

## MEMORANDUM

**TO:** Programs Projects and Operations Subcommittee

**FROM:** Terry Schumacher, Land & Water Programs Coordinator

**SUBJECT:** Review and Recommendation on Memorandum of Agreement with USDA, NRCS

**DATE:** December 2, 2019

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The Papio-Missouri River NRD and NRCS have a rich history of collaborating to deliver comprehensive technical and financial assistance to farmers, ranchers, forest stewards and other entities to voluntarily protect, restore and enhance natural resources.

The attached Memorandum of Agreement outlines the importance of working together to broaden strategic assessment and planning authority un the Soil and Water Conservation Act of 1977 for the conservation, protection and enhancement of soil, water and related natural resources. Also attached is Appendix A, Acknowledgement of the Requirements for Protection of Privacy of Personal and Geospatial Information Relating to Natural Resources Conservation Programs. The Parties further recognize that natural resources are finite and under increasing pressure from a variety of impacts.

In order to deliver the necessary technical and financial assistance to enable locally-led, voluntary conservation, the Parties agree to adhere to the principles, roles and responsibilities outlined in the MOA. This MOA does not affect or modify existing regulations or agency responsibilities and authorities. Moreover, this MOA does not commit either party to activities beyond the scope of their respective mission and statutory authorities.

**Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Memorandum of Agreement with the USDA, NRCS subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

## MEMORANDUM OF AGREEMENT BETWEEN THE

United States Department of Agriculture, Natural Resources Conservation Service

AND

Papio-Missouri River Natural Resources District, a Political Subdivision of the State of Nebraska

### I. PURPOSE

This Memorandum of Agreement (MOA) is entered into between the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) and the Papio-Missouri River Natural Resources District (NRD).

The authority of USDA to enter into this agreement is the Soil Conservation and Domestic Allotment Act, 16 U.S.C. § 590 (a-q).

The NRCS and NRD (the Parties) have common objectives of delivering technical and financial assistance to farmers, ranchers, forest stewards, and other entities to voluntarily protect, restore, and enhance the productivity of American agricultural lands. The Parties recognize the importance of natural resources, the wise use and management of these natural resources, and, as appropriate, the protection and/or development of these natural resources. This agreement is made and entered into with the objectives of:

- Continuing to support the delivery of excellent and innovative customer service;
- Recognizing conservation planning as foundational to our work, and working together to meet the conservation planning assistance needs of our cooperators/customers;
- Strengthening and modernizing conservation delivery to optimize efficiency and effectiveness;
- Broadening our outreach to existing and new customers and partners;
- Supporting science-based decision making as close to the resource issue/opportunity as possible;
- Encouraging a voluntary approach as the primary means of accomplishing conservation goals; and
- Using sound approaches to strengthen each Party and its role in the delivery of soil, water, and related natural resource conservation across the nation.

### II. BACKGROUND

The NRCS and NRD share a rich history of collaborating to deliver comprehensive technical and financial assistance to farmers, ranchers, forest stewards, and other entities to voluntarily protect, restore, and enhance natural resources.

The Soil Conservation Service was established in 1935 (renamed NRCS in 1994 to reflect its broader conservation mission). NRCS is committed to “helping people help the land.” It provides assistance and

resources for conservation practices that improve water and air quality, prevent erosion, restore wetlands, and enhance wildlife. NRCS's approach to mission delivery and customer service is deeply rooted in the notion that locally-led, voluntary efforts yield the most effective and productive outcomes. Locally-led conservation is the principle that farmers, ranchers, and forest stewards know their lands better than anyone else based on their personal knowledge and experience with those lands. As such, they are best positioned to make optimal decisions for the benefit of their operations, its natural resource conditions, and their communities.

The first Conservation District and the first State Conservation Agency were established in 1937 to provide local leadership in natural resources management. Conservation Districts serve as the link between federal and state agency resources with the local farmers, ranchers, and forest stewards. They are responsible for promoting and carrying out their conservation programs by assisting communities and its members develop, apply, and maintain appropriate conservation practices and resource management systems. They are authorized to provide broad area planning and implementation assistance to units of government. They are a focal point for coordinating and delivering technical assistance and funding to their respective communities.

Nebraska's system of local natural resources management is unique in the United States. Unlike the county-wide districts found in most states, Nebraska's Natural Resources Districts (NRDs) are based on river basin boundaries, enabling them to approach natural resources management on a watershed basis. There are 23 NRDs in Nebraska. Each district is autonomous, governed by a locally-elected Board of Directors. While NRDs share a common set of responsibilities, each district sets its own priorities and develops its own programs to best serve local needs.

### **III. STATEMENT OF MUTUAL BENEFIT**

In conjunction with the NRCS, the NRD coordinates and implements locally led conservation plans using their connections to Federal, State, Tribal, and local governments; private resources; and the public. The Parties agree to facilitate cooperation, collaboration, and agreement between agencies, landowners, and other stakeholders; develop comprehensive conservation plans; and bring those plans to the attention of landowners and others within the district.

In addition, the Parties recognize the importance of working together to broaden strategic assessment and planning authority under the Soil and Water Resources Conservation Act of 1977 for the conservation, protection, and enhancement of soil, water, and related natural resources. The Parties further recognize that natural resources are finite and under increasing pressure from a variety of impacts. Soil, water, air, plants, animals, and energy are all addressed under the programs, initiatives, and partnership efforts of the Parties.

In order to deliver the necessary technical and financial assistance to enable locally-led, voluntary conservation, the Parties agree to adhere to the principles, roles, and responsibilities outlined in this section of the MOA. This MOA does not affect or modify existing regulations or agency responsibilities and authorities. Moreover, this MOA does not commit either Party to activities beyond the scope of their respective mission and statutory authorities.

#### A. Locally-Led, Voluntary Conservation

The Parties agree that locally-led, voluntary conservation must be driven by natural resource conservation needs, rather than by programs. Its primary focus is to identify natural resource concerns, along with related economic and social concerns. Locally-led conservation consists of a series of activities and phases that involve community stakeholders in natural resource planning, implementation of solutions, and evaluation of results:

The NRD shall:

- Assist NRCS in promoting USDA programs by participating in outreach and community education activities.
- Advocate for a strong natural resource conservation program by keeping appropriate boards, landowners, legislators, county commissioners, and other key stakeholders apprised of conservation activities within the district.
- Assemble and chair the USDA local working group, as chartered under the State Technical Committee and authorized by 7 CFR 610, Part C, to encourage public participation.
  - Encourage diverse participation in local working groups through community outreach and education, to include stakeholders from historically underserved communities.
  - Open local working group meetings to the public and advertise notification of meetings in one or more newspapers, including Tribal publications.
  - Develop the agenda and associated materials/information for local working groups and distribute at least 14 calendar days prior to the meeting.
  - Develop and file local working group meeting records within 30 calendar days of the meetings at the local NRCS office.
  - Adhere to local working group responsibilities and standard operating procedures, as documented in NRCS policy (Title 440, Conservation Programs Manual).
- Develop the conservation needs assessment through broad-based community participation and in accordance with NRCS policy and procedures. This will provide a comprehensive evaluation of the district's natural resource base and be the basis for making decisions about local priorities or policies in all local conservation programs.
- Recommend local natural resource priorities and criteria for NRCS conservation activities and programs based on the conservation needs assessment and public input.
- Develop a District Master Plan every ten (10) years and a Long Range Plan of Work each year. These documents must incorporate local and community inputs.
- Identify NRCS program resources, develop and implement conservation plans and natural resource systems, and evaluate/measure the technical and community impacts of solutions.
- Update NRCS on activities of local and state advisory committees and community groups attended by NRD board members and staff.
- Cooperate and collaborate across NRDs, as appropriate.

NRCS shall:

- Support outreach activities and ensure the NRD is kept informed of NRCS activities and programs on at least a monthly basis. This includes bringing technical and financial assistance opportunities (including matching fund strategies) to the attention of the NRD.
- Work cooperatively to solicit and leverage community recommendations to inform priorities that guide the delivery of NRCS conservation programs.
  - Designate a representative to participate in NRD meetings and events, including local working group meetings. Alternatively, NRCS will chair the local working group should the NRD be unable or unwilling to.
  - Develop and transmit written notifications to the local working group members as to the decisions made in response to their recommendations within 90 days.
- Respond to requests from the NRD for technical guidance and assistance.
- Partner with local and Tribal agricultural, conservation, agency, and community groups where possible, to further NRD natural resource conservation goals and objectives.
- Provide an annual summary of NRCS accomplishments to the NRD.

B. Adherence to Technical Standards

The Parties agree to the use of science-based decision-making to address local natural resource issues. Implementation of sound conservation plans and practices will strengthen each Party, as well as their roles in the delivery of soil and water conservation.

The NRD shall:

- Adhere to Federal, State, Local, and Tribal laws and regulations.
- Adopt NRCS policies and procedures, including the NRCS Field Office Technical Guide (FOTG), and other science-based technical standards related to joint projects undertaken by the two parties.
- Leverage and promote use of USDA technologies and applications, as appropriate.
- Assign conservation practice job approval authority to its personnel based on employee knowledge, skill, and ability level, and within applicable laws and guidelines. Obtain NRCS concurrence for job approval for practices involving USDA authorities or programs.
- Participate in local, state, and national opportunities for policy, program, and project development.

NRCS shall:

- Develop, update, and disseminate technical standards, policies, and procedures.
- Seek input and comment from communities on natural resource conservation policies and issues.
- Inform the NRD and communities when pending statutes, laws, regulations, policies, or procedures may have a significant impact on the community.

- Develop and provide access to USDA technologies and applications to facilitate shared standards, as appropriate.
- Provide non-NRCS employees job approval authority in accordance with NRCS policy and consistent with State laws.
- Provide engineering job approval, as based on job class and in accordance with NRCS policy and Federal, State, and local laws, regulations and codes.
- Provide conservation planning certifications for non-NRCS employees in accordance with the NRCS policy and Federal, State, and local laws, regulations and codes.
- Create and promote opportunities for the NRD board members and staff to participate in policy, program, and project development.
- Provide technical or other training for conservation partnership employees in conjunction with its own training, or as separate events. Training must be consistent with and support of NRCS's mission objectives. As such, the principle emphasis will be on the delivery of field-based conservation technical assistance.

#### C. Data and Information Sharing

Any information furnished to NRCS under this agreement is subject to the Freedom of Information Act (5 U.S.C. 552).

Activities performed under this agreement may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term "confidential information" means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of NRCS.

NRD personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The NRD's personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).

See Appendix A, "ACKNOWLEDGMENT OF REQUIREMENTS FOR PROTECTION OF PRIVACY OF PERSONAL AND GEOSPATIAL INFORMATION RELATING TO NATURAL RESOURCES CONSERVATION SERVICE PROGRAMS." The signatory agrees to abide by these requirements as a condition of receiving access to such information.

#### D. Public Relations

The parties agree to:

- Utilize each party's public information program to inform private landowners about conservation programs including, when appropriate, distribution of technical and financial assistance information.
- Provide information to the public on Farm Bill Conservation programs and activities to improve producer profitability and soil health for the benefit of natural resources.

#### IV. GENERAL PROVISIONS

##### A. Period of Performance

This MOA takes effect upon the signature of the Parties and shall remain in effect until mutually modified or terminated.

##### B. Amendments

This MOA may be extended or amended upon written request of either Party and the subsequent written concurrence of the other. Either of the Parties may terminate this MOA with a 60-day written notice to the other.

This MOA may be supplemented, to reflect mutually agreed-to detailed working arrangements, to include an Annual Workplan and/or Plan of Operations. These may include, but are not limited to, documenting specific objectives or goals, action items, provision for documentation of accomplishments, schedule of planned events, and assignment of responsibilities.

##### C. Transfer of Funding or Non-Monetary Resources

This MOA is established to document the collaborative relationship between the Parties. Nothing in this MOA shall require either Party to obligate or transfer funding, or anything of value. This may include, but is not limited to:

- Office spaces and equipment/supplies
- Vehicles and associated expenses (e.g., fuel, maintenance)
- Computers, software, and technical equipment

Specific work projects or activities that involve the transfer of funds, services, or property will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOA does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations. The appropriate instruments include:

- Cooperative Agreement (2 CFR 200.24), which allows federal agencies to transfer a thing of value to the State, local or Tribal government, or other recipient to carry out a public purpose of support or stimulation authorized by law of the United States.
- Contribution Agreement (7 CFR 6962a), which is a unique statutory authority allowing NRCS to enter into an agreement with a non-federal entity that shares a mutual purpose in carrying out NRCS programs. All Parties must contribute resources to the accomplishment of these objectives.
- Reimbursable Agreement (31 USC 6505; PL 90-577), which allows federal agencies to provide specialized or technical services to State and local governments.

D. Other

This MOA is not intended to, and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies, its officers, or any person.

The Department of Agriculture and NRD and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each Party will carry out its separate activities in a coordinated and mutually beneficial manner.

All activities and programs conducted under this MOA shall be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; Civil Rights Restoration Act of 1987 (Public Law 100-250); and other nondiscrimination statutes; namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendment of 1972, and the Age Discrimination Act of 1975. Also, they will be in accordance with regulations of the Secretary of Agriculture (7 CFR Part 15, subpart A), which provide that no person in the United State shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of an applicant or recipient receiving federal financial assistance from the Department of Agriculture or any Agency thereof.

All activities conducted under this MOA shall be in compliance with the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D).

Contacts for each Party for administrative or technical concerns are listed below:

Natural Resources Conservation Service	Papio-Missouri River Natural Resources District
Andrew Bohnenkamp Resource Conservationist	<i>Terry Schumacher</i> Land & Water Programs Coordinator

V. SIGNATURES

**USDA NATURAL RESOURCES CONSERVATION SERVICE**

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

\_\_\_\_\_  
Craig Derickson, State Conservationist

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John Winkler, General Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



ACKNOWLEDGMENT OF REQUIREMENTS FOR PROTECTION OF PRIVACY OF PERSONAL AND GEOSPATIAL INFORMATION RELATING TO NATURAL RESOURCES CONSERVATION SERVICE PROGRAMS

**Purpose and Background**

The purpose of this Acknowledgment of Section 1619 compliance (hereinafter, “Acknowledgment”) is to require acknowledgment by Papio-Missouri River Natural Resources District (hereinafter, the “Conservation Cooperator”) of the requirements of 7 USC 8791 (Section 1619 of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill)), which prohibits disclosure of certain information by the Department of Agriculture (USDA) and its cooperators. The Conservation Cooperator assists USDA in the delivery of conservation-related services (for example, services that sustain agricultural productivity, improve environmental quality, reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce damages caused by floods and other natural disasters) or with monitoring, assessing, or evaluating of conservation benefits from USDA conservation programs under a Federal agreement. Those individuals or organizations (governmental or nongovernmental) that assist USDA with providing conservation-related services are known as Conservation Cooperators.

**NRCS Conservation Cooperator**

As a Conservation Cooperator, the Conservation Cooperator is authorized access to otherwise-protected agricultural information. Such protected information must be strictly limited to only that information necessary for the Conservation Cooperator to provide conservation related services or to perform monitoring, assessing, or evaluating of conservation benefits (as specified in the agreement between NRCS and the Conservation Cooperator). Disclosure to the Conservation Cooperator can include receiving the protected information either 1) directly from USDA; 2) directly from the producer or owner as part of the process required to enable a producer or owner to participate in a USDA program; or 3) in another manner with the producer’s permission.

**Section 1619 of the 2008 Farm Bill**

Section 1619 of the Food, Conservation, and Energy Act of 2008 (Exhibit 1) (hereinafter, “section 1619”) provides that USDA, or any “contractor or cooperator” of USDA, “shall not disclose—(A) information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in the programs of the Department; or (B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided.” USDA may disclose protected information to a USDA cooperator when such cooperator is “providing technical or financial assistance with respect to the agricultural operation, agricultural land, or farming or conservation practices” if USDA determines that the protected information will not be subsequently disclosed, except in accordance with the exceptions contained in Section 1619. The Conservation Cooperator is a “contractor or cooperator” of USDA within the meaning of Section 1619. Accordingly, the Conservation Cooperator may not subsequently disclose any information protected by section 1619. By entering the agreement that references this Acknowledgment, the Conservation Cooperator is certifying future compliance with the statutory obligations under Section 1619.

**Responsibilities**

The Conservation Cooperator certifies that:

- It acknowledges and understands that the Conservation Cooperator is legally bound by Federal statute to comply with the provisions of Section 1619 and that the Conservation Cooperator will not subsequently disclose information protected by section 1619 to any individual or organization that is not directly covered by this Acknowledgment. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The Conservation Cooperator will be held responsible should disclosure of the protected information occur.
- Acceptance of the agreement referencing this Acknowledgment legally binds every owner, manager,

supervisor, employee, contractor, agent, and representative of the Conservation Cooperator to comply with the provisions in Section 1619. The Conservation Cooperator must consult with USDA prior to providing protected information to an entity or individual outside of the Conservation Cooperator and as necessary to implement the program to ensure that such release is permissible.

- The Conservation Cooperator will use the protected information only to perform work that is directly connected to conservation related services or perform monitoring, assessing, or evaluating conservation benefits, as specified in the agreement between NRCS and the Conservation Cooperator (hereinafter, “the Work”). Use of the protected information to perform work that is not directly connected to the Work is expressly prohibited.
- The Conservation Cooperator must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information in order to perform the Work.
- The provisions in Section 1619 are continuing obligations. Even when the Conservation Cooperator is no longer a Conservation Cooperator, or when individuals currently affiliated with the Conservation Cooperator become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with the provisions of this Acknowledgment.
- The Conservation Cooperator must notify all managers, supervisors, employees, contractors, agents, and representatives about this Acknowledgment and the requirements of Section 1619. For the duration of this Acknowledgment, notifications about the existence of this Acknowledgment must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.
- When the Conservation Cooperator is unsure whether particular information is covered or protected by Section 1619, the Conservation Cooperator must consult with USDA to determine whether the information must be withheld.
- This Acknowledgment is nontransferable and may not be bought, sold, traded, assigned, extended to, or given free of charge to any other individual or organization not directly covered by this Acknowledgment.
- Use of the protected information for any purpose is expressly prohibited when an individual or organization is no longer a Conservation Cooperator. When the Conservation Cooperator is no longer a Conservation Cooperator, any protected information provided under this Acknowledgment must be immediately destroyed or returned to USDA. The Conservation Cooperator must provide to USDA written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.
- The State’s “sunshine law,” “open records act” or other version of the Freedom of Information Act is superseded by section 1619 under the Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.

### **Protected Information**

An example of the type of information prohibited by disclosure under Section 1619 includes, but is **not limited to**, the following:

- State identification and county number (where reported and where located).
- Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
- Farm, tract, field, and contract numbers.

- Production shares and share of acres for each Farm Serial Number (FSN) field.
- Acreage information, including crop codes.
- All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
- Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
- Location of conservation practices.

Section 1619 allows disclosure of “payment information (including payment information and the names and addresses of recipients of payments) under any Department program *that is otherwise authorized by law*” (emphasis added). The names and payment information of producers generally may be provided to the public; however, the Conservation Cooperator shall consult with USDA if there is any uncertainty as to the provision of such information.

Section 1619 also allows disclosure of otherwise protected information if “the information has been transformed into a statistical or aggregate form without naming any—(i) individual owner, operator, or producer; or (ii) specific data gathering cite.” The Conservation Cooperator must consult with USDA as to whether specific information falls within this exception prior to relying on this exception.

#### **Violations**

The Conservation Cooperator will be held responsible for violations of this Acknowledgment and Section 1619. A violation of this Acknowledgment by the Conservation Cooperator may result in action by USDA, including termination of the underlying Federal agreement.

#### **Effective Period**

This Acknowledgment will be in effect on the date of the final signature of the underlying agreement and continues until USDA notifies the Conservation Cooperator that the Acknowledgment is no longer required based on changes in applicable Federal law.