



Agenda Item # 26g
Date 4/6/22

PROFESSIONAL SERVICES AGREEMENT – AMENDMENT 1

COPY

PROJECT: Elkhorn River Bank Stabilization at Scribner FYRA Engineering, LLC JOB #: 152-20-01
 CLIENT: Lower Elkhorn NRD
 ADDRESS: 1508 Square Turn Boulevard, Norfolk, NE 68701
 CONTACT: Curt Becker TEL: 402.371.7313 FAX: _____
 CONSULTANT: FYRA Engineering, LLC
 ADDRESS: 12702 Westport Pkwy, Suite 300, Omaha, NE 68138
 CONTACT: Michael K. Sotak, P.E., D.WRE TEL: 402.934.8328 FAX: _____
 PROJECT DESCRIPTION: Budget adjustment to add back in bidding/construction services after permitting overruns and no-rise certification.

SCOPE OF SERVICES (See Attachment) SCHEDULE (See Original Agreement – No Change)

COMPENSATION:

The total compensation under this Agreement shall not exceed the dollar amount indicated herein or the amount authorized by Amendment(s) and/or Notice(s) to Proceed (NTP), whichever is the lesser.

LUMP SUM. Compensation for these services shall be a Lump Sum of \$ _____.

TIME AND MATERIALS. Compensation for these services will not exceed **\$48,320.00** without written authorization and will be based on the following option (per the attached Budget or List of Hourly Rates), and Reimbursable Expenses based on actual costs incurred and approved by FYRA Engineering, LLC and as authorized in writing by Client. **This modification brings the total contract amount to \$128,666.00**

Subconsultant's Direct Job Wages times a factor of _____ Budget/List of Subconsultant's Hourly Rates.


COST PLUS FIXED FEE. Compensation for these services shall be Subconsultant Cost plus a fixed professional fee, including Reimbursable Expenses. The estimated compensation for services is \$ _____ plus a fixed fee of \$ _____ for a total of \$ _____.

COMPENSATION DETAIL (See Following Pages)

SCHEDULE OF PAYMENTS (See Following Pages)

SERVICES AUTHORIZED BY: Execution of Agreement or Amendment(s) and/or NTP

EXECUTION: Execution of this document by duly authorized representatives of FYRA Engineering, LLC and CLIENT, including FYRA Engineering LLC's Standard Conditions (original Agreement) and any attachments, Additional Provisions as indicated, and addenda, represents the entire Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified by written instrument, but such instrument is valid only upon signature by both parties.

CONSULTANT:	<u>FYRA Engineering, LLC</u>	CLIENT:	<u>Lower Elkhorn NRD</u>
BY:	<u>Michael K. Sotak, P.E., D.WRE</u>	BY:	<u>Michael Sousek</u>
SIGNATURE:		SIGNATURE:	_____
TITLE:	<u>Owner/Principal Engineer</u>	TITLE:	<u>General Manager</u>
DATE:	<u>10 February 2022</u>	DATE:	_____



FYRA ENGINEERING, LLC STANDARD CONDITIONS

SERVICES. FYRA Engineering will perform services for the Project as set forth in attachment and in accordance with these Terms & Conditions. FYRA Engineering has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by FYRA Engineering in performing their services.

AUTHORIZED REPRESENTATIVES. The officer assigned to the Project by FYRA Engineering is the only authorized representative to make decisions or commitments on behalf of FYRA Engineering. The Client shall designate a representative with similar authority.

PROJECT REQUIREMENTS. The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they shall be furnished to FYRA Engineering at Project inception. FYRA Engineering will review the Client design standards and may recommend alternate standards considering the standard of care provision.

SITE ACCESS. The Client shall obtain all necessary approvals for FYRA Engineering to access the Project site(s).

PERIOD OF SERVICE. FYRA Engineering shall perform the services for the Project in a timely manner consistent with sound professional practice. FYRA Engineering will strive to perform its services according to the Project schedule set forth in attachment. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. FYRA Engineering shall be entitled to an extension of time and compensation adjustment for any delay beyond FYRA Engineering control.

COMPENSATION. In consideration of the services performed by FYRA Engineering, the Client shall pay FYRA Engineering in the manner set forth in attachment. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of FYRA Engineering.

PAYMENT TERMS. FYRA Engineering shall submit monthly invoices for services performed and Client shall pay the full invoice amount within thirty (30) days of the invoice date. Invoices will be considered correct if not questioned in writing within ten (10) days of the invoice date. FYRA Engineering shall be entitled to a 2% per month administrative charge in the event of payment delay. Client payment to FYRA Engineering is not contingent on arrangement of project financing. Invoice payment delayed beyond sixty (60) days shall give FYRA Engineering the right to stop work until payments are current. Non-payment beyond seventy (70) days shall be just cause for termination by FYRA Engineering.

ADDITIONAL SERVICES. The Client and FYRA Engineering acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, FYRA Engineering shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

INDEPENDENT CONSULTANT. FYRA Engineering shall serve as an independent consultant for services provided under this agreement. FYRA Engineering shall retain control over the means and methods used in performing their services and may retain subconsultants to perform certain services as determined by FYRA Engineering.

STANDARD OF CARE. Services provided by FYRA Engineering will be performed with the care and skill ordinarily exercised by members of the same profession practicing under similar circumstances. FYRA Engineering will not be liable for the cost of any omission that adds value to the Project.

COMPLIANCE WITH LAWS. FYRA Engineering shall perform its services consistent with sound professional practice and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, FYRA Engineering shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.



PERMITS AND APPROVALS. FYRA Engineering will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

OWNERSHIP OF DOCUMENTS. Documents prepared by FYRA Engineering for the Project are instruments of service and shall remain the property of FYRA Engineering. Record documents of service shall be based on the printed copy. FYRA Engineering will furnish documents electronically; however, the Client releases FYRA Engineering from any liability that may result from documents used in this form. FYRA Engineering shall not be held liable for reuse of documents for any purpose other than those intended under the Project.

INSURANCE. FYRA Engineering will maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability policies.

<u>Workers' Compensation</u>	As required by applicable state statute.
<u>Umbrella or Excess Liability</u>	\$2,000,000
<u>Commercial General Liability</u>	\$1,000,000 per occurrence (bodily injury including death & property damage) \$2,000,000 aggregate.
<u>Automobile Liability</u>	\$1,000,000 combined single limit for bodily injury and property damage.
<u>Professional Liability</u>	\$1,000,000 each claim and in the aggregate.

The Client shall make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. FYRA Engineering shall be a named insured on those policies where FYRA Engineering may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

WAIVER OF SUBROGATION. FYRA Engineering, LLC affirmatively agrees to obtain waiver of subrogation against the client and name the client as an additional insured on the Commercial General Liability and Automobile policies.

INDEMNIFICATION AND HOLD HARMLESS. FYRA Engineering, LLC shall indemnify and hold harmless the Client and its employees and agents from any and all liability, settlements, loss, defense costs, and expenses in connection with any action, suit, or claim resulting from the negligent acts, errors, or omissions in services provided pursuant to this Agreement by FYRA Engineering, LLC its employees, or Subconsultants and/or subcontractors. Client shall indemnify and hold harmless FYRA Engineering, LLC and its employees and agents from any and all liability, settlements, loss, defense costs, and expenses in connection with any action, suit, or claim resulting from the negligent acts, errors, or omissions in services provided pursuant to this Agreement by the Client, its employees, or subconsultants and/or subcontractors. However, if any such liability, settlements, loss, defense costs or expenses result from the concurrent negligence of FYRA Engineering, LLC, and the Client this indemnification applies only to the extent of the negligence of FYRA Engineering, LLC.



LIMITATION OF LIABILITY. 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, Subconsultant and all other negligent entities and individuals.

LEGAL EXPENSE. In the event that either party takes legal action against the other that is not prosecuted, is dismissed, or if the decision is rendered for the other party, the party taking legal action agrees to pay the other their attorney fees, court costs, and defense expenses that are allowable under Nebraska state law, within thirty (30) days of the court action.

CONSEQUENTIAL DAMAGES. Neither the Client nor FYRA Engineering shall be liable to the other for any consequential damages regardless of the nature or fault.

ENVIRONMENTAL MATTERS. The Client warrants they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, FYRA Engineering shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client shall indemnify FYRA Engineering from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of FYRA Engineering.

COST OPINIONS. If included in the scope of service, FYRA Engineering shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and FYRA Engineering acknowledge that actual costs may vary from the cost opinions prepared and that FYRA Engineering offers no guarantee related to the Project cost.

INDEPENDENT COUNSEL. The Client agrees to obtain independent legal and financial counsel for the Project considering FYRA Engineering does not furnish these services.

CONTRACTOR SELECTION. FYRA Engineering may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is their sole responsibility.

SHOP DRAWING REVIEW. If included in the scope of service, FYRA Engineering shall review shop drawing submittals from the contractor solely for their conformance with the design intent of and performance criteria specified for the Project. FYRA Engineering shall not be liable for the performance of or consequential damages of any equipment furnished by the contractor under the Project.

CONSTRUCTION REVIEW. If included in the scope of service, FYRA Engineering shall observe the progress and content of the work to determine if the work is proceeding in general accordance with the Contract Documents. This construction review is intended to observe, document, and report information concerning the construction process. Observation of work at the Project site shall not make FYRA Engineering responsible for the work performed by another party; the means, methods, techniques, sequences, or procedures selected by another party; nor the safety precautions or programs of another party.

REJECTION OF WORK. FYRA Engineering may recommend that the Client reject work by construction contractors that does not conform to the requirements of the Project.

SAFETY. FYRA Engineering shall be responsible solely for the safety precautions or programs of its employees and no other party.

INFORMATION FROM OTHER PARTIES. The Client and FYRA Engineering acknowledge that FYRA Engineering will rely on information furnished by other parties in performing its services under the Project. FYRA Engineering shall not be liable for any damages that may be incurred by the Client in the use of third party information.



CONSTRUCTION RECORD DRAWINGS. If included in the scope of service, FYRA Engineering will deliver drawings to the Client incorporating information furnished by construction contractors. In that construction record drawings are based on information provided by others, FYRA Engineering cannot and does not warrant their accuracy.

FORCE MAJEURE. Neither party will hold the other responsible for damages or delay caused by Acts of God, acts of war, strikes, accidents, or other events beyond the other's control.

DISPUTE RESOLUTION. The Client and FYRA Engineering agree that they shall diligently pursue resolution of all disagreements within forty-five (45) days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. FYRA Engineering shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work.

SUSPENSION OF WORK. The Client may suspend services performed by FYRA Engineering with cause upon fourteen (14) days written notice. FYRA Engineering shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay FYRA Engineering all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, FYRA Engineering shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

TERMINATION. The Client or FYRA Engineering may terminate services on the Project upon seven (7) days written notice in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. FYRA Engineering shall submit an invoice for services performed up to the effective date of termination and the Client shall pay FYRA Engineering all outstanding invoices within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

GOVERNING LAW. The terms of agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

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

WAIVER OF RIGHTS. The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

WARRANTY. FYRA Engineering warrants that it will deliver products under the Project within the standard of care. FYRA Engineering provides no other expressed or implied warranty.

SEVERABILITY. Any provision of these terms later held to violate any law shall be deemed void and all remaining provisions shall continue in force. In such event, the Client and FYRA Engineering will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

SURVIVAL. All provisions of these terms that allocate responsibility or liability between the Client and FYRA Engineering shall survive the completion or termination of services for the project.

ANTIDISCRIMINATION The parties shall require every contract to which it is a party to contain a provision requiring a contractor or its contractors not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to their hire, tenure, terms, and conditions of employment, because of race, color, religion, age sex, sexual orientation, gender identity, genetic information, national origin, disability, familial status, veteran status, or marital status.



LENRD Elkhorn River Bank Stabilization - Scribner
 Bidding/Construction Observation Services
 FYRA Project # 152-20-01

Task Description	FYRA Engineering				Totals
	Principal Sotak, PE, D.WRE \$240	Asst Engr EI (Varies) \$130	Accounting \$100	FYRA Expenses	
	Bidding				
4.1 Pre-Bid Coordination and Meeting	20				
4.2 Project Bidding	6				
4.3 LENRD Board Approval and Recommendation	4				\$0
Bidding Task Total	\$7,200	\$0	\$0	\$0	\$7,200
Construction Observation					
5.1 Pre-Construction Meeting	4	6			
5.2 Construction Observation (4 weeks)	16	120	2	\$1,000	
5.3 Construction Reporting	4	8			
5.4 Final Walkthrough	4	6			
5.5 As-Built Drawings	2	8			
5.6 FEMA Certifications	4	6			
Construction Observation Task Total	\$8,160	\$20,020	\$200	\$1,000	\$29,380
					\$36,580



LENRD Elkhorn River Bank Stabilization - Scribner
 Additional Services - No Rise Documentation
 FYRA Project # 152-21-01

Task Description	FYRA Engineering					Totals
	Principal Sotak, PE, D.WRE \$240	Asst Engr El (Varies) \$160	Student Intern (Varies) \$75	Accounting \$100	FYRA Expenses	
Data Collection						
6.1 Request FIS HEC2 Model		1			\$300	
6.2 Create Duplicate Effective Model (DEM)		12				
Task 1 Total	\$0	\$2,080	\$0	\$0	\$300	\$2,380
No-Rise Certification						
7.1 Create Corrected Effective Model from DEM		12				
7.2 Proposed Conditions No-rise Analysis		12	2			
7.3 No-Rise Certification Submission	1	8	2			
Task 2 Total	\$240	\$5,120	\$300	\$0	\$0	\$5,660
Coordination and Review						
8.1 Project Management	2			1		
8.2 Pre-submission Meeting w/ NEDNR Floodplain Manager		2				
8.3 Respond to NEDNR Comments	1	16				
Permitting Task Total	\$720	\$2,880		\$100	\$0	\$3,700
Column Total (Hours)	4	63	4	1		
Column Total (Costs)	\$960	\$10,080	\$300	\$100	\$300	\$11,740

Fee Assumptions:

Subtask 6.2 - Assumes HEC2 FIS model is available and that if the FIS model is not available, NEDNR will accept use of an updated hydraulic analysis with limited focus on the property using available FIS information.

Subtask 7.3 - Includes certification of the proposed conditions on the property if possible, though this outcome cannot be guaranteed. If an adjusted grading plan is necessary, the client will be notified, and spatial constraints for a certifiable grading plan can be provided within this scope. The client shall provide approval to proceed with certification of design constraints for an adjusted grading plan. Environment permitting, design, and survey of an adjusted site condition is not included within this scope.

Subtask 8.2 - Includes documentation of expected deliverable requirements. Effort will be made to document any changes to expectations.

Subtask 8.3 - This includes effort to respond to NEDNR comments that satisfy the requirements of subtask 3.2 and guidance in https://dnr.nebraska.gov/sites/dnr.nebraska.gov/files/doc/20200617_No-Rise%20Procedures%20and%20Certificate.pdf. If the agency review of the no-rise certification finds additional supporting data requirements which are not within these documents, a full response to these data requests may not be possible within this scope.

RE: Amendment

Curt Becker <cbecker@lenrd.org>

Thu 2/10/2022 3:14 PM

To: Clerk <clerk@scribner-ne.gov>; dodgecoroads@hotmail.com <dodgecoroads@hotmail.com>

Elmer,

I am coming up with \$356,065.00 total cost including FYRA costs. \$227,399.00 for construction and \$128,666.00 for Engineering(FYRA). My calculations would indicate that the cost for each of us would be \$11,868.83.

Thanks,

Curt Becker
Projects Manager
Lower Elkhorn NRD
1508 Square Turn Boulevard
Norfolk, NE 68701
402-371-7313

From: Clerk <clerk@scribner-ne.gov>
Sent: Thursday, February 10, 2022 2:56 PM
To: Curt Becker <cbecker@lenrd.org>; dodgecoroads@hotmail.com
Cc: Clerk <clerk@scribner-ne.gov>
Subject: RE: Amendment

Curt,

@ \$280,000.00 total, our share per entity is under \$5,000.00.

Correct?

Elmer Armstrong

Scribner City Administrator

Phone:402-664-3231

Email: clerk@scribner-ne.gov

530 Main Street

PO Box D

Scribner, Ne 68057

www.scribner-ne.gov



From: Curt Becker <cbecker@lenrd.org>
Sent: Thursday, February 10, 2022 2:48 PM
To: Clerk <clerk@scribner-ne.gov>; dodgecoroads@hotmail.com
Subject: FW: Amendment

Below is what I got from Sotak on the total estimated project cost.

Curt Becker
Projects Manager
Lower Elkhorn NRD
1508 Square Turn Boulevard
Norfolk, NE 68701
402-371-7313

From: Mike Sotak <msotak@fyraengineering.com>
Sent: Thursday, February 10, 2022 2:42 PM
To: Curt Becker <cbecker@lenrd.org>
Subject: RE: Amendment

SUMMARY TABLE OF QUANTITIES					
	ITEM DESCRIPTION	QUANTITY	UNIT	Unit Cost	Extension
1	MOBILIZATION	1	LS	\$ 25,000.00	\$ 25,000.00
2	CLEARING AND GRUBBING	1	LS	\$ 5,000.00	\$ 5,000.00
3	SWPPP MEASURES	1	LS	\$ 5,000.00	\$ 5,000.00
4	COMMON EXCAVATION (CUT)	1233	CY	\$ 13.00	\$ 16,029.00
5	OVER EXCAVATION (-1 FT)	1139	CY	\$ 13.00	\$ 14,807.00
6	EARTHEN EMBANKMENT/GRADE RESTORATION (FILL)	2993	CY	\$ 16.00	\$ 47,888.00
7	CLASS "B" ROCK RIPRAP (NEW BANK)	459	TN	\$ 110.00	\$ 50,490.00
8	CLASS "B" ROCK RIPRAP (JETTY 1, 2, 3, & 5 REPAIR)	40	TN	\$ 180.00	\$ 7,200.00
9	LIVE WILLOW STAKES	343	EA	\$ 125.00	\$ 42,875.00
10	PLACE 9" TOPSOIL (RIPRAP VOIDS)	474	CY	\$ 15.00	\$ 7,110.00
13	SEEDING	5	AC	\$ 1,200.00	\$ 6,000.00
				Sub-total	\$ 227,399.00

From: Curt Becker <cbecker@lenrd.org>
 Sent: Thursday, February 10, 2022 2:22 PM
 To: Mike Sotak <msotak@fyraengineering.com>
 Subject: RE: Amendment

Mike,

Do you have the total estimated project cost handy?

Thanks,

Curt Becker
 Projects Manager
 Lower Elkhorn NRD
 1508 Square Turn Boulevard
 Norfolk, NE 68701
 402-371-7313

From: Mike Sotak <msotak@fyraengineering.com>
 Sent: Thursday, February 10, 2022 6:23 AM
 To: Curt Becker <cbecker@lenrd.org>
 Subject: RE: Amendment

Here you go...see if this all makes sense to you.

And...do you need me to attend next LENRD Board meeting to help explain?

From: Curt Becker <cbecker@lenrd.org>
 Sent: Wednesday, February 9, 2022 10:43 AM
 To: Mike Sotak <msotak@fyraengineering.com>
 Subject: RE: Amendment

Mike,

Go ahead and put that together.

Thanks,

Curt Becker
 Projects Manager
 Lower Elkhorn NRD
 1508 Square Turn Boulevard
 Norfolk, NE 68701
 402-371-7313

From: Mike Sotak <msotak@fyraengineering.com>
 Sent: Tuesday, February 08, 2022 7:04 PM
 To: Curt Becker <cbecker@lenrd.org>
 Subject: Amendment

Curt:

I started working up the amendment and had a thought...and I don't think we covered it last week.

Since we're doing an amendment for the no-rise, do we want to add back in time now for the bidding and construction? If you, Scribner and Dodge County are taking it to your boards, better to do it once?

I can work up a list of items performed that cut into the bidding/construction budget to send along with it (call it an explanation letter...)

Thoughts?

Michael K. Sotak, P.E., D.WRE

12702 Westport Parkway, Suite 300 | Omaha, NE 68138

Phone: 402.502.7131 | Direct: 402.934.8328 | Cell: 402.850.6169

www.fyraengineering.com

msotak@fyraengineering.com



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