

## MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee  
FROM: Eric Williams, Natural Resources Planner  
DATE: November 4, 2021  
SUBJECT: West Papio Trail Millard Connection  
Interlocal Agreement with City of Omaha

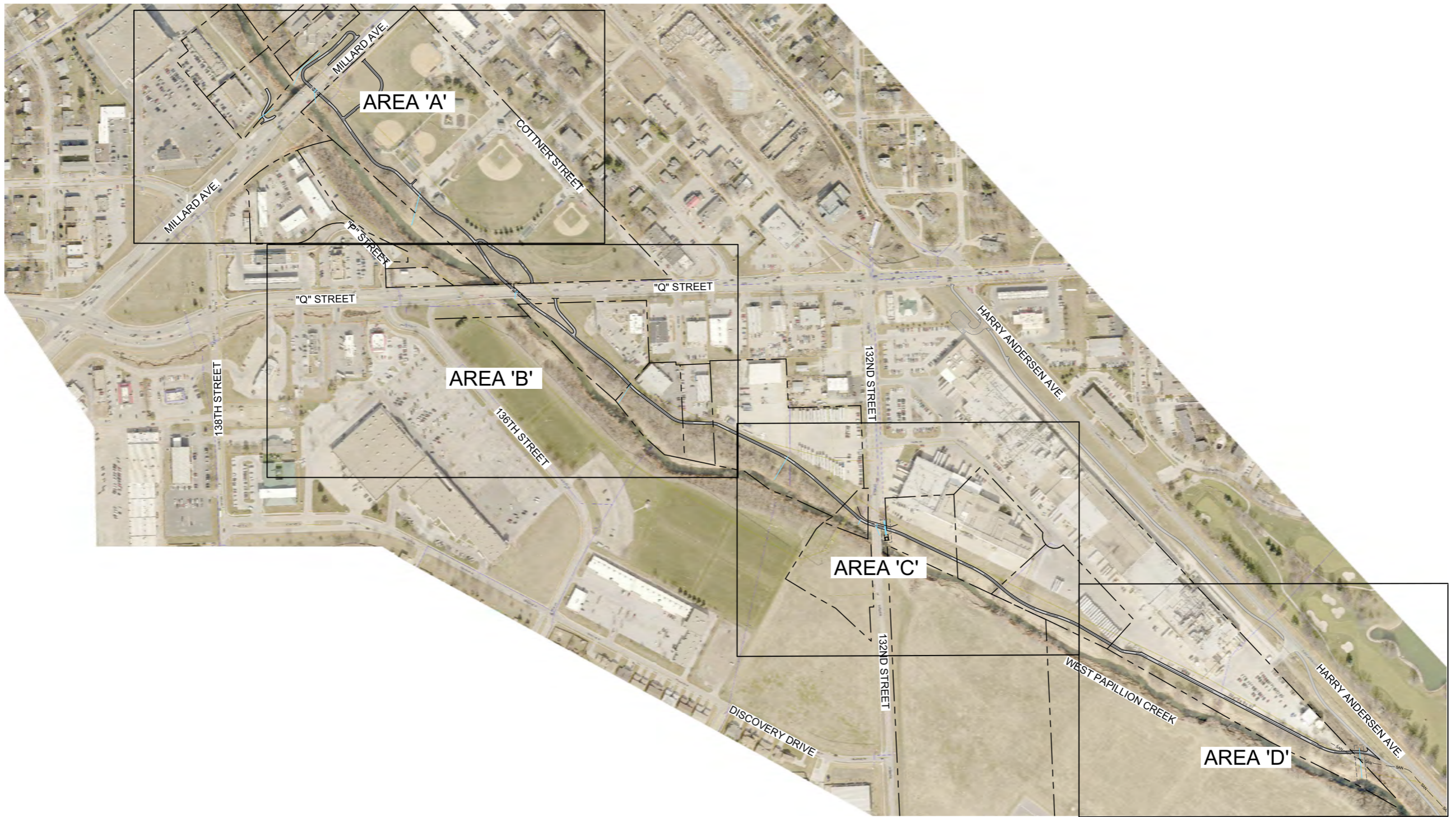
The purpose of this Interlocal Agreement is to specify the terms and conditions upon which the District will partner with the City of Omaha to design, develop, construct, operate and maintain the West Papio Trail, Millard Connection. This project is generally located from Harry Andersen Ave south of Q Street, to Millard Ave near 137<sup>th</sup> Street. This project has received more comments and requests to be completed from the public than nearly any other location in the metro area. A map of the location is attached.

Over recent years, the District has led several trail projects along the West Papio Creek in partnership with the cities of Bellevue, Papillion, La Vista, and Omaha. This project covers the remaining distance between the existing trails, approximately 1 mile. The District has been awarded federal aid funding through the Transportation Alternatives Program from MAPA to cover 80% of the expected total costs for the project. The remaining 20% local share of the project will be divided evenly between the District and the City of Omaha. The District will administer the design and construction of the project, and the City of Omaha will take over ongoing operations and maintenance of the project once it has been completed.

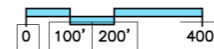
In 2018, a conceptual study along this corridor was completed to determine the viability of the connection and to identify any significant challenges to the overall project. Through that process, the District has partnered with the City of Omaha on stormwater improvements in two locations along the left/north bank of the West Papio Creek, both of which were specifically designed to accommodate the trail connection. Those projects are complete, and the District is prepared to submit documentation to the Nebraska Department of Transportation (NDOT) in order to begin the federal aid project process.

Preliminary estimates expect that the design process will begin in 2022 and continue through 2024, with construction in 2025. Funding for the local portions of this project will be included in the appropriate District budget as the project moves forward.

- **Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Cooperation Agreement with the City of Omaha for the West Papio Trail Millard Connection Project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**



WEST PAPIO TRAIL - ALIGNMENT STUDY FOR TRAIL WEST OF TYSON PROPERTY



# **INTERLOCAL COOPERATION AGREEMENT**

**Between**

**THE CITY OF OMAHA, NEBRASKA**

**And**

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

**For**

**WEST PAPIO TRAIL MILLARD CONNECTION**

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THIS AGREEMENT (hereinafter “**THIS AGREEMENT**”) is made by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (“the **NRD**”) and the **CITY OF OMAHA, NEBRASKA** (“the **CITY**”), pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§13-801, *et seq.*).

**WHEREAS**, CITY and NRD desire to obtain a trail connection to the West Papio Trail on the West Papio Creek from Millard Avenue to Harry Anderson Boulevard in Douglas County, Nebraska (“**MILLARD CONNECTION**”); and

**WHEREAS**, the MILLARD CONNECTION project has been awarded federal aid through the Metropolitan Area Planning Agency which includes reimbursement of 80% of the eligible costs associated with the design, development, and construction of the MILLARD CONNECTION (“**PROJECT**”); and

**WHEREAS**, the Parties intend to equally share the costs not reimbursed through federal aid for the design, project rights acquisition, development, and construction of the MILLARD CONNECTION (“**LOCAL SHARE COSTS**”); and

**WHEREAS**, in order to serve their mutual interests and pursuant to the authority granted to 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, development, construction, operation, maintenance, and repairs of the MILLARD CONNECTION.

**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:

**1. PROJECT BENEFITS.** The parties do hereby find and determine that the PROJECT will be of predominantly general benefit to the CITY and the NRD, with only an incidental special benefit.

**2. PROJECT PARTICIPANTS.** The PROJECT shall be undertaken without any separate entity being created, and the duties and responsibilities of the parties with respect to the PROJECT shall be as defined by THIS AGREEMENT.

**3. CITY TECHNICAL ASSISTANCE.** The CITY shall provide technical assistance to the NRD regarding the PROJECT within the limits of its expertise, as may be requested by the NRD.

**4. RIGHTS-OF-WAY ACQUISITION.** Lands, easements and rights-of-way, which the NRD determines is necessary for construction of the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT (“the **PROJECT RIGHTS-OF-WAY**”), shall be obtained by the NRD and deemed to be a cost of the PROJECT. The CITY shall grant to the NRD the right to use the CITY property for the construction of the PROJECT at no cost to the NRD. Upon final completion of the PROJECT, the NRD shall convey the PROJECT RIGHTS-OF-WAY to the CITY.

**5. PERMITS.** All necessary local, state and federal permits, which the NRD determines are necessary for construction of the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT, shall be obtained by the NRD, which shall hold the same. The cost of such permits shall be deemed a cost of the PROJECT.

**6. DESIGN CONTRACT FOR PROJECT.** The NRD shall retain an engineering firm (the “**ENGINEERS**”) to provide professional engineering services in design, permitting, bidding and construction administration for the PROJECT. The cost

of retaining the ENGINEERS for the PROJECT shall be deemed to be a cost of the PROJECT.

**7. PRELIMINARY PLANS.** The ENGINEERS shall prepare preliminary plans and specifications for the PROJECT (collectively, “the **PRELIMINARY PLANS**”), in accordance with the provisions of THIS AGREEMENT, subject to the following:

- a) The PRELIMINARY PLANS shall be drawn in accordance with design criteria provided by the NRD.
- b) The PRELIMINARY PLANS shall be in compliance with applicable Nebraska state and federal statutes, rules and regulations.
- c) The PRELIMINARY PLANS shall be in accordance with the applicable CITY design standards, rules and regulations.

**8. APPROVAL OF PRELIMINARY PLANS.** After the ENGINEERS’ completion of the PRELIMINARY PLANS, and approval of the same by the NRD, the PRELIMINARY PLANS shall be submitted to the CITY for its written approval, such approval to not be unreasonably withheld or delayed.

**9. PREPARATION OF FINAL PLANS.** After receipt by the NRD of the CITY’S written approval of the PRELIMINARY PLANS, the NRD shall direct the ENGINEERS to prepare final plans and specifications for PROJECT (collectively, “the **FINAL PLANS**”), in accordance with the provisions of THIS AGREEMENT, subject to the following:

- a) The FINAL PLANS shall be drawn in accordance with design criteria provided by the NRD.
- b) The FINAL PLANS shall be in compliance with applicable Nebraska state and federal statutes, rules and regulations.
- c) The FINAL PLANS shall be in accordance with the applicable CITY design standards, rules and regulations.
- d) The FINAL PLANS shall include legal descriptions of the PROJECT RIGHTS-OF-WAY to be acquired by the NRD.

**10. APPROVAL OF FINAL PLANS FOR PROJECT.** After the ENGINEERS’ completion of the FINAL PLANS and approval of the same by the NRD, the FINAL PLANS shall

be submitted to the CITY for its written approval. The CITY shall have a period of 30 days to review and approve or disapprove of the same in writing or suggest amendments thereto. Such approval shall not be withheld or delayed unreasonably.

**11. CONSTRUCTION CONTRACT FOR PROJECT.** The NRD shall solicit competitive sealed bids for construction of the PROJECT in accordance with NRD Policy.

**12. COMPETITIVE BIDS.** Within a reasonable time after NRD'S receipt and opening of sealed bids for construction of the PROJECT, the NRD shall deliver a summary thereof to the CITY, together with the identification by the NRD of the bidder whom the NRD determines is the lowest responsible bidder. The NRD shall accept such bid and shall award to such bidder the contract to construct all or one or more portions of the PROJECT. In the event that the NRD selects a bidder who did not submit the lowest bid, the NRD shall provide a written explanation of its decision to select a higher bid to the CITY. The NRD, through the CONTRACTOR, shall construct the PROJECT in accordance with the plans and specifications the NRD submitted to the CITY.

**13. CONSTRUCTION OBSERVATION.** The NRD will contract for engineering observation and administration of construction of the PROJECT and the CITY shall be given the opportunity to fully observe such construction at all reasonable hours and upon its request contemporaneously receive from the NRD copies of all written communications between or issued by the NRD and/or the ENGINEERS and/or the contractors pertaining to such construction, including but not limited to, statements by the ENGINEERS as to percentage of completion and substantial completion.

**14. CITY CONTRIBUTION.** As its contribution(s) towards the aforesaid costs of the engineering, PROJECT RIGHTS-OF-WAY acquisition, construction and construction observation of the PROJECT, the CITY shall reimburse the NRD for 50% of the LOCAL SHARE COSTS of the PROJECT ("the **CITY CONTRIBUTION**"). The CITY CONTRIBUTION shall be paid within thirty (30) days of receipt of the invoice from the NRD, provided, however, the NRD will not submit an invoice to the CITY for reimbursement prior to January 1, 2024.

**15. OPERATION AND MAINTENANCE OF THE PROJECT.** After completion of PROJECT and NRD acceptance of the PROJECT from the CONTRACTOR,

the CITY, at its own and sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the PROJECT during its useful life, as the CITY determines necessary, and in accordance with applicable and generally-accepted engineering practices, state and federal statutes and regulations. The CITY shall publicly acknowledge the NRD'S contribution to the PROJECT on a permanent sign, plaque, or other fixture (containing at a minimum the NRD'S name and logo), to be maintained by the CITY for the life of the PROJECT.

**16. INDEMNIFICATION.** The CITY shall indemnify and hold the NRD harmless from and against all liability and damages resulting from the operation, maintenance or repair of the PROJECT, and against all demands, causes of action, and claims arising therefrom including court costs and attorney fees, except as may be caused by the negligence or willful misconduct of the NRD.

The NRD shall indemnify and hold the CITY harmless from and against all liability and damages resulting from the design and construction of the PROJECT, and against all demands, causes of action, and claims arising therefrom including court costs and attorney fees, except as may be caused by the negligence or willful misconduct of the CITY.

**17. NON-DISCRIMINATION.** The parties hereto shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination by any of its contractors in violation of federal or state laws or local ordinances because of race, disability, color, sex, age, political or religious opinions, affiliations or national origin.

**18. ENTIRE AGREEMENT.** THIS AGREEMENT contains the entire agreement between the parties, and each party hereto agrees that neither the other party, nor any of the officers, agents, employees or contractors of the other party, have made any representations or promises with respect to the PROJECT not expressly contained herein.

**19. NOTICES.** All notices herein required shall be in writing and shall be served on the parties at their principal offices, or at such other address as either party may hereafter designate to the other party in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service hereunder.

**20. BINDING EFFECT.** The provisions of THIS AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective parties hereto.

**21. APPLICABLE LAW.** Each party to THIS AGREEMENT shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance of THIS AGREEMENT. Nebraska law will govern the terms and the performance under THIS AGREEMENT.

**22. SEVERABILITY.** In the event any portion of THIS AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any such invalidity or unenforceability shall not affect the remainder of THIS AGREEMENT, the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of THIS AGREEMENT so as to render it valid, reasonable and enforceable.

**23. CAPTIONS.** Captions used in THIS AGREEMENT are for convenience and not for use in the construction of THIS AGREEMENT.

**24. Counterparts.** THIS AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the parties have executed THIS AGREEMENT, on the respective dates hereinafter indicated, pursuant to authorizing resolutions duly adopted at regularly-called meetings of their governing bodies.

[SIGNATURES ON THE FOLLOWING PAGE]

The CITY has executed THIS AGREEMENT on \_\_\_\_\_, 2021.

The CITY of OMAHA

By \_\_\_\_\_

**Jean Stothert, Mayor**

**Attest:**

\_\_\_\_\_  
**City Clerk**

The NRD has executed THIS AGREEMENT on \_\_\_\_\_, 2021.

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_

**JOHN WINKLER, General Manager**