

Memorandum

To: Multi Hazard Mitigation Plan Update Ad-Hoc Consultant Selection Subcommittee

Re: Contract for Engineering Services with Olsson Associates

Date: June 1, 2009

From: Lori Ann Laster, Stormwater Management Engineer

On April 30, 2009, the Subcommittee interviewed and selected Olsson Associates with which to negotiate a professional services contract to update the District's Multi Hazard Mitigation Plan. Since that time, District staff and representatives from Olsson Associates have worked together to prepare the enclosed agreement, detailed scope, and time and cost estimate for this project.

In summary, Olsson Associates will be responsible for providing project management, coordinating public and stakeholder participation, data collection and hazard assessment, data analysis and Hazards-U.S. (HAZUS) software modeling, detailed dam breach analysis and Emergency Action Plan (EAP) updates, and preparing priority projects. According to the schedule, the updated plan will be submitted to FEMA in June 2010. The total fee for this work was negotiated at \$362,700, and is broken down between different tasks in the attached agreement and scope. The detailed dam breach and EAP updates are beyond the scope of the original request for proposal. The cost to complete those tasks is approximately \$75,000.

In conclusion, services provided by Olsson Associates for updating the Multi Hazard Mitigation Plan would cost a total of \$362,700 and be completed by December 2010. A FEMA grant in the amount of \$225,000 has been secured for this project.

- **Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute a professional services contract with Olsson Associates to update the District's Multi Hazard Mitigation Plan for a maximum fee of \$362,700, subject to changes deemed necessary by the General Manager and approval as to form by District legal counsel.**

STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

**Papio-Missouri River
Natural Resources District**

**Regional Multi-Hazard
Mitigation Plan Update**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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AMERICAN SOCIETY OF CIVIL ENGINEERS

STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

This is an Agreement effective as of 11 June, 2009 ("Effective Date")
between PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("Owner") and
OLSSON ASSOCIATES ("Engineer").

Owner retains Engineer to perform professional services in connection with _____
The update of the Owner's Regional Multi-Hazard Mitigation Plan

("Assignment").

Owner and Engineer agree as follows:

ARTICLE 1 – ENGINEER'S SERVICES

1.01 Scope

- A. Engineer shall provide the services set forth in Exhibit A.
- B. Upon this Agreement becoming effective, Engineer is authorized to begin services as set forth in Exhibit A.
- C. If authorized in writing by Owner, and agreed to by Engineer, then Engineer shall perform services beyond the initial scope of this Agreement for additional compensation and an equitable adjustment of the time in which to provide services.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit A.

ARTICLE 3 – TIMES FOR RENDERING SERVICES

- A. Engineer's services shall be performed within the time period or by the date stated in Exhibit A. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services shall be adjusted equitably.

ARTICLE 4 – PAYMENTS TO ENGINEER

4.01 *Methods of Payment for Services of Engineer*

- A. Owner shall pay Engineer for services rendered under this Agreement as follows:

Standard Hourly Rates

- a. An amount equal to the cumulative hours charged to the Assignment by Engineer's employees times Standard Hourly Rates for all services performed on the Assignment (estimated in the document "Multi-Hazard Mitigation Plan Update" Proposed Project Fee Estimates" attached to and incorporated in Exhibit A by reference), plus Reimbursable Expenses, estimated to be \$ 6,000, and Engineer's Consultants' charges, if any, estimated to be \$ 119,670. The total compensation under Paragraph 4.01. is estimated to be \$ 362,700, which, notwithstanding any other provision of this Agreement, shall be the total maximum payment due to Engineer under this Agreement for basic services, Reimbursable Expenses and Engineer's Consultants' charges.

ARTICLE 5 – GENERAL CONSIDERATIONS

5.01 *Standard of Care*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

5.02 *Insurance*

- A. Engineer will maintain insurance coverage for Workers' Compensation, General Liability, Professional Liability, and Automobile Liability in the amounts itemized in the Engineer's current certificate of insurance attached hereto and incorporated herein by reference.

5.03 *Indemnification and Allocation of Risk*

- A. *Indemnification by Engineer.* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Assignment, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, partners, employees, or Consultants. The indemnification provision of the preceding sentence is subject to the limitation provisions agreed to by Owner and Engineer in this Article 5, if any.

- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Assignment, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Assignment.
- C. *Environmental Indemnification.* In addition to the indemnity provided under Paragraph 5.03.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other disputes resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern (as more fully defined in EJCDC Document No. E-500) at, on, or under any site owned or controlled by Owner, or any property under study, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence.* 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, and all other negligent entities and individuals.
- E. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Assignment.

5.04 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner each shall designate a specific individual as a representative with respect to the services to be performed or furnished by Engineer and the responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of each respective party.

ARTICLE 6 – CONTENT OF AGREEMENT

6.01 *Exhibits*

The following Exhibits are incorporated herein by reference:

- A. Exhibit A, "DESCRIPTION OF BASIC PROFESSIONAL SERVICES AND RELATED MATTERS," consisting of 7 pages.
- B. Exhibit B, "Standard Terms and Conditions," consisting of 5 pages.
- C. Exhibit C, "Reimbursable Expenses Schedule," consisting of 1 page.
- D. Exhibit D, "Standard Hourly Rates Schedule," consisting of 1 page.

6.02 *Total Agreement*

- A. This Agreement together with the Exhibits identified in Paragraph 6.01 constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: PAPIO MISSOURI RIVER
NATURAL RESOURCES
DISTRICT

ENGINEER: OLSSON ASSOCIATES

By: JOHN WINKLER

Title: GENERAL MANAGER

Date Signed:

By: PAUL W WOODWARD, PE

Title: PROJECT ENGINEER

Date Signed:

By: LOUIS E LAMBERTY, PE

Title: OMAHA OFFICE LEADER

Date Signed:

Address for giving notices:

8901 S. 154th Street

Omaha, NE 68138-3621

Address for giving notices:

2111 South 67TH Street, Suite 200

Omaha, NE 68106

Designated Representative
(Paragraph 5.05):

Name: Lori Laster

Title: Project Manager

Phone Number: (402) 444-6222

Facsimile
Number: (402) 895-6543

E-Mail Address: llaster@papionrd.org

Designated Representative
(Paragraph 5.05):

Name: Paul W. Woodward, P.E.

Title: Project Engineer

Phone Number: (402) 341-1116

Facsimile
Number: (402) 341-5895

E-Mail Address: pwoodward@oaconsulting.com

EXHIBIT "A" ATTACHED TO
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN CLIENT AND OLSSON, DATED JUNE 11, 2009

DESCRIPTION OF BASIC PROFESSIONAL SERVICES AND RELATED MATTERS

This is an exhibit attached to and made a part of the Agreement for Professional Services dated June 11, 2009 between Papio-Missouri River Natural Resources District (CLIENT) and Olsson Associates (OLSSON) providing for professional services. The Basic Services of OLSSON are as indicated below.

Project: Regional Multi-Hazard Mitigation Plan Update

SCOPE OF BASIC SERVICES

General Description of Services

Olsson Associates (OLSSON) shall prepare an updated Regional Multi-Hazards Mitigation Plan for the CLIENT. The plan shall include hazard assessments for all of the NRD, including communities and stakeholders within a portion or all of the following counties: Burt, Dakota, Douglas, Sarpy, Thurston, and Washington. OLSSON shall perform for CLIENT professional services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as the CLIENT professional representative for the Project, providing consultation and advice and furnishing customary services incidental thereto.

Task 1. Project Initiation, Coordination, and Management

OLSSON will initiate, coordinate, and manage all aspects of the proposed project in accordance with the following subtasks:

- 1.1 Agency Coordination – OLSSON will coordinate with the proper regulatory agencies/officials throughout the hazard assessment and planning process. This includes initial requests for available data, continuous communication about the schedule and content of the plan, and coordination of the state and federal plan review.
- 1.2 Progress Meetings – OLSSON will hold an initial meeting with the CLIENT to review and discuss the overall schedule, budget, and contacts. Additional progress meetings will be held every two months or as needed to coordinate activities, meetings, and overall progress. A total of eight progress meetings are anticipated.
- 1.3 Project Management – OLSSON will develop a project management plan which will outline the project objectives and serve as a reference for project contacts. OLSSON will provide detailed budget and cost updates with each monthly invoice as well as a summary of tasks completed.
- 1.4 Web or Sharepoint Site – OLSSON will work the CLIENT to develop a web portal site that can be used to provide periodic updates, distribute information, allow for feedback, and coordinate schedules.

Task 2. Public and Stakeholder Participation

OLSSON will work with the CLIENT to solicit input, generate ideas, and involve the public in open participation based on the following:

- 2.1 Stakeholder Coordination – OLSSON will work with the CLIENT to identify the key stakeholders for the Project. OLSSON will prepare and provide background information for all identified stakeholders. This information will outline the need, benefits and process of Regional Multi-Hazard Mitigation Planning. After initial contact, OLSSON will continue to work with the CLIENT to provide constant communication through meetings and the web. Because of the large number of stakeholders involved, OLSSON will coordinate with NRD personnel to communicate with stakeholders.
- 2.2 Pre-Meeting Preparation – Prior to all stakeholder and public meetings, OLSSON will work with the CLIENT to prepare necessary handouts, presentations, and follow-up materials.
- 2.3 Public Announcements – OLSSON will work with the CLIENT to develop public meeting announcements and messages. Wide distribution and a variety of platforms will be important for engaging the public in natural hazard education and damage prevention.
- 2.4 Public Meetings – OLSSON will coordinate and conduct up to twelve public meetings. The location of the public meetings will be important in determining the number of representatives that attend the meetings. Therefore, it will be necessary for OLSSON, the CLIENT, and the county emergency managers to jointly determine locations to host the public meetings. OLSSON will have a minimum of two representatives available to attend each public meeting. OLSSON will summarize the information gathered from the public and provide a summary of the public meetings in an appropriate format.
- 2.5 Stakeholder Meetings - OLSSON will work with the CLIENT to coordinate up to six meetings with key personnel from county emergency management agencies, municipal public works and planning, power districts, school districts, state arborists, drainage and levee districts, water supply districts, railroad and transportation staff, etc. These stakeholders will work with the CLIENT and OLSSON to help guide the planning process and will take ownership of mitigation strategies that their agencies can enact as part of the plan.

Task 3. Data Collection and Hazard Assessment

OLSSON will coordinate with the appropriate agencies/officials to obtain applicable studies, available data, and geographic information for the Project as described below:

- 3.1 Review Past Studies - OLSSON will assemble and review available studies and historical information, including the existing All-Hazard Mitigation Plan. This information will be updated to form the basis and background information for the new plan.
- 3.2 Assess Hazards - OLSSON will perform a preliminary assessment of the potential natural hazards for the project area. This assessment will involve professionals experienced in power supply, transportation, railroads, water/wastewater, and environmental. Upon completion of the hazard assessments, OLSSON will summarize the potential hazards for use in public participation and future analysis. As part of the preliminary hazard assessment, OLSSON will develop a list of structures and features that need to be inventoried in each community, or for each stakeholder. It will be important to focus on key infrastructure within the communities, including power lines, gas lines, sewer lines, drinking water wells, hospitals, fire stations, schools, nursing homes, and any additional critical facilities that must remain operational after a disaster strikes in order for the town to begin

the recovery process. GIS maps will be created to identify these key structures, but a comprehensive GIS mapping database will not be completed as a part of this plan.

- 3.3 Collect Data Inventory – OLSSON will collect data, in GIS format if available, for structures or features identified in the hazard inventory. After the data is gathered, it will be used to complete the final analysis of hazards for each stakeholder.
- 3.4 Field Data Collection - OLSSON will work with the CLIENT to complete a structural inventory and limited survey of structures or features identified as critical in the hazard assessment that are not available from any other source. For many communities or stakeholders, aerials, topo maps, and other data sources will provide sufficient information to complete the hazard assessments. OLSSON anticipates minimal field data collection efforts will be required as part of this project.

Task 4. Data Analysis/HAZUS

OLSSON will compile the results from the Data Collection and Assessment and then utilize and enhance the data to perform several analyses over the course of the project to develop damage estimates, assess vulnerability, compare alternatives, and inform stakeholders and the public.

- 4.1 Format Data – OLSSON will reformat or reproject data as needed to work within HAZUS.
- 4.2 Perform Initial HAZUS Run – OLSSON will perform an initial HAZUS run to produce preliminary damage estimates based completely on census and other data available through HAZUS. The results of this effort will be used to begin hazard mitigation strategy discussions with stakeholders and the public.
- 4.3 Refine HAZUS - Data collected as part of the initial hazard assessment will be used to complete a more detailed analysis of the identified hazards for each community or stakeholder in HAZUS. Based on the information collected, OLSSON will estimate the potential damages or losses for each hazard that has been identified for the project area.
- 4.4 Complete Dam and Levee Analysis in HAZUS – As one of the identified hazards that must be addressed, OLSSON will utilize HAZUS and GIS mapping software to estimate dam or levee failures and predict potential inundation areas. This task will also include the incorporation of new and updated dam breach maps for all high hazard dams in the District as described below in Task 5.
- 4.5 Assess Vulnerability - Once the potential losses have been estimated, OLSSON will assess the vulnerability of each community to the identified hazards and identify general approaches for potential mitigation projects to protect vulnerable facilities in each community.

Task 5. Update High Hazard Dam Breach Maps

OLSSON will develop or update dam breach inundation maps for all 32 high hazard dams. This analysis and maps will be done in accordance with NDNR standards for inclusion in Emergency Action Plans.

- 5.1 Complete New Dam Breach Maps – Data previously collected for each high hazard dam will be used to determine the initial breach water surface elevation for the 18 high hazard dams which currently don't have a dam breach inundation map. OLSSON will utilize this information to develop a dam breach hydrograph and perform an unsteady HEC-RAS hydraulic model for the receiving streams downstream of the dam. HEC-GeoRAS will be used to correlate predicted water surface elevations with the best available topographic data to create breach inundation maps that can be incorporated into GIS and HAZUS.

- 5.2 Update Existing Dam Breach Maps – For the 14 remaining high hazard dams that already have dam breach inundation maps, OLSSON will extract data from the existing analysis and map the predicted dam breach in GIS using the best available topographic data. This digital data will then be available for incorporation into HAZUS. Deliverables for the dam breach maps will include a summary technical memorandum of the procedure, TR-66 breach analyses, HEC-RAS model files, and all completed GIS data.
- 5.3 Update Emergency Action Plans – Following completion of the dam breach maps, OLSSON will update or prepare Emergency Action Plans for all High Hazard Dams owned and operated by the CLIENT. These updates or new plans will be completed in accordance with the updated format required by NDNR.

Task 6. Develop Mitigation Plan

OLSSON will prepare a Multi-Hazard Mitigation Plan that incorporates results from all other tasks and meets all applicable guidelines and requirements.

- 6.1 Develop Preliminary Hazard Mitigation Goals – OLSSON will utilize public and stakeholder input in addition to information from the previous plan to formulate measurable goals for risk and damage reduction for each type of hazard. These overall goals will help prioritize mitigation options.
- 6.2 Identify Mitigation Options – OLSSON will work with the CLIENT and consult with stakeholders to identify mitigation strategies and options. These strategies will then be prioritized for each hazard and on an overall basis for inclusion in the plan.
- 6.3 Draft Plan – OLSSON will prepare a draft of the entire plan which will incorporate and document all previous work in developing the plan. The plan will be formatted to comply with state and federal guidelines and requirements.
- 6.4 Review and Revise Draft Plan – OLSSON will work with the CLIENT and stakeholders to review and revise the draft plan. This subtask will also include all appropriate internal QA/QC. Final comments from the public and stakeholders will be updated and documented. Letters of support and intent to approve the plan from involved stakeholders will be requested in order to prepare for final adoption by the NRD and all stakeholders.
- 6.5 FEMA Review – OLSSON will work with the CLIENT and FEMA to review and approve or revise the plan. OLSSON will respond one time to any direct comments from FEMA relating to the plan. OLSSON will also be available for 1 meeting with FEMA and the NRD.
- 6.6 Final Approval – OLSSON will provide CLIENT with a final presentation for using at community, county, or other stakeholder meetings for final adoption. OLSSON will not provide individual presentations for stakeholder adoption.

Task 7. Prepare Priority Projects

OLSSON will work with the CLIENT to identify and prepare 5 to 10 priority projects for future funding opportunities based on completion of the following subtasks:

- 7.1 Collect Additional Data – OLSSON will collect relevant information necessary to estimate preliminary cost and damage avoided for potential projects.
- 7.2 Benefit Cost Analysis – OLSSON will complete benefit cost analysis (BCA) for selected projects based on the latest guidance and standards. Conceptual plans may need to be developed for these projects; however, OLSSON will not provide any design services beyond 30% plans.
- 7.3 Compile Project Data for Future Grant Submittals – OLSSON will combine results from the benefit cost analysis with previous information generated as part of the plan to provide a

brief summary of selected projects and their feasibility. These summaries will be limited to 5 pages each. OLSSON will evaluate different funding opportunities and grants to determine which would be most applicable for each project.

ASSUMPTIONS

1. The CLIENT will be responsible for production and mailing or distributing the fliers, brochures, and meeting announcements.
2. The attached estimated costs include expenses associated with the project.
3. In order to achieve final approval of the plan from FEMA, all the project partners will need to provide continued cooperation and coordination throughout the duration of the project.
4. Data requested will need to be provided in a timely manner in order to stay on task and schedule.

DELIVERABLES

1. OLSSON will deliver up to five (5) hard copies of the final Multi-Hazard Mitigation Plan document. A digital copy of the plan along with all appropriate supporting documentation and files will be provided on digital media and available on the website.
2. OLSSON will deliver up to two (2) hard copies of each updated Emergency Action Plan. Additional copies will be made available in digital format for reproduction.
3. OLSSON will deliver up to two (2) hard copies of new or updated dam breach maps for all High Hazard Dams. Each map will also be provided digitally in GIS format along with all supporting analysis, including TR-66 outputs and HEC-RAS models.
4. OLSSON will deliver up to two (2) hard copies of the summaries for all selected project and BCA summaries. Additional copies and supporting data will be provided digitally or via the web.

Task	Hourly Wage Rate			Estimated Cost Breakdown				Comments	
	PM/Tech Review	Mitigation Planner	Tech/GIS	Clerical	Estimate	QA Cost	Material Cost		Expenses/ Other
Task 1: Project Initiation, Coordination, Management	\$125.00	\$80.00	\$70.00	\$40.00					
1.1 Agency Coordination	16	16			\$33,880	\$11,330	\$7,280		\$34,880
1.2 Progress Meetings	80	80			\$3,280	\$2,720	\$1,920		\$3,280
1.3 Project Management	40	40		20	\$16,400	\$11,640	\$8,320	\$1,000	\$17,400
1.4 Web Site/Sharepoint	16	40			\$9,000	\$5,200	\$3,600		\$9,000
					\$5,200	\$3,600			\$5,200
Task 2: Public and Stakeholder Participation									
2.1 Stakeholders Coordination	24	24			\$60,040	\$45,500			\$64,040
2.2 Pre-Meeting Preparation	16	40	40	B	\$4,920	\$4,920			\$4,920
2.3 Public Announcements	B	40		B	\$0,320	\$3,680			\$8,320
2.4 Public Meetings	100	100		B	\$4,520	\$4,520			\$4,520
2.5 Stakeholder Meetings	100	100		16	\$21,140	\$10,140		\$2,000	\$23,140
				16	\$21,140	\$9,140		\$2,000	\$23,140
Task 3: Data Collection and Hazard Assessment									
3.1 Review Past Studies	16	24			\$29,370	\$16,170			\$30,370
3.2 Assess Hazards	24	80	40		\$3,920	\$1,320			\$3,920
3.3 Collect Data Inventory	10	40	80		\$12,200	\$2,100			\$12,200
3.4 Field Data Collection		40			\$10,050	\$7,850			\$10,050
					\$3,200	\$1,200		\$1,000	\$4,200
Task 4: Data Analysis/HAZUS									
4.1 Format Data					\$65,920	\$12,800			\$65,920
4.2 Perform Initial HAZUS Run			60		\$4,200	\$1,200			\$4,200
4.3 Refine HAZUS	B	48	120		\$12,240	\$1,120			\$12,240
4.4 Complete Dam and Levee Analysis in HAZUS	24	80	200		\$18,840	\$1,120			\$18,840
4.5 Assess Vulnerability	24	32	24		\$23,400	\$1,700			\$23,400
					\$7,240	\$1,240			\$7,240
Task 5: Update High Hazard Dam Breach Maps									
5.1 Complete New Dam Breach Maps	40	200	200		\$75,800	\$46,600			\$75,800
5.2 Update Existing Dam Breach Maps	24	120	80		\$35,000	\$5,400			\$35,000
5.3 Update Emergency Action Plans	40	200		40	\$18,200	\$5,000			\$18,200
					\$22,600	\$1,600			\$22,600
Task 6: Develop Mitigation Plan									
6.1 Develop Prelim. Haz. Mit. Goals	16	40			\$46,280	\$41,960			\$46,280
6.2 ID Mitigation Options	24	80			\$5,200	\$5,200			\$5,200
6.3 Draft Plan	10	60	60	B	\$9,400	\$1,400			\$9,400
6.4 Review and Revise Draft Plan	40	40	36	16	\$10,570	\$1,570			\$10,570
6.5 FEMA Review	24	24	16	16	\$11,360	\$1,400			\$11,360
6.6 Final Approval	B	24		4	\$6,680	\$5,180			\$6,680
					\$3,080	\$1,080			\$3,080
Task 7: Prepare Priority Projects									
7.1 Collect additional data		16	16		\$45,480	\$30,280			\$45,480
7.2 Benefit Cost Analysis	80	120	120		\$2,400	\$1,200			\$2,400
7.3 Compile Project Data for future Grant Submittals	24	80	80		\$28,000	\$19,600			\$28,000
					\$15,000	\$9,000			\$15,000
TOTAL	812	1796	1292	1					

[illegible]

SUGGESTED FORMAT
(for use with E-525, 2004 Edition)

This is **EXHIBIT B**, consisting of 5 pages, referred to in and part of the Agreement between Owner and Engineer for Study and Report Phase Professional Services dated as of June 11, 2009.

Standard Terms and Conditions

The Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 OF THE AGREEMENT IS MODIFIED AS FOLLOWS:

B.4.02. Other Provisions Concerning Payment

A. Adjustments

1. Engineer's compensation is conditioned on time to complete the Assignment not exceeding the time identified in the document entitled "**Multi-Hazard Mitigation Plan Update - Proposed Project Schedule**" attached to and incorporated in Exhibit A by reference. Should the time to complete the Assignment be extended beyond this period due to reasons not the fault of and beyond the control of Engineer, the total compensation to Engineer shall be appropriately adjusted.

- B. *Reimbursable Expenses.* Reimbursable Expenses means the actual expenses incurred by Engineer or Engineer's Consultants directly in connection with the Assignment, including the categories and items listed in Exhibit C, and if authorized in advance by Owner, overtime work requiring higher than regular rates.

- C. *For Additional Services.* Owner shall pay Engineer for all services not included in the scope of this Agreement on the basis agreed to in writing by the parties at the time such services are authorized by Owner.

- D. *Invoices.* Invoices will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to Owner by Engineer monthly, unless otherwise agreed. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice therefore, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges.

ARTICLE 5 OF THE AGREEMENT IS SUPPLEMENTED AS FOLLOWS:

B.5.06 Dispute Resolution

- A. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes") to mediation.
- B. If a party alleges a dispute with the other party arising out of or relating to the performance of services under this Agreement, then either party shall have the right to request mediation within 20 days after the claiming party has provided the other party with written notice describing the dispute and the claiming party's position with reference to the resolution of the dispute.
- C. Except as otherwise agreed, the parties shall select a mediator within 30 days of a written request for mediation. The mediator will endeavor to complete the mediation within 30 days thereafter. The parties will share the costs of mediation equally.
- D. No performance obligation under or related to this Agreement shall be interrupted or delayed during any mediation proceeding except upon written agreement of both parties.
- E. The mediator shall not be a witness in any legal proceedings related to this Agreement.
- F. If mediation is not successful in resolving the dispute, then the parties may exercise their rights under law.

B.5.07 Termination of Contract

Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, Owner shall pay to Engineer all amounts owing to Engineer under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.

B.5.08 Environmental Condition of Site

It is acknowledged by both parties that Engineer's scope of services does not include any services related to the presence at any site or property under study of asbestos, PCBs, petroleum, hazardous waste, radioactive materials, or other Constituents of Concern (as fully defined in EJCDC Document No. E-500). In the event Engineer or any other party encounters a Constituent of Concern at a site owned or controlled by Owner, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until Owner: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituent of Concern; and (ii) warrants that the site or property is in full compliance with applicable laws and regulations. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which are or may be encountered at or near any such site or property in connection with Engineer's activities under this Agreement.

B.5.09 Patents

Engineer shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.

B.5.10 *Ownership and Reuse of Documents*

All documents prepared or furnished by Engineer pursuant to this Agreement are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and right of reuse at the discretion of Engineer). Reuse of any such documents by Owner for purposes other than those included in the Assignment shall be at Owner's sole risk; and Owner agrees to indemnify and hold Engineer harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse of documents by Owner or by others acting through Owner.

B.5.11 *Use of Electronic Media*

- A. Copies of Documents that may be relied upon by Owner are limited to the printed copies (also known as hard copies) that are signed or sealed by the Engineer. Files in electronic media format of text, data, graphics, or of other types that are furnished by one party to the other are only for convenience of the recipient. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- B. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the document creator at the beginning of this Assignment.
- C. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transfer errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Engineer shall not be responsible to maintain documents stored in electronic media format after acceptance by Owner.

B.5.12 *Opinions of Probable Costs*

- A. Construction Cost is the cost to Owner to construct proposed facilities. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with Owner's contemplated project, or the cost of other services to be provided by others to Owner pursuant to this Agreement. Construction Cost is one of the items comprising Total Project Costs.
- B. Engineer's opinions of probable Construction Cost provided for herein are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over the contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual

Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner wishes greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator.

- C. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

B.5.13 *Force Majeure*

Engineer shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond Engineer's reasonable control.

B.5.14 *Assignment*

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

B.5.15 *Independent Contractor*

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or Engineer. Engineer's services under this Agreement are being performed solely for Owner's benefit, and no other entity shall have any claim against Engineer because of this Agreement or the performance or nonperformance of services hereunder. Owner agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

B.5.16 *Binding Effect*

This Agreement shall bind, and the benefits thereof shall inure to the respective parties thereto, their legal representatives, executors, administrators, successors, and assigns.

B.5.17 *Severability and Waiver of Provisions*

Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

B.5.18 *Survival*

All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

B.5.19 *Controlling Law*

This Agreement is to be governed by the law of the State of Nebraska.

B.5.20 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail, or by a commercial courier service. All notices shall be effective upon the date of receipt.

SUGGESTED FORMAT
(for use with E-525, 2004 Edition)

This is **EXHIBIT C**, consisting of 1 page, referred to in and part of the Agreement between Owner and Engineer for Study and Report Phase Professional Services dated as of June 11, 2009.

Reimbursable Expenses Schedule

The Engineer's Reimbursable Expenses are as specified in the document entitled, "**Multi-Hazard Mitigation Plan Update- Proposed Project Fee Estimates**" attached to and incorporated in Exhibit A by reference.

This is **EXHIBIT D**, consisting of 1 page, referred to in and part of the Agreement between Owner and Engineer for Study and Report Phase Professional Services dated as of June 11, 2009.

Standard Hourly Rates Schedule

Hourly rates for basic services in effect on the date of the Agreement are as specified in the document entitled "**Multi-Hazard Mitigation Plan Update – Proposed Project Fee Estimate**" attached to and incorporated in Exhibit A by reference.

Teer, Pat

From: Alyssa Smola [asmola@nrdnet.org]
Sent: Wednesday, June 03, 2009 11:54 AM
To: Beth Walsh; Jacobsen, Christine; Denise Vinton; Don Ogle; Egr, Emmett; Heather Francis; Jane Kuhl; Jo Siel; jwragge@lenrd.org; Kay Grote; Kent Miller; Larry Schultz; Lindsay Rogers; Lower Niobrara; McKenzie Barry; mfaimon@littlebluenrd.org; Middle Niobrara NRD; Mike Mascoe; Nicole Salisbury (nsalisbury@tirbasinnrd.org); Roger Lawson; Scott Snell; Scott Sobotka; Stephani Rust; Terry Julesgard; ttompson@lpnnrd.org; Anna Baum; 'Dan Steinkruger'; Dave Ostdiek; 'Dean & Sharron Jochem'; Dean Johnson; Dean Rasmussen; Dough Dickinson; Gerald Dillman; Jim & Mary Ann Wortmann; Jim Johnson; Jim Meismer; 'Joe Anderjaska'; Keith Rexroth; 'Lyle Heinrichs'; Michael Mosel; Orval Gigstad; Tesar, Richard; 'Ted Hughes'; Yvonne Austin; dedson@nrdnet.org; 'Jeanne Dryburgh'; Jed Wagner; O'Brien, Patrick; Patrick O'Brien; 'Bob Hilske'; Butch Koehlmoos; Dan Smith; Dave Clabaugh; Deb Hayes; Dennis Schueth; Duane Filsinger; 'Glenn Johnson'; Jasper Fanning; John Miyoshi; John Thorburn; John Turnbull; Winkler, John; Lyndon Vogt; Petermann, Marlin; Mike Clements; Mike Murphy; Mike Onnen; Teer, Pat; Rod Horn; 'Ron Bishop'; Ron Cacek; Stan Staab; Tom Moser
Cc: Erich Strack; Phill Young
Subject: news articles for June 3

FYI - 4 Articles of interest

- 1) Big Mac gaining, but remains only about half full
- 2) Niobrara River segment wins national designation
- 3) Niobrara lawsuit to proceed
- 4) AGRICULTURE SECRETARY ANNOUNCES RECOVERY ACT
FUNDING FOR TWO NEBRASKA PROJECTS.

Big Mac gaining, but remains only about half full

By LORI POTTER, Hub Staff Writer
06/02/2009

HOLDREGE — Lake McConaughy now is slightly more than half full, but prospects for any big benefits this spring from mountain snowmelt in the North and South Platte basins are fading.

Civil Engineer Cory Steinke told the Central Nebraska Public Power and Irrigation District directors Monday that snow is melting quickly and upstream reservoirs are capturing much of the runoff. Wyoming's two largest reservoirs in the North Platte Basin have plenty of room, with Seminoe at 68 percent full and Pathfinder at 46 percent.

"It's gonna take a lot for us to get anything out of Colorado at this point," Steinke said, explaining that settling basins and other projects designed for groundwater recharge are taking excess water in the South Platte before it reaches Nebraska.

"That likely means no water for Elwood (Reservoir)," added CNPPID Irrigation Division Manager Dave Ford.

Elwood Reservoir hasn't been used by CNPPID to store irrigation water the past five years because of reduced irrigation allocations of 6.7 or 8.4 inches per acre as a result of low water levels in Lake McConaughy. Higher spring flows in 2008 allowed for limited diversions into Elwood, which raised the nearly depleted reservoir by 18 feet.

Ford said irrigation canals in Gosper, Phelps and Kearney counties are being filled for the start of irrigation deliveries in three weeks. Natural river flows have been used so far, he said, but storage water in Lake McConaughy will be released to finish the job, if needed.

As of Monday, Nebraska's largest lake held 832,000 acre-feet of water, which is 96,000 a-f more than a year ago. McConaughy also is 5 feet higher.

Inflows of 711 cubic feet per second are 40 percent of average and 66 percent of normal, Steinke said.

CNPPID officials say Lake McConaughy's recovery the past few years is due mostly to limited releases for the district's irrigation and hydropower projects, not higher inflows. They argue that the North Platte Natural Resources District should put greater limits on groundwater irrigation upstream of Lake McConaughy, because pumping near the river and its tributaries has depleted lake inflows and constitutes a "taking" of Central's water rights.

CNPPID appealed to Scotts Bluff County District Court the 12-inch-per-acre allocation the NPNRD set for the Pumpkin Creek Basin in Morrill and Banner counties. The NRD countered with a motion to dismiss the appeal, saying that Central has no legal right to second guess rules and regulations set by the NRD board.

There was a May 26 hearing on that motion, which now is under advisement by the judge, said CNPPID legal counsel Rob McCormick. "It could be a week. It could be a couple of months," he said about a ruling.

Meanwhile, planning continues on two projects around Lake McConaughy.

CNPPID Engineering Services Manager Eric Hixon sent specifications to five potential bidders on Kingsley Hydro rehabilitation work this fall. He said he expects three companies to submit bids by the June 23 deadline.

The board approved an interagency agreement with the Nebraska Department of Environmental Quality for a fall project to dredge a channel in Lake Ogallala below the Kingsley Dam to improve water circulation. Most of the costs will be paid by federal and Nebraska Environmental Trust grants.

In other business Monday, Information and Communication Officer Jeff Buettner said work has started on an \$100,000 CNPPID video. Photographers from Snitily Carr of Lincoln recently shot scenes at the North Platte Basin headwaters in Jackson County, Colo., and Buettner expects a first script draft this week.

He told the Hub the 15- to 20-minute video will be completed by late fall or early winter and will be used by the district at water education events.

e-mail to:

lori.potter@kearneyhub.com

Niobrara River segment wins national designation

Published Tuesday June 2, 2009

Omaha World Herald

-David Hendee

A 5.6-mile segment of the Niobrara River in north-central Nebraska now is designated a National Recreational Trail.

The newly designated stretch of the popular canoeing river runs through Fort Niobrara National Wildlife Refuge and is part of the Niobrara National Scenic River. The river cuts a deep canyon in the limestone rocks that underlie Nebraska's Sand Hills.

U.S. Secretary of the Interior Ken Salazar made the Niobrara designation. It was one of 22 trails in 13 states added to the National Recreation Trails system. The trails cover more than 525 miles.

Salazar said the trails system helps connect American families with nature. He said new trails built through partnerships with local communities will create new opportunities for fitness and stewardship, while creating a lasting legacy.

The designation highlights the 17th annual National Trails Day on Saturday.

Niobrara lawsuit to proceed

By KERRI REMPP, Record staff writer Tuesday, June 02, 2009

The Chadron Record

A water lawsuit regarding the Niobrara River will be allowed to move forward. Judge Brian Silverman denied the state's motion to dismiss in Sioux County District Court last week. The case was filed last year by a group of Sioux County producers against Brian Dunningan, the director of the Nebraska Department of Natural Resources.

The plaintiff's represent 11 farming and ranching operations south of Harrison, who allege that the DNR has failed to collect and correlate data needed to enforce the Upper Niobrara River Compact. The compact dates back to the early 1960s and was established "to provide for an equitable division or apportionment of the available surface water supply of the Upper Niobrara River Basin between the States."

After being denied a change of venue in December, the Attorney General's Office asked for the case to be dismissed. Assistant Attorney General Justin Lavene argued that there is no private right of action in the case to compel the states to enforce or amend the compact.

In the producers' complaint, they ask for a writ of mandamus – an order to public or governmental agencies to perform duties it has neglected or refused to do – and/or an injunction. Lavene argued that these are contradictory requests and that neither is appropriate. He called the mandamus an "extraordinary remedy," saying the producers want gauges installed to collect data. However, he contended, the state's "done all we

can" by putting gauges in up to the Nebraska-Wyoming line. To go further would require Wyoming's permission.

As for the injunction, Lavene said that injunctions preserve the status quo. The plaintiffs don't want the status quo, they want new and different action, he said.

Steven Smith, attorney for the producers, said the state is often criticized for being behind the game on water management. In this instance the state took steps to protect the Niobrara by entering the compact, which says the states "shall" collect and correlate data in order to appropriate water usage. But the DNR has failed to do so, he said.

"The basis of this lawsuit is not compact enforcement. The defendant failed to collect and correlate any essential data needed to commence administration of the compact," Smith said. Without that data, there is no way to administer the compact "unless laying down and submitting to Wyoming" is the state's plan to avoid conflict, he continued.

As to the motion to dismiss, Smith said at this point in the proceedings, the court must give his clients the benefit of doubt and assume their allegations are true. In regard to the requests for mandamus and injunction the rules provide for "different and even inconsistent remedies." Discovery and trial sorts out which, if any, are appropriate actions.

In addition, Smith argued that public trust law dictates that the state has a trust duty to protect natural resources.

"If we have interstate streams, which we do, ... the state has to have the duty to protect those streams because private citizens can't do it."

The compact does not say Nebraska officials can't collect data from Wyoming, he continued. In its motion, the state referred the court to a Web site it claims as proof the state has done its job. However, Smith pointed out, there's little data on the site, as some gauges have been out of commission for years at a time, and there is no historical data back to beginning of the compact.

Finally, an injunction can also compel performance, Smith said. If the state says an injunction preserves the status quo of doing nothing, "I think that's an admission that they are doing nothing."

In making his ruling, Silverman said there is a clear case for letting the lawsuit continue.

"It will be interesting as this case goes along ... because I remember catching a nice line of trout on what is Mr. Nunn's property. ... It will be interesting to see what it looks like today. I hope I'm not shocked."

AGRICULTURE SECRETARY ANNOUNCES RECOVERY ACT FUNDING FOR TWO NEBRASKA PROJECTS.

News Release

Contact:

Joanna Pope, NRCS Public Affairs
(402) 437-4123

Projects in Scotts Bluff and Knox counties receive over \$2.5 million in Recovery Act funds.

LINCOLN, June 3, 2009 – Agriculture Secretary Tom Vilsack announced yesterday that USDA will provide over \$2.5 million for two projects in Nebraska through the American Recovery and Reinvestment Act (ARRA) of 2009. The Natural Resources Conservation Service (NRCS) will direct the technical and financial assistance for the projects located in Scotts Bluff and Knox counties. These projects will improve water quality, decrease soil erosion, reduce flood damages, and improve fish and wildlife habitat while creating jobs in rural communities.

Over \$2.2 million will be heading to Scotts Bluff County through the Recovery Act to complete the Gering Valley Watershed Project. This project will install channel improvements and a diversion to work in conjunction with already installed structures. The entire system - which includes nine floodwater retarding structures, 10 miles of divisions, and over 60 miles of channel improvements and surface water disposal channels - will work together to control and safely pass flood water from the drainage area to a natural channel downstream.

This project will protect the city of Gering, Neb., and several area farmsteads from seasonal flood damages. Highly productive irrigated cropland will be protected from erosion and sediment damages due to flooding. An irrigation canal system, vital to crop production in the area, will also be protected by the completion of this project.

The Knox County project will receive \$361,260 through the Recovery Act's Emergency Watershed Protection (EWP) Program's floodplain easement component. This program allows the Natural Resources Conservation Service to acquire permanent easements on private land that has been damaged by flooding. Once the easement is established, NRCS will fund conservation work necessary to restore the land to its natural state.

The Recovery Act funding will be used to restore and protect 139 acres along Ponca Creek. This land has been damaged by flooding and sedimentation many times in the last ten years, including twice in 2008. The restoration activities to be performed include seeding 79 acres to native prairie and establishing three acres of riparian forest buffer along the creek.

Once the project is completed it will create a corridor of protected habitat. This will provide benefits to area wildlife, including the bald eagle, an at-risk species. The land offered also will reduce flood damage and improve stream water quality.

Funding provided through the American Recovery and Reinvestment Act of 2009 is part of the Obama Administration's plans to modernize the nation's infrastructure, jumpstart the economy and create jobs. For more information, visit www.recovery.gov.

For more information about how the Natural Resources Conservation Service is implementing the Recovery Act in Nebraska and across the country, visit <http://www.nrcs.usda.gov/recovery/>

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