invitation for bids, which is to contain NRCS requirements drawings and specifications, and Sponsor requirements.

9. Receive, protect and open bids. Determine the lowest qualified bidder, and with written concurrence of the NRCS State Administrative Officer, make award.
10. Comply with the applicable requirements in Attachment A to this agreement. If applicable, complete the attached "Clean Air and Water Certification" included in Attachment A.
11. Ensure that all contracts for construction of emergency watershed protection measures include the provisions contained in Attachment B to this agreement.
12. Provide copies of site maps to appropriate Federal and State agencies for environmental review, if applicable. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns prior to award of the contract(s) for construction of the emergency watershed protection measures.
13. Ensure that requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.

14. Pay the contractor as provided in the contract(s). Submit billings to NRCS for reimbursement of NRCS' share of contract costs and in-kind contributions on Form SF-270, Request for Advance or Reimbursement, with supporting documentation of costs attached to the form.
15. Receive payment under this agreement using electronic funds transfer (EFT) procedures in accordance with 31 CFR 208. EFT procedures will comply with USDA National Finance Center (NFC) requirements.
16. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this agreement. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, and litigation that may result from the project. Such actions will be at the expense of the Sponsor including legal expenses.
17. Arrange for and conduct final inspection of completed emergency watershed protection measures. Provide a certification statement to the NRCS State Administrative Officer that the project was installed in accordance with contractual requirements and the terms of this agreement.
18. Hold and save NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by it under this agreement or resulting from the work provided for in this agreement.
19. Upon completion and acceptance of all work, when provided by the terms of the contract, obtain a written release from the contractor of all claims against the Sponsor arising by virtue of the contract.
20. Upon acceptance of the work from the contractor(s), assume responsibility for operation and maintenance (in accordance with the Operation and Maintenance Agreement).



21. Retain all records dealing with the award and administration of the contract(s) for 3 years from the date of the Sponsor's submission of the FINAL request for reimbursement or until final audit findings have been resolved. If any litigation is started before the expiration of the 3-year period, the records are to be retained until the litigation is resolved or the end of the 3-year period whichever is longer. Make such records available to the Comptroller General of the United States or his duly authorized representative and accredited representatives of the Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcripts.
22. Be responsible for all administrative expenses necessary to arrange for and carry out the works of improvement described in Section A. These administrative matters include but shall not be limited to facilities, clerical expenses, and legal counsel, including the fees of such attorney or attorneys deemed necessary by NRCS to resolve any legal matters.
23. If needed, upon completion of emergency protection measures and the elimination of the threat, take action to bring the measures up to reasonable standards by other means and/or authority. Unless the measures are brought up to reasonable standards, the sponsor will not be eligible for future funding under the Emergency Watershed Protection Program.
24. Administer action under this agreement in accordance with 7 CFR 3015, 7 CFR 3016, OMB Circulars A-102, A-87, A-133, and other Rules referenced in 7 CFR 3015.

**c. NRCS will:**

1. Provide 75 percent of the cost of construction of the emergency watershed protection measures described in A.1. This cost to NRCS is estimated to be \$750,000.00 (financial assistance funds).

Provide reimbursement of in-kind contributions not exceed \$25,000.00 (technical assistance funds).

2. Prepare the design, construction specifications, and drawings in accordance with standard engineering principles and be in compliance with programmatic requirements.
3. The following individual is designated as the liaison between the NRCS and the Sponsor. The major duties, responsibilities and authorities of the liaison will be to assist in the final inspection; certify along with the Sponsor's representative when all work has been completed according to the specifications and drawings. Review and approve SF-270 Request for Advance or Reimbursement and supporting documentation for reimbursement to the Sponsor.

Chuck Leinen, Civil Engineer  
8901 South 154<sup>th</sup> Street  
Omaha, NE 68138-3621  
Telephone No. 402-896-0121 Ext 237

4. Not be substantially involved with the contractual administration of this agreement. However, NRCS will provide inspection services for the work described in Section A.1. and provide advice and counsel as needed.
5. Make payment to the Sponsor covering NRCS's share of the cost upon receipt and approval of Form SF-270, Request for Advance or Reimbursement.

**D. It is mutually agreed that:**

1. This agreement is effective the date it is fully executed by all parties to this agreement. It shall become null and void 30 calendar days after the date NRCS has executed this agreement in the event the work has not been commenced. All work must be completed by August 25, 2012.
2. The furnishing of financial and other assistance by NRCS is contingent on the availability of funds appropriated by Congress from which payment may be made and shall not obligate NRCS upon failure of the Congress to appropriate funds.

3. In the event of contractor default, any additional funds properly allocable as construction costs required to ensure completion of the project described in Section A, are to be contributed by the parties under the terms of this agreement. Any excess costs including interest resulting from a judgment collected for the defaulting contractor, or his or her surety, will be prorated between the Sponsor and NRCS in the same ratio as construction funds are contributed under the terms of the agreement.
4. NRCS may terminate this agreement in whole or in part if it is determined by NRCS that the Sponsors have failed to comply with any of the conditions of this agreement. NRCS shall promptly notify the Sponsors in writing of the determination and reasons for the termination, together with the effective date. Payments made by or recoveries made by NRCS under this termination shall be in accord with the legal rights and liabilities of NRCS and the Sponsors.
5. This agreement may be temporarily suspended by NRCS if it determines that corrective action by the Sponsors is needed to meet the provisions of this agreement. Further, NRCS may suspend this agreement when it is evident that a termination is pending.
6. This agreement may be amended as mutually agreed by a written amendment duly executed by authorized officials of the signatory parties to this agreement.
7. By signing this agreement the recipient assures the Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.
8. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By: \_\_\_\_\_

Title: General Manager

Date: \_\_\_\_\_

This action authorized at an official meeting of the Papio-Missouri River NRD on the \_\_\_\_\_ day of \_\_\_\_\_ 2012, at \_\_\_\_\_ State of Nebraska.

Signature\_\_\_\_\_ Title\_\_\_\_\_

UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE

By: \_\_\_\_\_  
Craig Derickson

Title: State Conservationist

Date:\_\_\_\_\_

- Attachment A - Special Provisions
- Attachment B - Special Provisions, Construction