

## MEMORANDUM

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

**FROM:** Ralph Puls

**SUBJECT:** Pigeon/Jones Site #15 Design Contract

**DATE:** September 5, 2007

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At its July 11, 2007 meeting, the Natural Resources Commission approved the District's application for Nebraska Resource Development Funds (NRDF) for the Pigeon/Jones Site #15 multi-purpose dam and reservoir project. A January 22, 2007 recommendation from the Director of Natural Resources and a July 12, 2007 letter from the Department of Natural Resources noting that approval are attached. The letter states that due to the unavailability of funds at this time, no dollars can be allocated to the project at this time. However, it is understood that the P/J site #15 project will be funded in the future as funds become available.

The schedule developed for this project calls for the consultant, Olsson Associates, to do the final design of the Site #15 Dam, as well as design the downstream levee improvements and upstream county road improvements. Olsson Associates has submitted a proposed contract for that work which staff has reviewed and a copy for the Subcommittee's review accompanies this Memo. Also attached is a recently revised project Master Plan and Fact Sheet that describes the project; the Fact Sheet notes that the project meets all criteria including Technical, Economic, Environmental and Financial Feasibility required by the Natural Resources Commission. The Fact Sheet also shows an up to date schedule for the various components of the project and a cost breakdown of State, County and NRD contributions. The contract for Professional Service fees for this phase of the project is for a maximum of \$534,573.

**Staff recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute a professional services contract with Olsson Associates for the final design of Pigeon/Jones Watershed Site #15 Dam, downstream improvements and upstream county road improvements for a maximum, not to exceed fee of \$534,573, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.**

STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

**Papio-Missouri River  
Natural Resources District**

**Pigeon/Jones Creek Watershed  
Site 15 Final Design**

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

**STANDARD FORM OF AGREEMENT  
BETWEEN  
OWNER AND ENGINEER  
FOR  
FINAL DESIGN PHASE  
PROFESSIONAL SERVICES**

This is an Agreement effective as of 13 September, 2007 ("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 final design of Pigeon/Jones Creek Site 15 Dam, downstream levee improvements and upstream  
County road improvements. ("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 "Pigeon/Jones Creek Watershed Site 15" Project Scope and Task Estimates" attached to and incorporated in Exhibit A by reference), plus Reimbursable Expenses, estimated to be \$ 526,733, and Engineer's Consultants' charges, if any, estimated to be \$ 7,840. The total compensation under Paragraph 4.01. is estimated to be \$534,573, 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, "Further Description of Services, Responsibilities, Time, and Related Matters," consisting of 2 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

By: MICHAEL K. SOTAK, PE E-8759  
Title: VICE PRESIDENT

Date Signed:

Date Signed:

By: BRAD D. STRITTMATTER, PE E-10530  
Title: VICE PRESIDENT

Date Signed:

Address for giving notices:

8901 S. 154<sup>th</sup> Street

Omaha, NE 68138-3621

Address for giving notices:

2120 South 72<sup>nd</sup> Street, Suite 1400

Omaha, NE 68124

Designated Representative  
(Paragraph 5.05):

Name: Ralph Puls

Title: Project Manager

Phone Number: (402) 444-6222

Facsimile Number: (402) 895-6543

E-Mail Address: rpuls@papiionrd.org

Designated Representative  
(Paragraph 5.05):

Name: Michael K. Sotak, P.E.

Title: Vice President

Phone Number: (402) 341-1116

Facsimile Number: (402) 341-5895

E-Mail Address: msotak@oaconsulting.com

**ACORD™ CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)  
07/31/07

## PRODUCER

The Harry A. Koch Co.  
P.O. Box 45279  
Omaha, NE 68145-0279  
402 861-7000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

## INSURERS AFFORDING COVERAGE

## NAIC #

## INSURED

Olsson Associates  
P.O. Box 84608  
Lincoln, NE 68501

INSURER A: The Cincinnati Insurance Co

INSURER B: Continental Casualty Co.

INSURER C:

INSURER D:

INSURER E:

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CPP0887727	10/01/06	10/01/07	EACH OCCURRENCE	\$1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000
						MED EXP (Any one person)	\$10,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
						PRODUCTS - COMP/OP AGG	\$2,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CPP0887727	10/01/06	10/01/07	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
A		<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	CPP0887727	10/01/06	10/01/07	EACH OCCURRENCE	\$9,000,000
						AGGREGATE	\$9,000,000
							\$
							\$
							\$
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC210094303	10/01/06	10/01/07	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
						E.L. EACH ACCIDENT	\$500,000
						E.L. DISEASE - EA EMPLOYEE	\$500,000
						E.L. DISEASE - POLICY LIMIT	\$500,000
B		<b>OTHER Professional Architects/Eng. Claims Made Basis</b>	AEH254046268	01/12/07	01/12/08	\$2,000,000 Ea.Claim & Annual Aggregate	

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

PROJECT: JONES CREEK SITE 15 WATERSHED PROJECT

CERTIFICATE HOLDER IS ADDITIONAL INSURED WITH RESPECT TO GENERAL LIABILITY

## CERTIFICATE HOLDER

PAPIO-MISSOURI RIVER NRD  
ATTN: JOHN WINKLER  
8901 S. 154TH ST  
OMAHA, NE 68138

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE





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

This is **EXHIBIT A**, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Study and Report Phase Professional Services dated as of September 13 , 2007.

**Further Description of Services, Responsibilities, Time, and Related Matters**

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Specific articles of the Agreement are amended and supplemented to include the following agreement of the parties:

**A1.01 Final Design Phase – Engineer’s Services**

**A. Engineer shall:**

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications shall conform to the 16-division format of the Construction Specifications Institute. Consult with Owner to define and clarify Owner’s requirements for the Assignment and provide engineering and planning services required for the planning, design and permit applications for the Pigeon/Jones Creek Watershed Site 15 multi-purpose dam site. This includes tasks as described in the documents entitled:
  - a. **“Pigeon/Jones Creek Watershed Site 15 Final Design Project Scope and Task Estimates”** attached to and incorporated in this Exhibit A by reference; and,
  - b. **“Pigeon/Jones Creek Watershed Site 15 Final Design Proposed Task Summaries”** attached to and incorporated in this Exhibit A by reference.
2. Provide technical criteria, written descriptions, and design data for Owner’s use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
4. Perform or provide the following additional Final Design Phase tasks or deliverables:  
**(No additional services identified at this time)**
5. Prepare and furnish Bidding Documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within 15 days of receipt, Owner shall submit to Engineer any comments and instructions for revisions.
6. Revise the Bidding Documents in accordance with comments and instructions from the Owner, as appropriate, and submit 3 final copies of the Bidding Documents (plus an electronic

version), a revised opinion of probable Construction Cost, and any other deliverables to Owner within 45 calendar days after receipt of Owner's comments and instructions.

B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A1.01.A.1 have been delivered to Owner.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

#### *A.2.01 Owner's Responsibilities*

A. Owner shall do the following in a timely manner, so as not to delay the services of Engineer:

1. Provide all criteria and full information as to Owner's requirements for the Assignment, including anticipated funding sources and any project budgetary requirements.
2. Furnish to Engineer all existing studies, reports and other available data pertinent to the Assignment, obtain or authorize Engineer to obtain or provide additional reports and data as required, and furnish to Engineer services of others as required for the performance of Engineer's services.

B. Engineer shall be entitled to use and rely upon all such information and services provided by Owner or others in performing Engineer's services under this Agreement.

C. Access. Owner shall arrange for safe access to and make all provisions for Engineer and its Consultants to enter upon public and private property as required for Engineer to perform services under this Agreement.

D. Owner shall bear all costs incident to compliance with its responsibilities pursuant to this paragraph A.2.01.

#### *A.3.01 Times for Rendering Services*

The time period for the performance of Engineer's services shall be as specified in the document entitled "**Pigeon/Jones Creek Watershed Site 15 Final Design - Proposed Project Schedule**" attached to and incorporated in Exhibit A by reference.

**Pigeon/Jones Creek Watershed Site 15 - Final Design  
Project Scope and Task Estimates**

Attachment to Exhibit A

Pigeon/Jones Creek Watershed Site 15 - Final Design

Project Scope and Task Estimates

#	Name															
1	P-JMRND															
2	NRCS															
3	NG&PC															
4	NDEC															
5	OA - Resources Engineering															
6	OA - Environmental Sciences															
7	OA - Geotechnical															
8	OA - Survey															
9	OA - Transportation															
10	OA - Structural															
11	BODM															
Task	EE Type: Resource Hrs Rate:	Proj. Mgr. 140	Water Res. Scientist 60	EIT 75	Sr. Engr. 130	Survey Crew 105	Geotech Engr. 50	Geotech EIT 135	Trans. Engr. 145	Structural Engr. 120	Senior Pro. Scientist 165	Project Scientist 86	GIS Technician 51	Clarion LA II : 08	Direct Costs 40	Extension
Project Management and Coordination with NDNR																
General Project Management	5	100													\$18,200	
Evaluation of Project Costs and Rate-of-Return on Investment	5	8	20												\$2,500	
Project Progress and Cost Update Meetings with NDNR (4)	5	16	40												\$5,000	
Internal QA/QC by Senior Engineer				60											\$7,800	\$38,500
Community-Based Watershed Planning																
Kickoff Meeting with Stakeholders	5	6	10	4											\$2,090	
Public Meeting #1 (Present Resource Information)	5	2	10	4											\$1,470	
Public Meeting #2 (Developing Vision & Project Objectives)	5	2	10	4											\$1,470	
Complete Additional Information Based on Objectives	5	2	10	10											\$1,720	
Analyze Additional Information as Necessary	5	2	10	10											\$1,470	
Stakeholder Meeting to Discuss Alternatives	5	2	10	4											\$200	
Modeling and Analysis of Alternatives to Meet Goals	5	10	60	20	4										\$200	
Stakeholder Meeting to Present Results	5	2	10	4											\$200	
Public Meeting #3	5	2	10	4											\$970	
Finalize Alternatives	1,4,5	2	10	0											\$200	
Watershed Council Meeting to Present Final Alternatives	5	2	10	4											\$8,140	
Formulate Draft Management Plan	5	2	10	4											\$200	
Stakeholder Meeting	1,4,5	2	10	4											\$200	
Public Meeting #4	1,5	2	10	4											\$1,470	
Finalize and Prepare Deliverables	1,5	2	40	4											\$500	\$37,220
Geotechnical Investigations																
Site 15 Field Investigation (760 LF of Auger Borings)	7														\$16,800	
Site 15 Laboratory Work	7														\$14,300	
Site 16 Geotechnical Report and Design Recommendations	7							65	230						\$29,375	
Pigeon/Jones Creek Levee Field Investigation (95 LF of Auger Borings)	7														\$2,450	
Pigeon/Jones Creek Levee Laboratory Work	7														\$1,405	
Pigeon/Jones Creek Levee Stability Analysis and Report	7							3	24						\$2,325	\$17,156
Survey																
Topographic Mapping of Off-Line Storage Area	8								20						\$5,200	
Additional Survey to Supplement Existing Contour Information	8								15						\$3,000	\$9,100
Dam Structure Design																
Review Preliminary Dam Design Runs	5	30													\$4,720	
Coordinate Permanent Pool Elevation	10	4						10	4						\$3,670	
Routel Flow Hydrology	5	14						30	4						\$5,900	
Set Structure Control Elevations	5	4						30	4						\$4,730	
Conduct Fish Analaysis on Pool	5	2						6							\$2,730	
Draft Refined Embankment and Auxiliary Spillway	5	6						40	20						\$4,770	
Determine Earthwork Requirements	5	6						50							\$28,400	
Principal Spillway Rear Design (Gates, Valves, etc.)	5	30						100	30						\$7,980	
Design Pool Borrow	5	30						40	6						\$7,060	
Update Water Budget Analysis	5	20						20							\$7,400	
Prepare Structure Design Drawings	5	10						80							\$3,150	
Submit Structure Design Drawings to NDNR for Review	5	10						6	10						\$17,600	
Prepare Design Memorandum	5	30						40	80						\$22,900	
Finalize Structure Design Documents (Plans & Specifications)	5	40						140	50						\$4,710	\$127,240
Prepare Opinion of Probable Project Costs	5	12						30	6							
Fishway Enhancement Design																
Facility/Coordination Meeting With NGPC	5	12													\$4,440	
Prepare Preliminary Design Costs & Cost Estimate	5	10						120							\$9,080	
Coordinate Design with NDNR	5	20						40							\$5,690	
Provide Assistance with Sport Fish Restoration Grant App.	5	6						60							\$4,980	
Prepare Final Design Documents (Plans & Specifications)	5	8						80							\$6,640	
Prepare Opinion of Probable Project Costs	5	4						40							\$3,320	\$34,620
South Street & Lutton Avenue Relocation Design																

Activity	Days	Personnel	Cost	Notes
<b>Project Kickoff Meeting with County</b>	5.0	8	\$2,880	
Refine Road Geometry & Design Template	5.0	40	\$3,680	
Refine Road Geometry & Design Template	5.0	10	\$896	
Refine Tripartite Crossing (Sediment Basins) Inflow Hydrographs	9	8	\$3,680	
Refine Tripartite Crossing (Sediment Basins) Inflow Hydrographs	5	8	\$2,880	
Main Tributary Drainage Structure Civil and Structural Design	5	15	\$15,750	70
Southeast Tributary Drainage Structure Civil and Structural Design	5	30	\$7,250	30
Luton Ave. Tributary Drainage Structure Civil and Structural Design	5	30	\$7,250	30
Multi-Plate Pedestrian Underpass Civil and Structural Design	5	50	\$9,050	40
Coordination Meeting with County and Utilities to Present Design	5.0	10	\$2,280	
Finalize Design	5.0	60	\$7,300	
Calculate Earthwork Balance and Sediment Basin Borrow Requirements	5	10	\$3,660	
Final Approval Meeting with County	5.0	4	\$2,280	
Prepare Final Design Documents (Plans and Specifications)	20	2	\$6,080	
Prepare Opinion of Probable Costs	5	10	\$2,440	
<b>South Bluff Road Tie-Back Levee Design</b>				
Project Kickoff Meeting with County	5	4	\$880	
Evaluate New Bridge Enhancements and Hydraulic Performance	5	8	\$880	
Design Levee Embankment	5	20	\$1,780	
Design Levee Embankment	5	10	\$880	
Obtain Final Approval from Counties	5	4	\$880	
Prepare Final Design Documents (Plans and Specifications)	5	2	\$3,280	
Prepare Opinion of Probable Costs	5	1	\$880	
<b>Off-Line Storage Area Design</b>				
Review Preliminary Design Concept	5	4	\$1,310	
Refine Design Hydrology and Update S. Bluff Road Bridge Geometry	5	10	\$3,580	
Refine Levee Modification and Drainage Structure Design	5.7	14	\$3,580	
Coordination Meeting with County to Present Design	5	4	\$880	
Finalize Design	6	2	\$2,530	
Obtain Final Approval from County	6	4	\$880	
Prepare Final Design Documents (Plans and Specifications)	5	2	\$2,530	
Prepare Opinion of Probable Costs	5	1	\$1,840	
<b>Recreation Facility Design</b>				
Revise Recreation Master Plan	11	80	\$7,840	
<b>Environmental Investigations &amp; Permitting</b>				
Desktop Scoping of Potential Archaeological Sites (Auxiliary Spillway)	8	8	\$1,368	
400 - Project Management / Communication with USACE	260	260	\$24,060	
401 - Initial Review / Quality Assurance	8	80	\$9,900	
404 - Alternatives Analysis / (b) Documentation	8	200	\$13,200	
404 - Prepare Report Figures	8	80	\$4,080	
<b>Land Acquisition</b>				
Finalize Project Boundary	5	6	\$59,508	
Prepare Land Rights Map	5	20	\$1,010	
Prepare Easement Descriptions	5	80	\$2,540	
<b>Miscellaneous Permitting</b>				
Prepare SWPPP and NPDES Permit	5	20	\$11,800	
Prepare GLOMR	5	90	\$37,900	
Prepare/Coordinate Storage Permit Application	5	140	\$4,300	
<b>TOTAL</b>			<b>\$584,573</b>	

## **Attachment to Exhibit A**

### **Papio-Missouri River NRD Pigeon/Jones Creek Site 15 Final Design**

#### **Proposed Task Summaries**

##### **Project Management & Coordination with Nebraska Department of Natural Resources (NDNR)**

Coordinate all contractual aspects of contract internally with project team and externally with NRD. Review project progress internally at times of monthly invoicing and coordinate all internal project coordination meetings. Keep NDNR in the loop on all design decisions made to facilitate the permitting process. Conduct and document all internal quality control efforts. Plan and attend four NRD staff design updates and attend four NRD and four Dakota County Board meetings.

##### **Community-Based Watershed Management Planning (CBWMP)**

Work with the NRD and Nebraska Department of Environmental Quality (NDEQ) to form both a technical advisory team and watershed advisory council to conduct a CBWMP in accordance with NDEQ guidelines. The process will involve all entities such as Dakota County, NRCS, producers and landowners involved in the watershed.

##### **Geotechnical Investigations**

Conduct sub-surface field investigations of the dam, upstream roadway crossings and downstream levee improvements, perform laboratory testing of the samples and readings taken, and prepare design recommendations consistent with the requirements of designing the aforementioned facilities.

##### **Survey**

Provide field survey services to supplement existing information required to properly design and calculate quantities for the dam, upstream reservoir and roadway improvements, and downstream levee improvements.

##### **Dam Structure Design**

Perform the required hydrologic and hydraulic routings for the dam structure design, prepare site civil drawings in conjunction with the geotechnical recommendations and prepare construction documents consistent with what is needed to obtain a Permit to Impound Water and dam construction permit from NDNR.

##### **Fishery Enhancement Design**

Work with the NRD and NGPC to prepare a grant application for in-lake aquatic habitat and motorboat access facilities, plan and design said facilities with NGPC and the NRD and coordinate design with project landscape architect.

#### 200<sup>th</sup> Street & Lutton Avenue Relocation Design

Plan and design the relocation of 200<sup>th</sup> Street and Lutton Avenue surrounding the reservoir, conduct review of initial design recommendations prepared in the NRDF Application with Dakota County and coordinate and permit the planned improvements with both Dakota County and the NRD.

#### South Bluff Road Tie-Back Levee Design

Design the tie-back levee improvements proposed in the NRDF Application to meet the proposed hydraulic improvements associated with the effort. Coordinate all design activities with Dakota County and the US Hwy 35 planning effort.

#### Off-Line Storage Area Design

Design and coordinate the off-line storage area north of the Pigeon Creek Ditch as proposed in the NRDF Application. Coordinate all design activities with Dakota County and the NRD.

#### Recreational Facility Design

Coordinate updates to Recreation Master Plan with Landscape Architect through design process.

#### Environmental Investigations & Permitting

Provide coordination, field investigations, alternatives development, project review and all correspondence necessary to apply and obtain a 404/401(b) permit from the U.S. Army Corps of Engineers (USACE.) The effort for this task is based on current regulations being enforced by the USACE and is subject to change based upon direction received from the USACE.

#### Land Acquisition

Preparation of Land Rights Map and easement description reflecting the necessary land acquisitions/easements needed to implement the final design.

#### Miscellaneous Permitting

Preparation of Application and Plans necessary to acquire the required Stormwater Pollution Prevention Plan (SWPPP – NPDES Permit), County Floodplain Development Permit and NDNR Permit to Impound Water and Dam Construction Permit. Permit application fees to be paid by NRD.

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 September 13, 2007.

**Standard Terms and Conditions**

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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 "**Pigeon/Jones Creek Watershed Site 15 Final Design - 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)

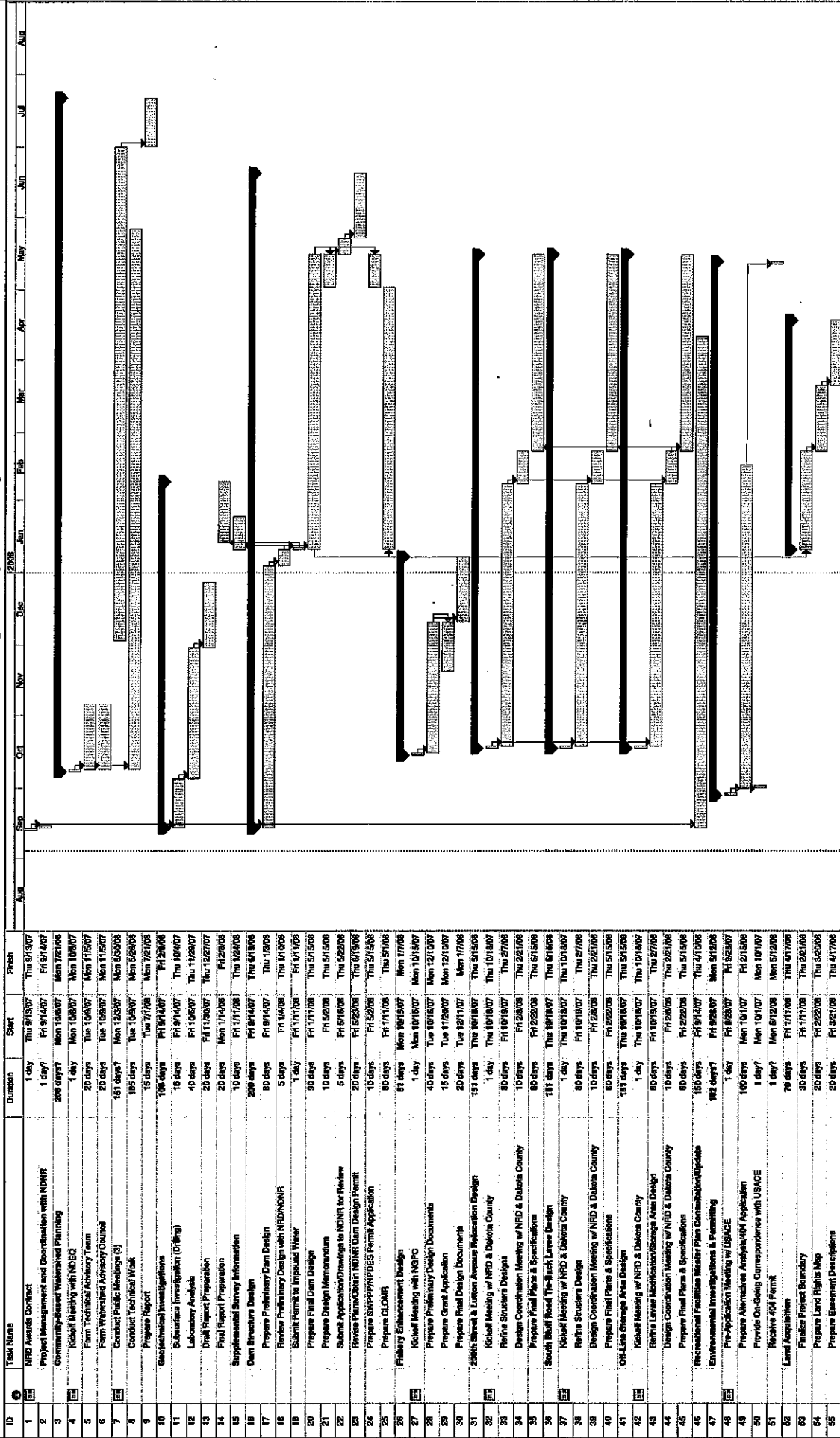
This is **EXHIBIT C**, consisting of 1 page, referred to in and part of the Agreement between Owner and Engineer for Study and Report Phase Professional Services dated as of September 13, 2007.

**Reimbursable Expenses Schedule**

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The Engineer's Reimbursable Expenses are as specified in the document entitled, "**Pigeon/Jones Creek Watershed Site 15 Final Design – Project Scope and Task Estimates**" attached to and incorporated in Exhibit A by reference.

# Pigeon/Jones Creek Watershed Site 15 Final Design - Proposed Project Schedule

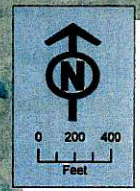


Attachment to Exhibit A





# P-MRNRD Pigeon/Jones Creek SITE 15 MASTER PLAN SEPTEMBER 2007





## Pigeon/Jones Creek Site 15 Fact Sheet

**Technical Feasibility*****Tie-Back Levee and Off-Line Storage Area***

- \* The tie-back levee will increase the efficiency of the Pigeon Creek Levee System allowing complete confinement of floods up to and including the 100-year storm event. A significant portion of flood flows currently bypass the Levee System.
- \* The off-line storage area will provide for temporary storage of a portion of the flow in the Levee System. This will prevent localized flooding at downstream bridge crossings where the Levee System has limited conveyance capacity.
- \* Flow into the off-line storage area will be controlled by lowering a portion of the right-bank levee to allow diversion of flows that exceed downstream bridge capacity. Flows will be slowly released back into the Levee System via small culverts.

***Site 15 Reservoir & Road Realignments***

- \* The Site 15 dam embankment will require placement of approximately 465,000 CY of earth fill borrowed from the 300-foot wide auxiliary spillway located on the west abutment of the dam.
- \* Site 15 will impound a 200 surface-acre main reservoir and 28 surface-acres of sediment basins.
- \* The main reservoir will have a mean depth of 17 feet and a maximum depth of 50 feet at the dam embankment.
- \* The existing 200th Street and Lutton Ave. will be realigned. The new roads will form the sediment basin embankments.
- \* Dakota County has approved the preliminary road realignment geometry and has entered into an inter-local agreement with the P-MRNRD to pay 50% of the local portion of the road realignment costs (up to \$350,000) and to maintain the county and park roads.
- \* One residence will be inundated and two more will be impacted by the recreation area. The NRD is working with the homeowners to find suitable relocation sites adjacent to the park boundary.

***Site 15 Recreation Area***

- \* The Site 15 recreation area includes 228 surface-acres of water and 595 acres of park land.
- \* The reservoir will have a 5 mph or "no-wake" speed restriction.
- \* A handicap accessible fishing pier, jetties and off-shore breakwaters are planned to protect the shoreline and improve angler access.
- \* The recreation area includes a 3.8 mile hiking/biking trail around the main body of the reservoir.
- \* Equestrian-related activities are a major focus of this site. The site Master Plan includes an equestrian campground and 10 miles of equestrian trails.
- \* This site is uniquely suited to mountain biking. Coordination with regional mountain biking associations resulted in the incorporation of two single-track mountain biking trails. The final trail design will be coordinated with the associations who are hoping to hold yearly sanctioned meets at the site.
- \* The recreation area also features separate RV and tent campgrounds and three day-use areas.

**Economic Feasibility*****Project Costs (\$9,973,334)***

- \* Total project costs include the planning, design, permitting, land rights and construction of the dam, in-lake facilities, recreation area, levee tie-back at the new South Bluff Road bridge and Pigeon/Jones Creek ditch off-line storage area.

***Project Benefits (\$856,448)***

- \* Annual flood control benefits total \$61,100 (2005 dollars.)
- \* Annual recreation benefits total \$795,348 (at current rec. day value of \$7.03.)

***Project Rate of Return on Investment***

- \* Project Internal Rate of Return (IRR) is 5.9%.

**Environmental Feasibility*****Cultural Resources Investigation***

- \* University of Nebraska-Lincoln Department of Anthropology and Geography Division of Cultural Resource Management (DCRM) conducted a Cultural Resources Investigation for Site 15. The previously identified archeological site 25DK32 was investigated with no findings of any archeological features. DCRM recommends that additional investigation be conducted via surface stripping with heavy equipment once land rights are acquired. Any burials located would be exhumed and re-located in accordance with State and Federal laws and in cooperation and coordination with the Omaha Tribe.
- \* The Omaha Tribe was contacted with the Cultural Resources Investigation results and indicated, through personal communication, that the Tribe has no objections to the planned project.

***Wetland and Threatened and Endangered Species Investigation***

- \* Project wetland impacts will be very limited and creation of the reservoir is expected to more than mitigate the impacts.
- \* No threatened or endangered species or critical habitats were found at the project site.

**Project Schedule**

July, 2007: NRC Approves Future Funding of Project

Final Design: Fall 2007 – Summer 2008

Land Rights Acquisition: Spring 2008 – Spring 2009

Construction of Dam, In-Lake Facilities, Roads, Downstream Levee Improvements: Summer 2009 - Fall 2010

Design of Recreation Facilities: 2009

Construction of Recreation Facilities: 2010-2011

Park Open: Fall 2011/Spring 2012

**Financial Feasibility**

Nebraska Resources Development Fund Contribution: \$6,482,667(65% of Project Costs)

Papio-Missouri River Natural Resources District: \$3,490,317

Dakota County: \$350,000 (or 50% of local road improvement costs, whichever is less)

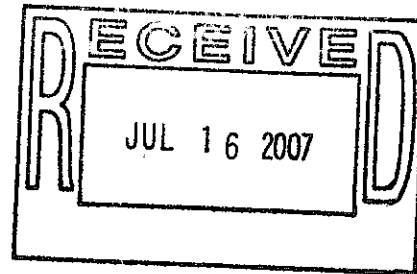
Nebraska Game & Parks Commission: (Motorboat Access Facilities-To Be Determined)



**Dave Heineman**  
Governor

**STATE OF NEBRASKA**  
**DEPARTMENT OF NATURAL RESOURCES**  
**Ann Bleed**  
Director

July 12, 2007



IN REPLY TO:

John Winkler, Manager  
Papio-Missouri River NRD  
8901 South 154<sup>th</sup> Street  
Omaha, NE 68138-3621

Dear Mr. Winkler:

At its July 11, 2007, meeting, the Natural Resources Commission approved the Papio-Missouri River NRD's application for the Pigeon/Jones Creek project. Due to the unavailability of funds that can be allocated by the Commission, this project is approved but with \$0 of allocation. Subject to the Governor's approval, the revised rules adopted at this Commission meeting allow you, as sponsor, to request that this project be reconsidered at any point during the next four years for an increased allocation.

If you wish to discuss this matter you may reach me at (402) 471-0575.

Sincerely,

Kent Zimmerman  
Projects Director

KZ:mh

cc: Jim Thompson  
Marlin Petermann  
Wayne Madsen

adminservices/members/Zimmerman/2007





**Dave Heineman**  
Governor

# STATE OF NEBRASKA

**DEPARTMENT OF NATURAL RESOURCES**  
**Ann Bleed**  
Acting Director

January 22, 2007

IN REPLY TO:

**TO:** Commission Members

**FROM:** Ann Bleed, Director of Natural Resources *AB*

**SUBJECT:** Recommendation on the Pigeon/Jones Creek Site 15 Project

Following review of the subject NRDF project application, I have made the following findings of fact:

- (1) The Pigeon/Jones Creek Site 15 Project will be of general public benefit;
- (2) The project plan does not conflict with any existing state land plan;
- (3) The project has been determined to be technically, economically, and financially feasible and environmentally acceptable according to the Nebraska Resources Development Fund criteria;
- (4) The plan for development is satisfactory;
- (5) The plan minimizes any adverse impacts on the natural environment;
- (6) The Papio-Missouri River Natural Resources District (NRD) is qualified, responsible, and legally capable of carrying out the project;
- (7) Other plans and programs of the state were taken into consideration in preparing the plan of development in accordance with section 84-135, and resources development plans of the political subdivisions of the state were considered;
- (8) The project will not jeopardize the continued existence of any threatened or endangered species or modify or destroy the habitat of any such species;

and recommend:

- (1) The Pigeon/Jones Creek Site 15 Project be determined eligible for funding from the Nebraska Resources Development Fund; actual funding to be subject to the condition that the money required from the Fund is available and the application of the assessment system for obligating funds.
- (2) The legislatively imposed \$18.5 million cap on the spread between allocated and obligated RDF funds must be honored and could affect the action the Commission would otherwise take on this project. Alternative ways to move forward with this project and with other RDF projects in a manner that is consistent with that cap are being considered. In making a funding recommendation for this project, I have not made any assumptions about which alternative(s) will be selected by the Commission. Instead, my funding recommendation for this project is based on

clrshare/zimmerman/NRDFRecommendations

what I believe would be the relevant factors if the cap were not an issue. On that basis, I recommend that funding, if and when provided, be in the form of a grant for up to \$6,482,667.00 not to exceed 65% eligible total local project cost of \$9,973,334.00

- (3) The Director of Natural Resources is authorized to negotiate and enter into a contract with the Papio-Missouri River NRD for carrying out the provisions of the project.

In developing my recommendation regarding NRDF assistance for the Pigeon/Jones Creek Site 15 Project, I considered the following factors:

- (1) The project is of general public benefit regarding the recreation, flood control, and sediment reduction.
- (2) The project, as planned, has a 50-year life period.
- (3) The project was planned by the Papio-Missouri River NRD.
- (4) The cost of constructing this project will be shared by the Papio-Missouri River NRD, Dakota County, and the Nebraska Resources Development Fund.
- (5) In FY 2005, the Papio-Missouri River NRD had a valuation of \$40,237,022,071 and a levy of 3.9094 cents/\$100 valuation.