

MEMORANDUM

TO: Finance, Expenditures and Legal Subcommittee

FROM: Lori Ann Laster, Stormwater Management Engineer

SUBJECT: Review and Recommendation on Douglas County Buyout Purchase Agreement - Fix

DATE: November 4, 2021

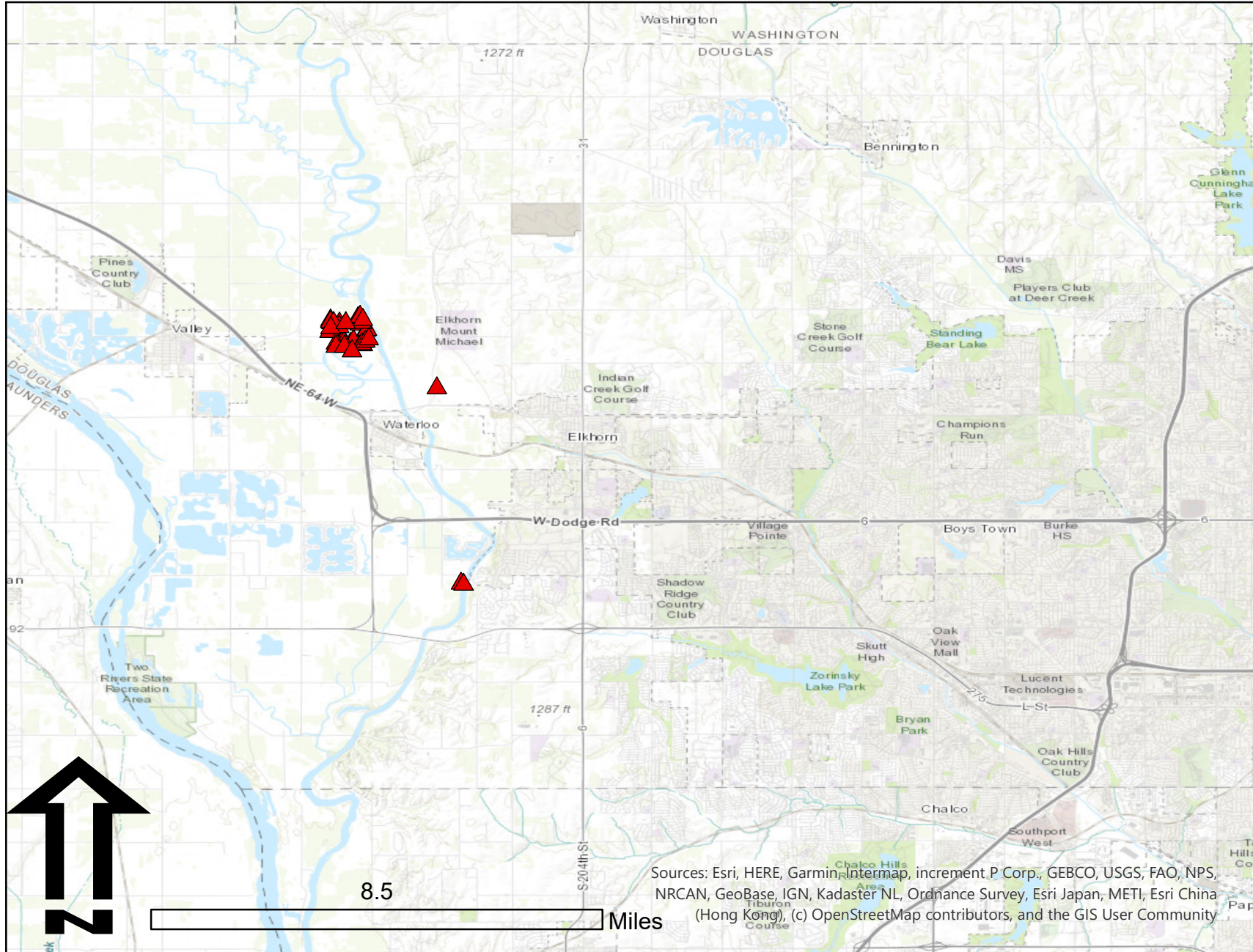
The District has received grant funding through FEMA's Hazard Mitigation Grant Program to purchase 25 properties that were damaged in the March 2019 flooding.

The District hired Ag One Appraisal Services to perform appraisals of the properties included in the grant application. Purchase agreements for the appraised value of each property were presented to the property owners.

Michael Fix has accepted the appraised value of \$50,000 for residential property located at 24253 King Lake Road in Valley, NE. (see attached purchase agreements). However, FEMA has verified that Mr. Fix received \$25,211.69 in FEMA Individual Assistance after the 2019 flood meaning that amount will be deducted from the purchase offer amount. The total offer amount is \$24,788.31.

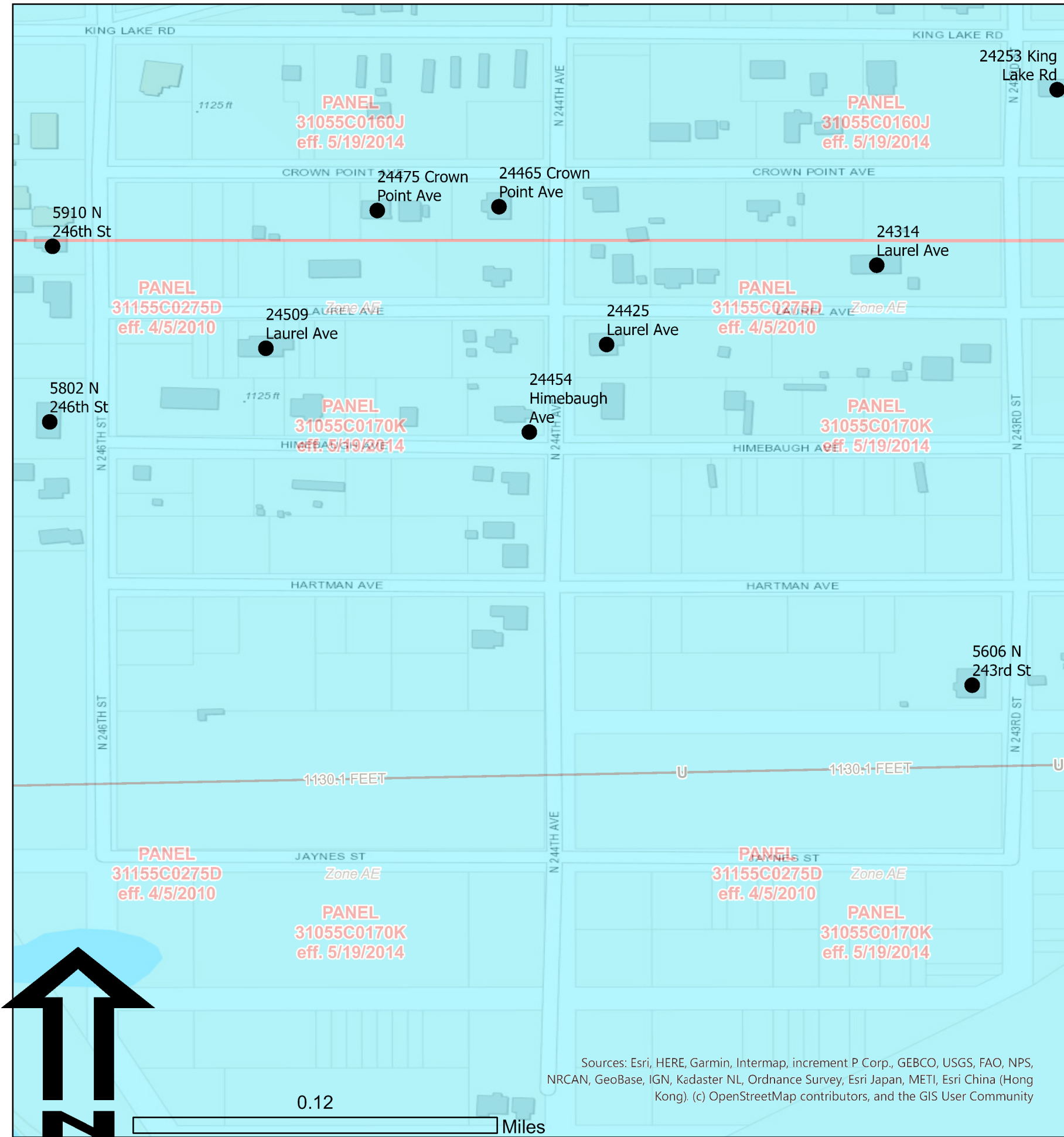
Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute for and on behalf of the District the Purchase Agreement in the form as presented to this meeting providing for the purchase by the District from Michael Fix, of property located at 24253 King Lake Road, Valley, Nebraska for the purchase price of \$24,788.31, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

P-MRNRD Douglas County Acquisition HMGP Application Location Map



▲ Buyout Properties

P-MRNRD Douglas County Acquisition HMGP Application - Property Map 2



● Buyout Properties

public/NFHL

□ FIRM Panels

— Cross-Sections

Flood Hazard Boundaries

— Other Boundaries

Other Boundaries

— Limit Lines

Limit Lines

SFHA / Flood Zone Boundary SFHA / Flood Zone Boundary

Flood Hazard Zones

1% Annual Chance Flood Hazard

1% Annual Chance Flood Hazard

Regulatory Floodway

Regulatory Floodway

Special Floodway

Special Floodway

Area of Undetermined Flood Hazard

Area of Undetermined Flood Hazard

0.2% Annual Chance Flood Hazard

0.2% Annual Chance Flood Hazard

Future Conditions 1% Annual Chance Flood Hazard

Future Conditions 1% Annual Chance Flood Hazard

Area with Reduced Risk Due to Levee

Area with Reduced Risk Due to Levee

**PURCHASE AGREEMENT
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
FLOODPLAIN PURCHASE PROGRAM**

THIS AGREEMENT (hereinafter referred to as "THIS AGREEMENT") is dated as of this _____ day of _____, 20 ____, by and between MICHAEL FIX (hereinafter referred to as "SELLER") and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (hereinafter referred to as "PURCHASER").

SELLER hereby agrees to sell and convey to PURCHASER, and PURCHASER hereby agrees to purchase and accept from SELLER, certain real property upon the following terms and conditions:

1. Property. The Property of SELLER to be sold to PURCHASER pursuant to THIS AGREEMENT consists of the marketable fee simple title to 24253 King Lake Road, Valley Nebraska (hereinafter referred to as "the PROPERTY").

2. Price. The PROPERTY has been appraised at a fair market value in the sum of FIFTY THOUSAND DOLLARS (\$50,000); however, since Title 42 U.S.C. 5155 (Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended) prohibits the use of Federal disaster-related funds when assistance from another source has been received, the purchase price that PURCHASER agrees to pay to SELLER for the PROPERTY is the sum of TWENTY-FOUR THOUSAND SEVEN HUNDRED EIGHTY EIGHT DOLLARS and thirty-one cents (\$24,788.31) (hereinafter referred to as the PURCHASE PRICE") payable by PURCHASER to SELLER at the CLOSING.

3. Payment. The PURCHASE PRICE shall be paid by PURCHASER to SELLER at the time of closing, by PURCHASER'S certified bank check.

4. Deed. The PROPERTY shall be conveyed by SELLER to PURCHASER by Full Warranty Deed, free and clear of all leases, mortgages, liens (including real estate taxes) and other encumbrances, except easements and protective covenants now of record, all such excepted items hereinafter being referred to collectively as "the PERMITTED EXCEPTIONS."

5. Title Insurance. Within 60 days after the date of THIS AGREEMENT, PURCHASER shall deliver to SELLER a commitment for a title insurance policy for the PROPERTY.

(a) Such commitment shall be issued by an authorized company in the amount of the purchase price and shall show marketable fee simple title to the PROPERTY to be vested in SELLER, subject only to the PERMITTED EXCEPTIONS aforesaid and liens and encumbrances of an ascertainable amount which may be removed by the payment of money at the time of closing and which SELLER may so remove at that time by using a portion of the purchase price to be paid at closing, including deposit of same for SELLER'S account with the title insurer pursuant to a "title indemnity" or similar escrow arrangement pending removal or release of such liens or encumbrances. The aforesaid policy or commitment shall be conclusive evidence of good title as therein shown as to all matters insured or to be insured by the policy.

(b) If the aforesaid commitment discloses any exceptions to title other than the PERMITTED EXCEPTIONS (hereinafter referred to as the "NONPERMITTED

EXCEPTIONS”), SELLER shall have 30 days from the date of delivery of the commitment to SELLER to have the NONPERMITTED EXCEPTIONS removed from the policy or commitment, or, at SELLER’S expense, to have the title insurer commit to insure against loss or damage that may be occasioned by such NONPERMITTED EXCEPTIONS, and in such event, the time of closing shall be the day following the date of such removal of exceptions or commitment to insure, or the date for closing as provided herein, whichever comes later.

(c) If SELLER fails to have the NONPERMITTED EXCEPTIONS removed, or in the alternative, to obtain the commitment for title insurance specified above as to such NONPERMITTED EXCEPTIONS within the specified time, PURCHASER may, at PURCHASER’S election, terminate THIS AGREEMENT as to all of the PROPERTY or take title as then is, in either case by giving SELLER written notice of PURCHASER’S election and, in the latter case, by tendering performance on PURCHASER’S part. If PURCHASER fails to give notice of such election within ten days after the expiration of the aforesaid 30 days, then PURCHASER shall be deemed to have elected to take title as it then is, and this transaction shall close in accordance with the preceding provisions hereof. If PURCHASER shall give notice of PURCHASER’S election to terminate THIS AGREEMENT, as aforesaid, within the time provided, then THIS AGREEMENT shall thereupon, without further action by any party, become null and void and neither party shall have any obligation hereunder.

6. Seller Representations, Warranties and Covenants. As an inducement to PURCHASER hereunder, the Seller hereby represents, warrants and covenants with PURCHASER as follows:

(a) The SELLER is duly organized or incorporated, validly existing and in good standing under the laws of its state of organization or incorporation and has the power and authority to own the PROPERTY. All necessary action required to be taken by or on behalf of the SELLER to authorize SELLER to enter into and consummate the transaction contemplated by this Agreement in accordance with the terms hereof have been duly and properly taken. This Agreement is the legal, valid and binding obligation of the SELLER and enforceable against the SELLER in accordance with its terms.

(b) Neither the execution or delivery of this Agreement nor the consummation of the transaction herein contemplated will violate or result in a breach of or constitute a default under any covenant or agreement to which the SELLER is a party or by which the SELLER is bound, or under any judgment, order, decree, rule or regulation to which and of the SELLER is subject.

(c) SELLER has good title to the PROPERTY, and at the Closing SELLER will transfer the PROPERTY to PURCHASER in accordance with Section 3 above. At the Closing, no portion of the PROPERTY will be subject to any agreement, right of first refusal, lease or other undisclosed or unrecorded interest, right or restriction. SELLER certifies that there will have been no claims for labor performed, and no claim for materials furnished to the PROPERTY by any person or entity, who has not been paid in full, for at least 120 days prior to the Closing. SELLER hereby agrees to indemnify and hold PURCHASER harmless from and against any such claims:

(d) SELLER is not engaged in or a party to or, threatened with or affected by, any legal action or other proceeding before any court, administrative agency, or arbitration or mediation authority, and there are no outstanding orders, judgments, consent decrees, stipulations or similar obligations by or with any court, administrative agency, or arbitration or mediation authority affecting the PROPERTY, or the SELLER's ability to perform this Agreement.

(e) All tax returns required by law to be filed by SELLER with respect to the PROPERTY have been or will be timely filed, and SELLER has paid or will pay all federal, state and local taxes which have been or will become payable in connection with the PROPERTY prior to the Closing Date.

(f) From the date of this Agreement to the Closing Date, SELLER will maintain the PROPERTY in the ordinary course of business consistent with past practice.

(g) The PROPERTY is not, and as of the Closing will not be, in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the PROPERTY including, but not limited to, soil and groundwater conditions. There are no Hazardous Materials (as defined below) present on the PROPERTY except as permitted or allowed by applicable law. The SELLER further warrants and represents that neither the SELLER nor any third party, has used, generated, manufactured, produced, stored or disposed of on, under or about the PROPERTY or transported to or from the PROPERTY any Hazardous Materials. There is no proceeding or inquiry by any governmental authority with respect to the presence of Hazardous Materials on the PROPERTY or the migration of Hazardous Materials from or to the PROPERTY. There are no storage tanks located in or under the PROPERTY except as permitted or allowed by applicable law. The term "Hazardous Material" means, but is not limited to, any substance, material or waste that is toxic, ignitable, reactive, or corrosive; which is or can be injurious to the health, safety, or welfare of the public or environment, and which is or becomes regulated by any local or state governmental authority or the United States government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "pollutant or contaminant," or "hazardous material," by any local or state law, (ii) oil and petroleum products and their by-products, (iii) asbestos or asbestos-containing materials, (iv) designated as a "hazardous substance" pursuant to the Federal Water Pollution Control Act, (v) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act or (vi) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act. The SELLER has disclosed to PURCHASER in writing all information in the SELLER's possession or control which relates to the environmental condition of the PROPERTY.

(h) No consent, approval, or authorization of, or designation, declaration or filing with, or notice to, any legislative body, court, governmental or regulatory authority or arbitrator under any provision of any law, judgment, order, decree, rule or regulation is required on the part of the SELLER in connection with the execution, delivery and performance of this Agreement or any other agreement or document contemplated hereby or with the consummation of the transactions contemplated hereby.

(i) SELLER carries adequate insurance (both in form and amount), subject to deductibles, with respect to the PROPERTY. Such insurance is in effect and will remain in effect through the Closing.

(j) SELLER has good and marketable fee simple title to the PROPERTY, free and clear of all encumbrances, except for as disclosed on the Commitment and monetary liens and encumbrances to be satisfied by SELLER at Closing.

(k) SELLER has not leased or otherwise granted to anyone the right to use or occupy the PROPERTY.

(l) There are no unrecorded outstanding options, rights of first offer or rights of first refusal to purchase the PROPERTY or any portion thereof or interest therein.

(m) SELLER has not received any written notice of (i) material violations of building codes and/or zoning ordinances or other governmental or regulatory laws affecting the PROPERTY, or (ii) existing, pending or threatened condemnation proceedings affecting the PROPERTY.

7. Conditions Precedent. The obligation of PURCHASER to consummate the transactions contemplated herein is expressly subject to satisfaction as determined by PURCHASER, in its absolute discretion, of the following conditions on or prior to the Closing.

(a) Title. PURCHASER shall be satisfied with the condition of title to the PROPERTY, subject only to exceptions waived or agreed to by PURCHASER as provided herein.

(b) Property Condition. The approval by PURCHASER, in its sole discretion, of the physical condition and legal compliance of the PROPERTY.

(c) Warranties. This Agreement is contingent upon all warranties and representations of SELLER hereunder being true and correct in all material respects as of the date hereof and as of the Closing.

8. New Liens or Conditions. As long as this AGREEMENT is in effect SELLER shall not transfer, convey, lease or otherwise dispose of any right, title or interest in the PROPERTY except subject to the terms of THIS AGREEMENT or with written consent of PURCHASER. SELLER agrees not to consent to or allow any new lien, encumbrance, condition reservation, easement, lease, restriction or covenant against the PROPERTY, other than the lien for current real estate taxes due but not yet delinquent.

9. Survey. All surveys that PURCHASER may require in connection with the closing of this transaction, shall be at the expense of PURCHASER.

10. Eminent Domain. It is agreed among the parties that THIS AGREEMENT is entered into voluntarily, SELLER having been informed that this is a voluntary program and that PURCHASER will not use its power of eminent domain (condemnation) to acquire the PROPERTY.

11. Closing. This transaction shall be closed at _____, on _____, at the address of PURCHASER set out below, or at such other date, time or place as may be agreed upon in writing by SELLER and PURCHASER.

12. Taxes. All taxes relating to the PROPERTY must be paid prior to closing and SELLER shall provide proof of payment at closing.

13. Delivery of possession. Possession of the PROPERTY, subject to the PERMITTED EXCEPTIONS, shall be delivered to PURCHASER at closing or at such other time as may be agreed upon in writing by SELLER and PURCHASER.

14. Revenue Stamps. All documentary stamp taxes shall be paid by PURCHASER to the extent that this transaction is not exempt there from.

15. Assignment. THIS AGREEMENT, and/or any interest of SELLER hereunder, may not be assigned in whole or in part by SELLER without the prior written consent of PURCHASER.

16. Recordation. At the sole discretion of the PURCHASER, THIS AGREEMENT may be recorded in whole or in part.

17. Entire Agreement. THIS AGREEMENT contains the entire AGREEMENT between the parties, and SELLER agree that neither PURCHASER, nor any of its officers, agents, or employees, have made any representation or promise with respect to, or affecting the PROPERTY or adjoining real estate, or THIS AGREEMENT, not expressly contained herein.

18. Governing law. The provisions of THIS AGREEMENT shall be governed by, and construed in accordance with, the laws of the State of Nebraska.

19. Captions. The captions contained in THIS AGREEMENT are for convenience only and are not intended to limit or define the scope or effect of any provision of THIS AGREEMENT.

20. Time. Time is of the essence of THIS AGREEMENT.

21. Default and Specific Performance. If SELLER shall default hereunder, PURCHASER shall be entitled to enforce specific performance of THIS AGREEMENT or may terminate THIS AGREEMENT, at PURCHASER'S option.

22. Notices. All notices herein required shall be in writing and shall be served on the parties at the addresses set out below, or at such other address as either party may hereafter designate 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.

To Seller: Michael Fix
1814 N. 84th Street
Omaha, NE 68114

To Purchaser: John Winkler, General Manager
Papio-Missouri River Natural Resources District
8901 S. 154th Street
Omaha, NE 68138

23. Survival of conditions. The terms and conditions of THIS AGREEMENT, and all representations, covenants, warranties, and agreements made herein, shall survive the closing of this transaction, and shall not be deemed to have merged or terminated upon closing.

24. 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.

25. Salvage. After the execution of THIS AGREEMENT and by the date for closing provided herein, SELLER shall have the right, at SELLER'S cost, to remove from the PROPERTY and convert to SELLER'S own use any and all personal property, including but not limited to any garage, shed and/or residential dwelling on the PROPERTY, including contents of structures and fences. Until the closing, SELLER shall bear the risk of loss of all structures or other improvements on the PROPERTY and shall have an insurable interest therein. SELLER shall not commit waste as to any other structure or improvement on the PROPERTY. Any partial salvage of a building or other structure on the PROPERTY by SELLER shall be done in a good and workmanlike manner so as not to impair the structural integrity of the building or structure. The openings for any doors or windows that are removed from any structure shall be boarded up so as to prevent unauthorized entry into the structure. SELLER agrees to hold harmless and defend PURCHASER from any and all claims, actions, or damages resulting from SELLER'S salvage as described herein. Prior to removing any garage, shed and/or residential dwelling on the PROPERTY, SELLER shall submit to PURCHASER for PURCHASER'S approval a detailed plan outlining SELLER'S salvage plan. The proposed plan shall include a list of what is to be salvaged and the location of any real estate intended as a permanent site for any structure salvaged from the PROPERTY. As soon as such salvage is completed according to the approved plan, SELLER shall notify the General Manager of PURCHASER and an agent of PURCHASER will conduct a final inspection of the PROPERTY.

IN WITNESS WHEREOF the parties hereto have set their hands.

PAPIO-MISSOURI RIVER NATURAL RESOURCES
DISTRICT
8901 South 154th Street, Omaha, NE 68138-3621

By _____
JOHN WINKLER, General Manager

STATE OF _____)
) SS.
COUNTY OF _____)

On this ____ day of _____, 20 ____, before me, a Notary Public in and for said County, personally came the above named _____ and he acknowledged the execution of the above instrument as his voluntary act and deed.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

PROPERTY OWNER

Michael Fix

Michael Fix
1814 N. 84th St.
Omaha, NE 68114

STATE OF Nebraska)
) SS.
COUNTY OF Sarpy)

On this 4th day of November, 2021, before me, a Notary Public in and for said County, personally came the above named Michael Fix and she acknowledged the execution of the above instrument as her voluntary act and deed.

WITNESS my hand and Notarial Seal the date last aforesaid.



Lori A. Laster
Notary Public