

Agreement to Provide Funding for
Flood Reduction Structures of the
Saunders County Wahoo Creek Flood Control Project
in the
Lower Platte North Natural Resources District

This Agreement (Agreement) is entered into by and between the State of Nebraska, Department of Natural Resources (Department) and the Lower Platte North Natural Resources District (LPNNRD) for funding costs pursuant to planned flood reduction structures of the Saunders County Wahoo Creek Flood Control Project (Project).

WHEREAS the LPNNRD is a political subdivision of the State of Nebraska, responsible for flood control within the boundaries of the LPNNRD; and

WHEREAS the LPNNRD has secured funding from multiple sources for earlier stages of the Project, including federal funding and state funding through the Nebraska Water Sustainability Fund Grant #5201 for three flood reduction structures, and now seeks additional funding for the entire Project; and

WHEREAS the Legislature has appropriated money from the Jobs and Economic Development Initiatives (JEDI) Fund to the Department's Budget Program 319 Water Projects Fund; and

WHEREAS, pursuant to the JEDI Act, *Neb. Rev. Stat.* §§ 61-401 to 61-405, and LB1011, 2022, Section 87, the Department is charged with the responsibilities of establishing and administering dispersals for carrying out the Fund's purposes, including contracting with natural resources districts for flood control activities; and

WHEREAS the Director of the Department has reviewed the environmental, hydrological, and other feasibility studies associated with the Project and has deemed the Project feasible pursuant to the requirements of *N.R.S.* 61-405(3).

WHEREAS the Department determined that the LPNNRD is eligible for funding for flood reduction activities under the terms of the JEDI Act; and

WHEREAS the LPNNRD through its contractor FYRA Engineering has submitted a summary of the Project budget, Attachment A, and proposed of Scope of Work approved by the Upper Wahoo Creek Watershed Agreement between U.S. Dept. of Agriculture Natural Resources Conservation Service (NRCS) and LPNNRD, Attachment B, hereby incorporated by reference into this agreement

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. PARTIES. The parties to this agreement are the State of Nebraska, Department of Natural Resources (Department) and the Lower Platte North Natural Resources District (LPNNRD).
2. TERM OF AGREEMENT. This Agreement shall become effective on the date signed by the last party and shall remain in effect until Project construction is completed or until December 31, 2029 or until this Agreement is terminated by either party.
3. WORK TO BE PERFORMED. Attachments A and B describe the scope of work, completion of the ten Wahoo Creek flood risk reduction structures located in Saunders County.
4. INDEPENDENT CONTRACTOR. LPNNRD shall complete through its own efforts, or through contracting with a capable party, all obligations for completing the Project and ensuring that all state, local, and federal legal compliance, accountability, permitting, and reporting obligations are met.
 - A. It is agreed that nothing contained in this Agreement is intended to be or should be construed in any manner as creating or establishing the relationship of partners between the Department and the LPNNRD or contractors of LPNNRD.
 - B. All claims on behalf of any person arising out of employment or alleged employment (including but not limited to claims of discrimination against the LPNNRD, its officers or its agents) shall in no way be the responsibility of the Department or the State. The LPNNRD will hold the Department and the State harmless from all such claims. The LPNNRD personnel and all other persons acting for the LPNNRD shall not require nor be entitled to any reimbursement, rights or benefits from the Department or the State including but not limited to tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.
4. PAYMENT. The Department will pay LPNNRD up to 100% of its costs, except for amounts required for Nebraska Water Sustainability Fund local match or amounts provided by subsequently procured federal sources, up to a maximum of \$19,667,600 in reimbursement for actual, necessary, and reasonable expenses and costs incurred by LPNNRD in performance the work carried out under paragraph 3 of this Agreement after April 7, 2022. LPNNRD agrees to reimburse the Department for any JEDI/Department Budget Program 319 funds it receives pursuant to this Agreement that duplicate any federal funds received for the Project after execution of this Agreement.
 - a. LPNNRD shall submit invoices to Department contract manager/project contact Jesse Bradley, Nebraska Department of Natural Resources, 245 Fallbrook Blvd., Suite 201, Box C, Lincoln, NE 68521. Invoice justifications may consist either of certifications of work completion by LPNNRD's contracted engineer or copies of cancelled checks or comparable evidence of payment. Invoices shall set forth

included cost with enough detail to understand its purpose and price. Invoices will be reviewed by the Department Project Contact for satisfactory completion of the work specified in paragraph 3 above.

- b. Payment shall be made within sixty (60) days of receipt of satisfactory invoices.
- c. LPNNRD shall maintain records adequate to document that it had qualified expenditures under the terms of this contract. Such files shall be available for inspection by personnel of the Department and by representatives of the State Auditor's office during normal business hours of LPNNRD. If the Director becomes aware of a violation of the contract between LPNNRD and the Department, the Director may terminate the contract and/or demand reimbursement of any state funds related to such violation.
- d. After July 1, 2023, continued payment eligibility requires that LPNNRD files an annual report of Project progress with the Department, the first one due July 1, 2023, reporting Project work completed during the past twelve-month period and Project work planned for the following twelve-month period.
- d. Invoices or reimbursement requests for expenditures acquiring interests in real property must comply with Nebraska Executive Order 21-08 and include, for each legal interest acquired:
 - (i) Title insurance policy showing title in the seller;
 - (ii) Closing statement signed by the seller;
 - (iii) Copy of recorded instrument (deed/easement) from the seller to the Sponsor for the specified real estate;
 - (iv) Copy of certified check payable to the seller for the indicated transaction; and
 - (v) Brief explanation of the relationship of the property interest to the Project.

If funds transferred to the District under this contract are used to purchase land easements, the easements required for the flood control dam project (project) shall be limited to ninety-nine (99) years in length. These easements will then be renewed for another ninety-nine (99) years lease unless the landowner or the District desires to end the easement(s) for the project at that time. If the District elects to end the easements for the project the District shall continue to be responsible for operating and maintaining the project in accordance with prevailing dam safety standards.

5. AMENDMENT. This agreement may be amended only in a writing duly executed by all the parties.
6. TITLES NOT CONTROLLING. The titles of the paragraphs are for reference only and shall not be used to construe the language of this agreement.
7. PREVAILING LAW. This Agreement is governed by the laws of the State of Nebraska including the State Contract Claims Act, *Neb. Rev. Stat.* §§ 81-8,302 through 81-8,306.
8. TECHNOLOGY ACCESS. LPNNRD agrees to ensure compliance with Nebraska Access Technology Standards.

See website at: <http://www.nitc.state.ne.us/standards/accessibility>.

9. FAIR EMPLOYMENT PRACTICES. LPNNRD agrees to ensure compliance with the Nebraska Fair Employment Practice Act which prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, or national origin, *Neb. Rev. Stat.* §§ 48-1101 through 48-1125.
10. NEBRASKA DRUG-FREE WORKPLACE POLICY. LPNNRD agrees to ensure compliance with the Nebraska Drug-Free Workplace Policy.
11. WORKER ELIGIBILITY STATUS REQUIREMENTS. LPNNRD is required and hereby agrees to use federal immigration verification system to determine the work eligibility status of any contractors paid with proceeds of this contract that are physically performing services within the State of Nebraska. LPNNRD understands and agrees that lawful presence in the United States is required for such employment and LPNNRD may be disqualified or the contract terminated if such lawful presence cannot be verified as required by *Neb. Rev. Stat.* § 4-108. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.
12. AUDIT BY OFFICE OF THE STATE AUDITOR.

Any public or private non-profit entity or political subdivision of the state serving as the service contractor or sub-recipient of funds under this Agreement, except for an individual person, is subject to audit by the Office of State Auditor and must comply with requests

for any information or records within three business days after the actual receipt of the request pursuant to *Neb. Rev. Stat.* Reissue of 2015, § 84-304(4) (a) and § 50-1213(2).

13. Indemnification

Neither the Department nor the State of Nebraska shall be liable for any damage or compensation payable with respect to or in consequence of any accident or injury to any workman or other person in the employment of LPNNRD that would be covered by worker's compensation insurance, liability insurance, or otherwise, save and except an accident or injury resulting from an intentional act of the Department. LPNNRD shall indemnify, defend, and hold harmless the Department and the State of Nebraska against all such damages, compensation, and against all claims, proceedings, costs, charges, attorney's fees, and expenses whatsoever in respect thereof or in relation thereof. LPNNRD shall indemnify the Department and the State of Nebraska for any damages, claims or liability to the extent caused by its negligent acts, errors or omissions arising out of the performance of professional services under this Agreement. LPNNRD expressly waives all statutory or common law defenses, including but not limited to those under Workers' Compensation, Contribution, Comparative Fault or similar statutes or legal principles to the extent said defenses are inconsistent with or would defeat the purpose of the indemnification under this section.

14. Entire Agreement/Severability/Waiver

This Agreement is the entire agreement between the parties hereto; no representations, inducements, promises or agreements, oral or other, between the parties not embodied herein shall be of any force or effect. In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

15. PROJECT CONTACTS.

LPNNRD's Project Contact for this Agreement is Eric Gottschalk. His telephone number is (402) 443 4675; mailing address is: Lower Platte North NRD, 511 Commercial Park Rd., P.O. Box 126, Wahoo, NE 68006; email address is egottschalk@lpnnrd.org

Department's Project Contact is Jesse Bradley. His telephone number is (402) 219 1357; mailing address is: Nebraska Department of Natural Resources, 245 Fallbrook Blvd., Box C, Suite 201, Lincoln, NE 68521; email address is jesse.bradley@nebraska.gov.

All correspondence, other communication, and notices will be provided by and to Project Contacts.

IN WITNESS WHEREOF, the Parties to this Agreement through their duly authorized representatives have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement as set forth herein.

The Effective Date of this Agreement is the date of the signature last affixed to this Agreement.

LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT


By: Eric Gottschalk, General Manager

12/13/22
Date

DEPARTMENT OF NATURAL RESOURCES

By: Thomas E. Riley, P.E. Director

Date

Memorandum

To: Eric Gottschalk, Lower Platte North Natural Resources District
From: FYRA Engineering
Project: 10 Wahoo Creek Structures - Saunders County Flood Control Project
Re: JEDI Funding
Date: September 7, 2022

This purpose of this memorandum is to detail the total costs and funding sources for the 10 Wahoo Creek flood risk reduction structures located in Saunders County, NE which were recently allocated JEDI funding.

The project includes 10 flood risk reduction sites, described in detail in the NRCS-funded and approved Upper Wahoo Creek Watershed Plan-Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). Planning has been completed for the project and final design and permitting are ongoing. This project underwent an extensive economic analysis and yielded a benefit to cost ratio of 1.23 with estimated average annual flood damage reduction benefits of \$772,100 (price base: 2020, amortized over 58 years at a discount rate of 2.50 percent).

Total Project Costs. Project costs are \$19,667,600 (price base: 2020) and include engineering, permitting, mitigation, easements, construction, and project administration. Planning costs total \$817,305 and have been exhausted. A portion of the engineering costs have also been utilized. Construction costs are constantly increasing, and it is anticipated that the total project costs will be above those calculated in 2020.

Federal Funding. The project received funding through two NRCS P.L. 83-566 programs, the Regional Conservation Partnership Program (RCPP) and the Watershed and Flood Prevention Operations program (WFPO). RCPP allocated funds include a portion of the construction of Sites 26a, 26b, and 27 (up to \$1,350,000) and \$150,000 in NRCS technical assistance, including \$37,500 for planning. Additional construction costs, as well as engineering/design costs, are not covered under the RCPP program. WFPO allocated funds include 100 percent funding for planning (\$817,305), design (\$1,325,630), and administration (\$15,000) of the seven additional sites. Up to 100 percent of construction costs for the seven sites (excluding mitigation) could be funded by the WFPO program. However, the availability of Federal funds is contingent upon appropriations available for this purpose. Table 1 below shows the allocated and potentially available funds from the Federal programs.

State Funding. The Nebraska Department of Natural Resources (NDNR) Water Sustainability Fund (WSF) awarded funding assistance of \$2,269,194 to the LPNNRD to assist with the non-federal construction and easement costs for Sites 26a, 26b, and 27. WSF requires a 40 percent local cost share of non-federal costs. Table 1 below shows the allocated funds for this project.

Land Acquisition/Easements. Easements will be acquired for land within the project limits, including the embankment, permanent pool, flood pool, auxiliary spillway, top of dam limits, and mitigation sites. These easements fall under #7 and #8 of Executive Order 21-08.

Table 1. State and Federal Funding

Funding Source	Allocated Funds for LPNNRD Use ¹			Potential Funds ²
	WSF	RCPP	WFPO	WFPO
Sites 26a, 26b, 27	\$ 2,269,194	\$ 1,350,000	\$ -	\$ -
Remaining 7 Sites	\$ -		\$ 2,157,935	\$ 10,198,500

¹Does not include Federal funds allocated for NRCS use

²Contingent upon future Federal appropriations and not guaranteed

JEDI funding has given the LPNNRD an opportunity to build the remaining 7 flood reduction sites at an expedited pace that could not be possible if relying on WFPO funds and local cost share. Federal funds for construction of the remaining sites are not guaranteed and, if available, could take many years to acquire. It is anticipated that utilizing WFPO funds and local cost share in lieu of JEDI funds could take over 8 years for project implementation. With JEDI funds, the Federal funds for construction would not be requested, as shown in Table 2. State WSF funds for Sites 26a, 26b, and 27 would still be utilized as the local cost share for the LPNNRD has already been budgeted and the WSF funds have been previously allocated for this project.

Table 2. Accepted State and Federal Funding when Utilizing JEDI Funds

Funding Source	Allocated Funds for LPNNRD Use ¹			Potential Funds ²
	WSF	RCPP	WFPO	WFPO
Sites 26a, 26b, 27	\$ 2,269,194	\$ 1,350,000	\$ -	\$ -
Remaining 7 Sites	\$ -		\$ 2,157,935	\$ -

¹Does not include Federal funds allocated for NRCS use

²Contingent upon future Federal appropriations and not guaranteed

November 17, 2022

Lee Will, State Budget Administrator

Nebraska Department of Administrative Services

1445 K St., Rm.1320

Lincoln, NE 68508

Dear Mr. Will,

Pursuant to the Jobs and Economic Development Initiative Act and N.R. S. 61-405(3), I wish to certify to you that the Department of Natural Resources has conducted or reviewed all environmental, hydrological, or other feasibility studies necessary to establish the feasibility of the Wahoo Creek Watershed Flood Control Project of the Lower Platte North Natural Resources District (NeDNR Contract #) and based on the results of such studies, I deem the project feasible.

Respectfully,

Thomas E. Riley, P.E. Director

CC: Jacob Leaver, DAS Budget Analyst

