

ITEM A 13

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
AUGUST 19, 2014 AGENDA**

Subject:	Type:	Submitted By:
HELL CREEK GRADE CONTROL STABILIZATION, INTERLOCAL AGREEMENT WITH PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT AND OMAHA	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER/ASSISTANT PUBLIC WORKS DIRECTOR

SYNOPSIS

A resolution has been prepared authorizing the Mayor to execute an Interlocal Cooperation Agreement with the Papio-Missouri River Natural Resources District and the City of Omaha for the undertaking of efforts required to design repairs or reconstruction of a grade control structure on Hell Creek. The repair and/or reconstruction is necessary to keep channel erosion from proceeding upstream and seriously damaging infrastructure owned by the City of Omaha, the City of La Vista and the Papio-Missouri River Natural Resources District.

FISCAL IMPACT

The Papio-Missouri River NRD is agreeing to provide 60% of the costs. The remaining 40% would be split equally between the City of Omaha and the City of La Vista. The City's share will not exceed \$10,000 after reimbursement by the other parties. The FY14 and proposed FY15 Capital Fund Budgets contain yearly allocations for interim repairs to Hell Creek until a major channel reconstruction project can be undertaken.

RECOMMENDATION

Approval

BACKGROUND

There is an existing grade control structure on Hell Creek at its confluence with the West Papillion Creek located just west of the intersection of 110th Street and Harry Andersen Avenue (southwest of Yahoo facility). Hell Creek drops over 16 feet into the West Papillion Creek. The grade control structure has been slowly deteriorating in recent years, but the frequent, heavy rains this year have accelerated the decay. The structure needs to be repaired in order to protect existing infrastructure located on the high side of the structure. This interlocal agreement only addresses design work to identify a solution and associated costs. The City of La Vista is the lead agent since it already has a consultant under contract working on conceptual designs for Hell Creek and since the property is located in the City of La Vista. A future interlocal agreement will be needed for construction of repairs.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN INTERLOCAL COOPERATION AGREEMENT WITH THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT AND THE CITY OF OMAHA FOR THE UNDERTAKING OF EFFORTS REQUIRED TO DESIGN REPAIRS OR RECONSTRUCTION OF A GRADE CONTROL STRUCTURE ON HELL CREEK.

WHEREAS, the provisions of Nebraska State Statutes Sections 13-801, et. seq., provide authority for the City of La Vista to join with other governmental agencies on a basis of mutual advantage and in a manner that will accord best with geographic, economic, population and other factors by signing an Interlocal Cooperation Agreement; and;

WHEREAS, the City of La Vista is serving as the lead agent since it already has a consultant under contract working on conceptual designs for Hell Creek and since the property is located in the City of La Vista, and;

WHEREAS, the grade control structure has been slowly deteriorating in recent years, but the frequent heavy rains this year have accelerated the decay, and;

WHEREAS, the Papio-Missouri River NRD is agreeing to provide 60% of the cost with the remaining 40% being split equally between the City of Omaha and the City of La Vista, and;

WHEREAS, the FY 14 and proposed FY 15 Capital Fund Budgets contain yearly allocations for interim repairs to Hell Creek until a major channel reconstruction project can be undertaken, and;

WHEREAS, the participants agree that this Interlocal Cooperation Agreement in no manner expands or restricts the authority otherwise granted to them by law; and

WHEREAS, such an agreement is in the best interests of the citizens of the City of La Vista.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of La Vista, Nebraska, hereby approves and authorizes the execution of an Interlocal Cooperation with the Papio-Missouri River Natural Resources District and the City of Omaha for the undertaking of efforts required to design repairs or reconstruction of a grade control structure on Hell Creek.

PASSED AND APPROVED THIS 19TH DAY OF AUGUST, 2014.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

INTERLOCAL COOPERATION ACT AGREEMENT
HELL CREEK GRADE CONTROL STABILIZATION
(at confluence with West Papillion Creek)
AMONG
THE CITY OF LA VISTA,
THE CITY OF OMAHA,
AND
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

This agreement ("Agreement") is hereby made and entered into as of this _____ day of _____, 2014, by and among the CITY OF LA VISTA ("La Vista"), the CITY OF OMAHA ("Omaha"), municipal corporations organized and existing under the laws of the State of Nebraska, and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("District"), a natural resources district organized and existing under the laws of the State of Nebraska (all collectively referred to hereinafter as "the Parties").

WHEREAS, District currently owns and maintains the former UPRR railroad right of way across Hell Creek including a bridge that the District desires to protect for future use; and,

WHEREAS, La Vista owns and maintains infrastructure along Hell Creek upstream of the grade control structure; and,

WHEREAS, Omaha owns, operates, maintains and repairs the West Papillion Creek Interceptor Sewer immediately upstream of the grade control structure; and,

WHEREAS, in order to protect their mutual interests and pursuant to the authority granted the Parties by the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801, et.seq.), the Parties desire to enter into this Agreement to delineate and provide for their specific rights and obligations with respect to the design of repairs to the Hell Creek Grade Control Structure at the existing bridge structure located on Hell Creek located just upstream of the confluence of Hell Creek with the West Papillion Creek generally depicted on Exhibit "A" attached hereto; and,

WHEREAS, construction of repairs identified by the preliminary design work is not covered by this Agreement and will require a future amendment or separate agreement between the Parties; and,

WHEREAS, La Vista has previously hired Felsburg, Holt, & Ullevig (“Consultants”) to provide professional services for conceptual and preliminary design work to stabilize Hell Creek from approximately 300 feet south of Harrison Street to the confluence with West Papillion Creek. Said services included only conceptual design work for the portion of Hell Creek from 400 feet south of Olive Street to the confluence with West Papillion Creek.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the Parties do hereby mutually undertake, promise, agree, and contract each for itself and its successors and assigns as follows:

I. PURPOSE

The purpose of this Agreement is to specify the terms and conditions upon which the Parties will cause preliminary design and cost estimates to be prepared by the Consultants in order to identify solutions available to stabilize or reconstruct the existing grade control structure identified in Exhibit “A”. The grade control structure needs to be stabilized in order to protect existing infrastructure owned by the Parties

II. RIGHTS, DUTIES, AND OBLIGATIONS OF LA VISTA

La Vista agrees to:

1. Act as the lead administrator for development of a solution to stabilize the grade control structure;
2. Obtain an amendment to the existing agreement with the Consultants and compensate the Consultants for providing professional engineering services for preliminary design and cost estimates to stabilize the grade control structure as set forth in Exhibit “B” attached hereto;
3. Provide copies of all reports and documents prepared by Consultants to the Parties for review and approval;
4. Compile meeting minutes and review comments received from District and Omaha and submit review comments and requests to the Consultants;
5. La Vista shall not be required to expend more than a total of \$50,000, or \$10,000 of its own funds, for professional engineering services without

assurances of additional proportionate reimbursement by Omaha and District, in the proportions hereinafter stated;

6. Maintain records accounting for all payments to the Consultants.

III. RIGHTS, DUTIES, AND OBLIGATIONS OF DISTRICT

District agrees to:

1. Timely review and comment on plans, reports, and documents for the Hell Creek Grade Control Stabilization submitted by La Vista, such reviews to not be withheld or delayed unreasonably.
2. Reimburse to La Vista in one installment, in the amount of 60% of La Vista's total costs expended for professional services set forth in Exhibit "B", but such reimbursement not exceeding \$30,000, such installment to become due and payable on March 1, 2015 or upon completion of such services, whichever date is later.

IV. RIGHTS, DUTIES, AND OBLIGATIONS OF OMAHA

Omaha agrees to:

1. Timely review and comment on plans, reports, and documents for the Hell Creek Grade Control Stabilization submitted by La Vista, such reviews to not be withheld or delayed unreasonably.
2. Reimburse to La Vista in one installment, in the amount of 20% of La Vista's total costs expended for professional services set forth in Exhibit "B", but such reimbursement not exceeding \$10,000, such installment to become due and payable on March 1, 2015 or upon completion of such services, whichever date is later.

V. GENERAL CONDITIONS

1. **NONDISCRIMINATION.** None of the Parties shall, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, disability as defined under the Americans with Disabilities Act, political or religious opinions, affiliations, or national origin.

2. **CAPTIONS.** Captions used in this Agreement are for convenience only.
3. **APPLICABLE LAW.** The Parties shall conform with all existing and applicable city ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.
4. **INTEREST OF THE PARTIES.** Each of the Parties to this Agreement covenants with the other that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict with its performance under this Agreement.
5. **MERGER.** This Agreement shall not be merged into any other oral or written contract, lease, or deed of any type.
6. **MODIFICATION.** This Agreement contains the complete and entire Agreement of the parties. No representations were made or relied upon by any of the Parties other than those expressly set forth herein. No agent, employee, or other representative of any party is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of the respective Parties.
7. **AMENDMENTS.** This Agreement may be amended upon the actions of the Parties if done so in writing.
8. **ASSIGNMENTS.** A party may assign its rights under this Agreement only by written consent of the other Parties.
9. **EFFECTIVE DATE.** This Agreement shall become effective on the date that its execution by each and all of the Parties is complete.
10. **INTERLOCAL COOPERATION ACT PROVISIONS.** This Agreement shall not create any separate legal or administrative entity. It shall be administered jointly by the parties, through one representative to be designated by and on behalf of each party. Each party shall separately finance and budget its own duties and functions under this Agreement. There shall be no jointly held property as a result of this Agreement. The Agreement shall terminate upon completion of the work contemplated by the Agreement, unless the parties consent in writing to an earlier termination. Upon termination, each party shall retain ownership of the property it owns at the time of termination. This Agreement does not authorize the levying, collecting or accounting of any tax.

This Agreement is executed by PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT this _____ day of _____, 20____.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By _____
General Manager

This Agreement is executed by THE CITY OF OMAHA this _____ day of _____, 20____.

THE CITY OF OMAHA

Attest:

By _____
MAYOR

CITY CLERK

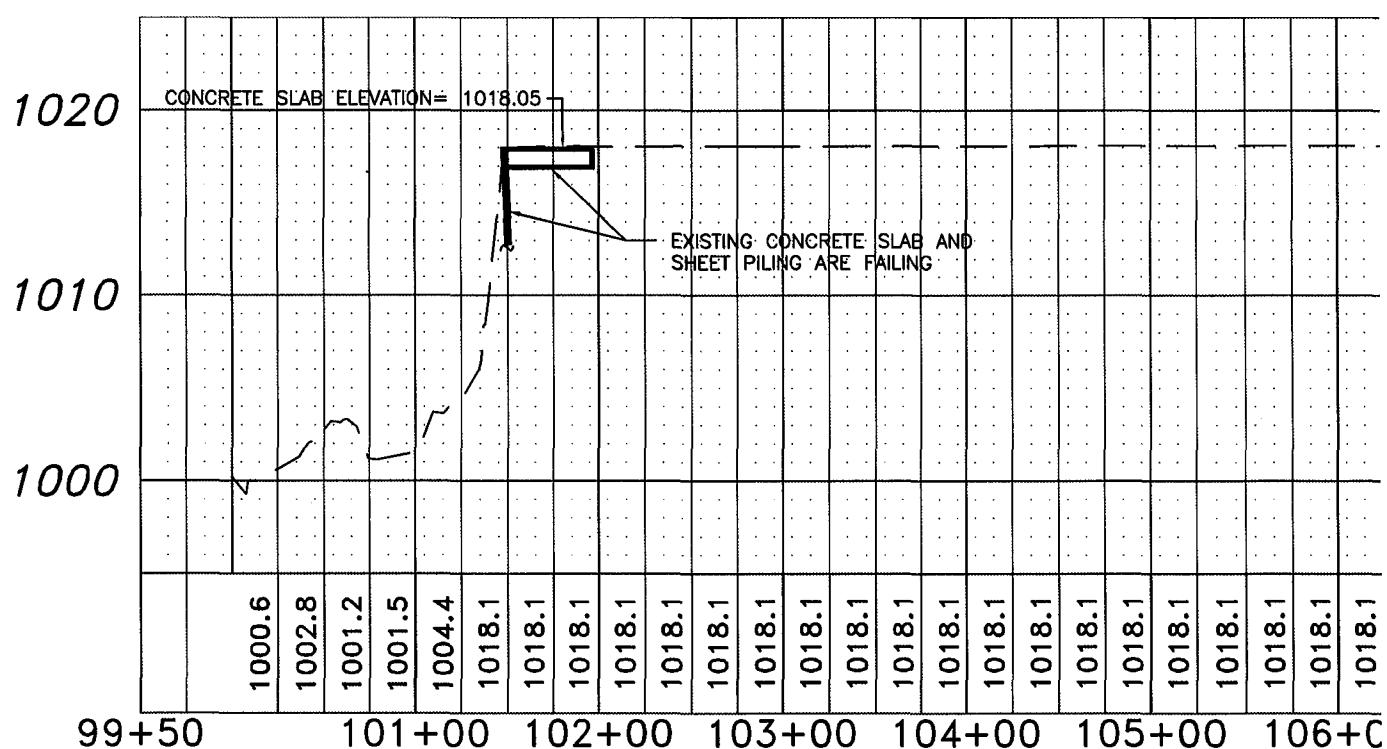
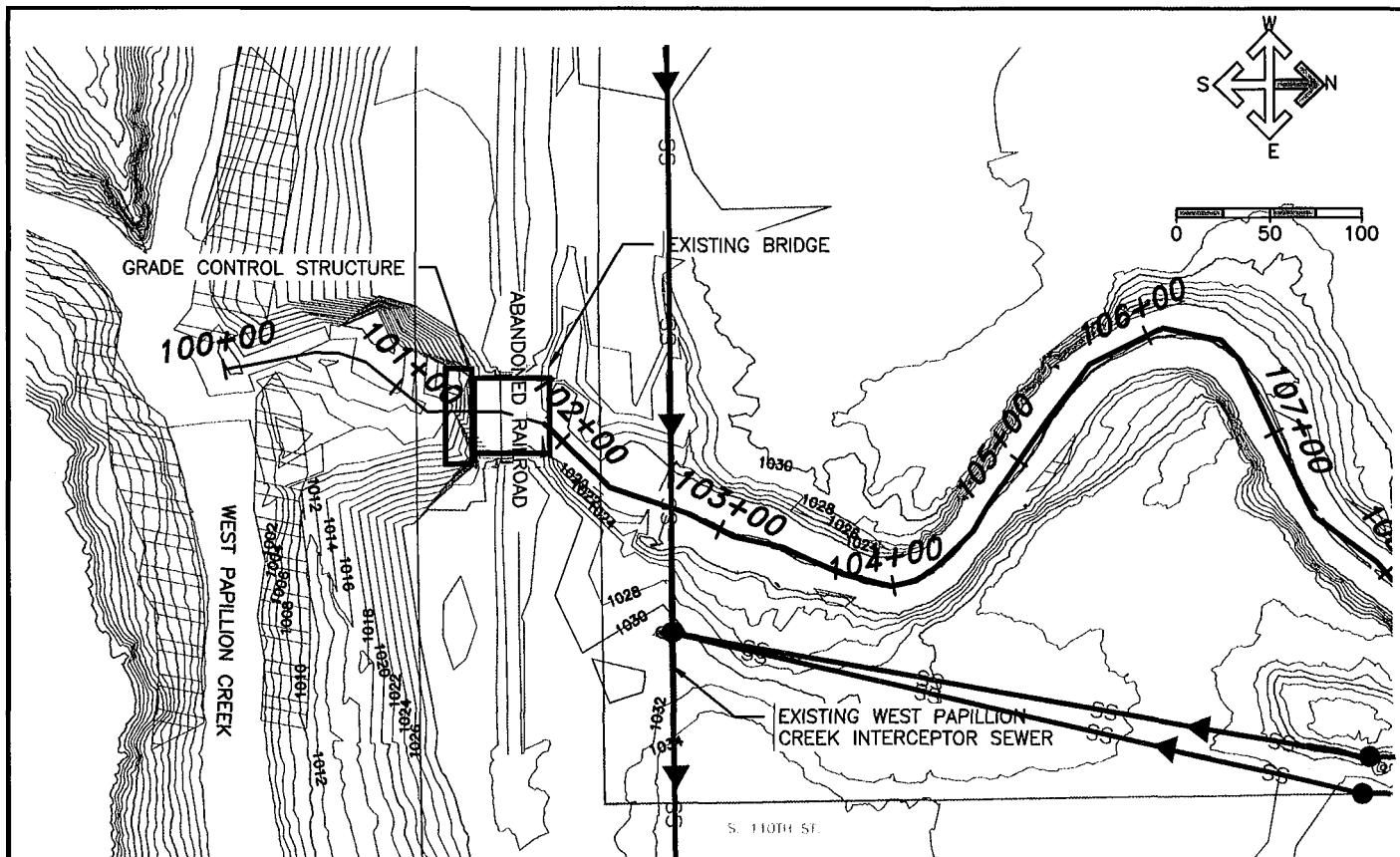
This Agreement is executed by THE CITY OF La VISTA this _____ day of _____, 20____.

THE CITY OF La VISTA

Attest:

By _____
Mayor

CITY CLERK



Print Date: 8/7/2014 8:21:02 AM

File Name: 13112-PRO02.dwg

Horizontal Scale: Vertical Scale:



11422 Miracle Hills Drive, Suite 115
Omaha, NE 68154
tel 402.445.4405
fax 402.445.4394

EXHIBIT A

Project No./Code

13112-02

Designer:

Structure

Detailer:

Numbers

Subset:

Sheets:

of

Sheet Number



EXHIBIT B
(8 pages)

August 7, 2014

Mr. John Kottmann, P.E.
City Engineer
City of La Vista
9900 Portal Road
La Vista, Nebraska 68128

RE: Proposal to Provide Engineering Services
 for Hell Creek Bridge and Stream Stabilization at West Papillion Creek

Dear John:

Thank you for the opportunity to submit this proposal to provide engineering services for preliminary design for the abandoned railroad bridge and associated grade control on Hell Creek at its confluence with West Papillion Creek in Sarpy County, Nebraska. The information used to prepare this proposal is based on work done during the conceptual design for Hell Creek Phase II for the City of La Vista and discussions with you during an on-site meeting on May 15th, 2014.

Scope of Services

Task 1) Field Investigations and Existing Conditions Assessment

This task will include obtaining supplemental survey information; assessing stream and bridge conditions; and conducting a geotechnical evaluation. This information will be used as the basis for design to stabilize the stream bed and make improvements to the bridge structure.

1a) Supplemental Survey

Felsburg, Holt and Ullevig (FHU) will have Olsson Associates (OA) perform a topographic survey for the project that will supplement data obtained during the original survey for Hell Creek Phase II for the City of La Vista. The original survey included shots on the bridge structure and contour information. Supplemental topographic survey under this task shall include the thalweg and south water's edge along approximately 300 feet of West Papillion Creek; timber piles and the boundary and general form and flowline of the boulder features; additional information on the railroad bridge; sewers and utilities within 200' of the project area; and vegetation boundaries. OA will also contact a title company to perform a title search within the project area for use in determining easement restrictions and helping determine boundaries that will be included in the drawings.

1b) Stream and Bridge Assessment

FHU will assess fluvial geomorphology conditions and stability of the step-pool feature that has formed on the downstream side of the railroad bridge along with the condition of the bridge itself. This task

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will include site visits to obtain pertinent field information and dimensions associated with the bridge, bridge foundation and failing drop structure.

Though the intent is to leave the existing boulder features in place, FHU will evaluate the transition from the bridge to the boulder step-pool feature, improvements to the existing boulder step-pool feature to help ensure stability (i.e. with the use of piling), improvements to extend the step-pool feature down to meet with the West Papillion Creek thalweg, and the stability of adjacent banks. This assessment will include a review of hydraulic conditions during various storm events for influences of West Papillion Creek on Hell Creek.

Bridge conditions will be investigated for the purpose of reuse as a crossing for pedestrians and maintenance vehicles and as a grade stabilization structure. A thorough investigation of the existing bridge will be completed to insure the structure can safely be converted to a trail bridge while maintaining the historical integrity of the existing bridge, and providing grade control. A field investigation together with geotechnical information will be used to evaluate the condition of the bridge and a report of condition and suitability assessment will be prepared.

1c) Geotechnical Investigation

OA will complete soil borings and laboratory testing of soil samples to complete a Report of Geotechnical Exploration for the site. The field work will include the use of hand operated, power equipment to core through the concrete bridge floor slab in two (2) locations to determine the slab thickness and if there are voids present below the slab. The exploration will determine groundwater conditions and identify soil properties and characteristics that may be used for evaluating slope stability and design parameters for tiebacks and piling.

OA proposes to use a CME-75 or CME-55 drill rig to complete two (2) soil test borings; one each at the north and south bridge abutments. Soil borings will be extended to depths of 70 feet each, or refusal, whichever is shallower. This proposal is based on a total drilling footage of 140 linear feet.

We will contact Diggers Hotline of Nebraska to locate underground public utilities. If the Client is aware of underground utilities in the area that may not be identified by the Diggers Hotline request, we ask that they provide OA with that information so we may shift or relocate the soil borings if necessary.

We propose to complete both borings through the ballast materials which remained in place after the rail lines were removed. We have walked the site and drill rig access is available from the north and south railroad right of way. We anticipate the need for only minor site clearing (small, overhanging branches) to provide drill rig access.

Drilling rigs are heavy equipment and some disturbance of existing grades or surface features are possible. Although OA will attempt to minimize surface distress wherever possible, no restoration other than backfilling the soil borings with auger cuttings is included in this work scope.

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Sampling of soils will be in general accordance with ASTM D-1586 and ASTM D-1587. We will obtain groundwater levels in the test borings while drilling, immediately after drilling, and again within 48 hours after drilling.

Laboratory Services - As soil conditions dictate, laboratory testing may include visual soil classification (ASTM D-2488), unconfined compression (ASTM D-2166), thin-walled tube density (ASTM D-2937), moisture content (ASTM D-2216), Atterberg limits (ASTM D-4318), Standard Proctor (ASTM D-698), or mechanical sieve analysis (ASTM D-422).

Engineering Analysis and Report Preparation

At a minimum, the Report of Geotechnical Exploration will include the following information:

- Recommendations will be provided regarding options for H-pile or sheet pile installation.
- Recommendations regarding the thickness, moisture, and compaction criteria for backfill or structural fill.
- Recommendations associated with site preparation and related earthwork during new construction.
- Recommendations for core-out and/or overexcavation of soft or unsuitable soils, as applicable.
- Analysis of the soils encountered regarding shrink/swell characteristics and the potential for reuse as general fill or compacted structural fill.
- The report will include the results of the bridge slab coring efforts, including slab thickness, visible reinforcement, and approximate size of underlying voids (if present).
- The report will include a general discussion regarding options for filling voids, if feasible, below the bridge slab or replacing subgrade soils with materials suitable for supporting the new bridge slab.
- Discussion of anticipated groundwater concerns, along with recommendations for addressing these concerns during earthwork and construction, if required.
- Lateral earth pressure parameters will be provided for the design of sheet pile or new grade structure walls. FHU will utilize the recommendations and information contained in the Report of Geotechnical Exploration for design of new structures and anchors.
- An electronic copy and two (2) bound copies of the Report of Geotechnical Exploration will be provided.

Task 2) Conceptual Design and Stakeholder Meetings

FHU will use information obtained from field investigations and the assessments of existing conditions as the basis-of-design for the project. An assessment of suitable grade stabilization alternatives will be completed which will include various materials and methods to achieve the required drop in elevation for the creek and have a proven history of performing under similar conditions. Design considerations will include stability on the immediate upstream side of the bridge and the transition of flow into the bridge structure, the bridge structure (including future decking and safety railing considerations) and any integrated grade control, downstream grade control using the existing boulder step pools and other means to extend stability down to West Papillion Creek, and bank stabilization.

During the alternative evaluation process, multiple factors will be evaluated by the project team, including: constructability and access, compatibility with the existing bridge and channel features,

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durability and maintenance, and cost. A key element of consideration for stream stabilization alternatives will be diverting the flow during construction. Alternatives which are compatible with a phased installation will be preferable, to prevent a more complex diversion scheme.

FHU will prepare conceptual level drawings, in AutoCAD, for two preferred alternatives. Drawings will include layouts in plan view, accompanied by a profile of the structure and stream, and typical sections, as needed, to adequately convey the design concept at the bridge structure.

Cost estimates will also be prepared for the two alternatives and an alternatives development and evaluation report will be provided.

FHU and OA will meet with the City of La Vista, Papio-Missouri River NRD, City of Omaha and other stakeholders approved by the City of La Vista, to discuss our assessment and the design alternatives.

FHU will follow up with a separate pre-application meeting with the Corps of Engineers Regulatory Division to discuss the proposed design and any potential concerns they may have from a permitting perspective.

Decisions from these meetings will be carried into final design under a separate contract prepared FHU at the request of the P-MRNRD.

The following assumptions or exclusions have been made in preparing this scope of work:

- Design alternatives will be based on one of the original concepts presented as part of work for the City of La Vista Phase II that includes using the bridge and boulder structures in a step-pool formation to provide grade control with minor modifications.
- The project will be completed in accordance with the scope outlined above under the assumption that existing conditions of the abandoned railroad bridge and grade control do not change significantly from its current state. Significant changes to existing conditions that require major modifications to the plans will be considered a change to the contract.
- Wetland Delineation for Hell Creek Phase 2, prepared for the City of La Vista will be accepted by the US Corps of Engineers for the project. Any revisions or amendments required will be considered additional services.
- Stream Assessment for Hell Creek Phase 2, prepared for the City of La Vista, in conjunction with additional documentation on hydraulics and geomorphology described in this scope, will be accepted by the US Corps of Engineers for the project. Any revisions or amendments required will be considered additional services.
- Final Design, Contract and Bidding Construction staking is not part of this scope of services. These are services that are available to P-MRNRD by FHU.
- Additional services will be billed at our standard hourly rates.

Hell Creek Bridge and Stream Stabilization at West Papillion Creek
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FHU proposes to conduct the tasks on a time and expense basis. Our fees for Tasks 1 & 2, listed above, are as follows:

Task 1: Field Investigations and Existing Conditions Assessment	
1a) Supplemental Survey	\$ 6,500
1b) Stream and Bridge Assessment	\$13,500
1c) Geotechnical Investigation	\$ 7,800
Task 2: Conceptual Design and Stakeholder Meetings	\$21,400
<hr/>	
TOTAL	\$49,200

This amount would be established as a "not to exceed" limit beyond which no charges could be made without your prior approval. Task 1 will take approximately 6 to 8 weeks to complete. Task 2 is estimated to take another 6 to 8 weeks and will commence after Task 1 is completed.

A breakdown of fees with standard hourly billing rates for the personnel expected to be involved in this project is shown in the fee estimate (Attachment A). Under such an agreement, we are compensated on an hourly basis for all labor.

Additional services that are required outside the Scope of Work, such as additional meetings or design revisions would be performed on a time and materials basis using the attached hourly rates. Additional work would not be performed without written authorization from the client.

Direct expenses incurred on this project will include a 10 percent markup. These may include items such as reproduction charges, postage, telephone, etc. Vehicle usage will be charged at the current Federal rate at the time of the usage.

If the conditions of this proposal and attached standard contract provisions are acceptable to you, please print and sign two copies of this letter, and mail or fax one copy to us for our files. If you have any questions about this proposal, please give Dave Lampe or me a call at (402) 445-4405.

Sincerely,

FELSBURG HOLT & ULLEVIG



Kyle A. Anderson, PE, PTOE
Principal

Accepted By

Title

Date

LETTER AGREEMENT STANDARD PROVISIONS

A. SERVICES BY THE CONSULTANT

The **CONSULTANT** agrees to perform all services, hereunder, using reasonable skill and judgment in accordance with applicable professional standards. **CONSULTANT** agrees to keep the **CLIENT** informed on its progress through periodic reports, and to maintain accurate records relating to its services in connection with this project.

The **CONSULTANT** agrees to provide, directly or by association with such other Consultants or Contractors as it may deem necessary to further the interest of the **CLIENT**, the basic services as described in Scope of Work in the letter proposal or Letter Agreement.

B. RESPONSIBILITIES OF THE CLIENT

The **CLIENT** shall provide and make available to the **CONSULTANT**, for his use, all maps, property descriptions, surveys, previous reports, historical data, and other information within its knowledge and possession relative to the services to be furnished hereunder. Data so furnished to the **CONSULTANT** shall remain the property of the **CLIENT** and will be returned upon completion of its services.

The **CLIENT** shall make provisions for the **CONSULTANT** to enter upon public and private properties as required for the **CONSULTANT** to perform its services hereunder.

C. EXTRA WORK

The **CLIENT** may desire to have the **CONSULTANT** perform work or render services other than those provided in Scope of Work. This will be Extra Work. Work shall not proceed until so authorized by the **CLIENT**. Payment for all work under this Agreement shall be on an hourly basis plus expenses in accordance with the attached rate schedule. Charges for outside services, expenses, and subconsultant work will be billed at 1.10 times the invoice amount.

D. TIME OF BEGINNING AND COMPLETION

Signing this form is authorization by the **CLIENT** for the **CONSULTANT** to proceed with the work. Completion is as noted in the letter agreement.

E. PAYMENT

Unless otherwise provided herein, **CONSULTANT** shall submit monthly invoices for Basic, Additional or Special Services and for Reimbursable Expenses each month for work actually performed. If hourly, invoices will be based on labor and expenses incurred. If lump sum, invoices will be based on the percentage of work completed.

Payments not made within 60 days of the billing date shall bear interest at the rate of 1% per month which is an annual interest rate of 12%. In the event any portion of or all of an account remains unpaid 90 days after billing, the **CLIENT** shall pay all costs of collection, including reasonable attorney's fees.

F. DELAYS

If the **CONSULTANT** is delayed at any time in the progress of work by any act or neglect of the **CLIENT** or its agents, employees or contractors, or by changes in the work, or by extended reviews by the **CLIENT**, fire, unavoidable casualties,

or by any causes beyond the **CONSULTANT'S** control, the time schedule shall be extended for a reasonable length of time, and **CONSULTANT's** compensation may be subject to renegotiation for increased expenses due to escalation of prices, extended services, relocation of other expenses incidental to such delays.

G. OWNERSHIP OF DOCUMENTS

All drawings, specifications, reports, records, and other work products developed by the **CONSULTANT** in connection with this project are instruments of service for this project only and shall remain the property of the **CONSULTANT** whether the project is completed or not. The **CONSULTANT** shall furnish originals or copies of such work product to the **CLIENT** in accordance with the services required hereunder. Reuse of any of the work product of the **CONSULTANT** by the **CLIENT** on an extension of this project or on any other project without the written permission of the **CONSULTANT** shall be at the **CLIENT'S** risk and the **CLIENT** agrees to defend, indemnify and hold harmless the **CONSULTANT** from all claims, damages, and expenses including attorneys fees arising out of such unauthorized reuse by the **CLIENT** or by others acting through the **CLIENT**. Any reuse or adaptation of the **CONSULTANT'S** work product shall entitle the **CONSULTANT** to equitable compensation.

H. INSURANCE

During the course of the services, the **CONSULTANT** shall maintain Workmen's Compensation Insurance in accordance with the Workmen's Compensation laws of the State of Nebraska, Professional Liability Insurance in the amount sufficient to cover **CONSULTANT'S** liability under paragraph O. below, Automobile Liability of \$150,000 per person, \$600,000 per occurrence, and Comprehensive General Liability of \$150,000 per person, \$600,000 per occurrence. The **CONSULTANT** shall provide certificates of insurance to the **CLIENT** indicating compliance with this paragraph, if requested.

I. TERMINATION

Either the **CLIENT** or the **CONSULTANT** may terminate this Agreement at any time with or without cause upon giving the other party seven (7) calendar days prior written notice. The **CLIENT** shall within sixty (60) calendar days of termination pay the **CONSULTANT** for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

J. DISPUTES

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the **CLIENT** and the **CONSULTANT** agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.

K. GOVERNING LAW

Unless otherwise agreed in writing, this Agreement and the interpretation thereof shall be governed by the law of the State of Nebraska.

L. SUCCESSORS AND ASSIGNS

The **CLIENT** and the **CONSULTANT** each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party with respect to all covenants of this Agreement. Neither party shall assign or transfer its interest in this Agreement without the written consent of the other.

M. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations and representations. Nothing herein shall be deemed to create any contractual relationship between the **CONSULTANT** and any other **CONSULTANT** or contractor or material supplier on the project, nor obligate it to furnish any notices required under other such contracts, nor shall anything herein be deemed to give anyone not a party to this Agreement any right of action against a party which does not otherwise exist without regard to this Agreement.

N. NOTICES

All notices and instructions given by either party to the other shall be in writing, and shall be deemed to be properly served if delivered to the address of record shown below, or if deposited in the United States Mail properly stamped with the required postage and addressed to such party at the address shown below. The date of service of a notice sent by mail shall be deemed to be the day following the date on which said notice is so deposited. Either party hereto shall have the right to change its address by giving the other party written notice thereof.

O. ACCURACY OF SERVICES AND LIMITATION OF LIABILITY

The **CONSULTANT** shall use reasonable professional skill and judgment in connection with services, hereunder, but does not warrant that such services are without errors and/or omissions. If, during the authorized use and prudent interpretation of documents or advice furnished by the **CONSULTANT**, an error or omission is discovered within a reasonable time, the **CONSULTANT** shall be responsible for correction of any work which must be removed or altered to meet the project requirements, provided the **CONSULTANT** is given a reasonable opportunity to make remedial recommendations and to correct or arrange for the correction of the work itself. The **CONSULTANT** will not be liable for the cost of procurement of work or services performed in correcting such errors and/or omissions where such work or services result in a value to the Project over and above that which the original work or services provided.

In providing opinions of probable construction cost, the **CLIENT** understands that the **CONSULTANT** has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of the **CONSULTANT'S** qualifications, and experience. The **CONSULTANT** makes no warranty,

expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

The **CONSULTANT** agrees, to the fullest extent permitted by law, to indemnify and hold the **CLIENT** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **CONSULTANT'S** negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her subconsultants or anyone for whom the **CONSULTANT** is legally liable.

The **CLIENT** agrees, to the fullest extent permitted by law, to indemnify and hold the **CONSULTANT** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **CLIENT'S** negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the **CLIENT** is legally liable, and arising from the project that is the subject of this Agreement.

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the **CONSULTANT** and the **CONSULTANT'S** officers, directors, partners, employees, agents and subconsultants, and any of them, to the **CLIENT** and anyone claiming by, through or under the **CLIENT**, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of the **CONSULTANT** or the **CONSULTANT'S** officers, directors, employees, agents or subconsultants, or any of them, shall not exceed the total compensation received by the Design Professional under this Agreement, or the total amount of \$50,000, whichever is less.

IN WITNESS WHEREOF, the **CLIENT** agrees to the terms of these Special Provisions in conjunction with the attached Letter Agreement:

CLIENT: _____

By: _____

Title: _____

Date: _____

ATTACHMENT 1