

MEMORANDUM

TO: Programs, Projects, and Operations

FROM: Ian Ghanavati, Water Resources Engineer

SUBJECT: Agreement with Westwood Solutions, LLC for Donation at Glacier Creek

DATE: November 8, 2022

Westwood Solutions LLC (Westwood) is in the process of developing approximately 261 acres of agricultural land located at the Northwest corner of the intersection of State Street and State Highway 133 for a light industrial project (see Exhibit A in the agreement below). The development of this area has resulted in a loss of prairie ecosystem, which was not flagged prior to the grading activities that removed it from the site. The City of Omaha's Master Plan Land Use Element suggests that the destruction or removal of prairie lands requires mitigating actions by the developer.

Westwood & the City of Omaha have reached an agreement to mitigate for the lost prairie through the donation of \$100,000 to the Papio NRD for use in the establishment, monitoring, and continued maintenance of the 43.48 acres of reconstructed prairie to be created at Glacier Creek Preserve, located to the north of the intersection of State Street and 144th Street (see Exhibit B in the agreement below).

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Prairie Mitigation Agreement, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

PRAIRIE MITIGATION AGREEMENT

This Prairie Mitigation Agreement (the “**Agreement**”) is entered into by and between Westwood Solutions LLC, a Delaware limited liability company (“**Westwood**”) and the Papio-Missouri River Natural Resources District (“**NRD**”) as bank sponsor and responsible party of the Glacier Creek Preserve (“the **Preserve**”), and acknowledged and accepted by the City of Omaha, Nebraska (the “**City**”)

RECITALS:

- A. Westwood and City were notified regarding damage to prairie lands on portions of the State and Highway 133 Development Site (the “**Property**”, as further described and depicted in Exhibit A attached herein) after the Property was graded. The damage to the prairie lands on the Property which occurred prior to this Agreement shall be referred to as the “**Prairie Damage**.”
- B. The exact extent of the prairie lands were not measured prior to grading activities and no mitigation requirements were flagged during the governmental approvals process for the development of the Property by Westwood.
- C. The City’s Masterplan Land Use Element suggests prairie lands that are removed or destroyed shall require mitigating actions on behalf of a developer.
- D. Westwood desires to document its voluntary settlement agreement as to the total amount to be paid by Westwood for the Prairie Damage that may have occurred due to Westwood’s development of the Property.

NOW, THEREFORE, in consideration of this Agreement, the rights, releases, and benefits to be received by the parties pursuant to this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

- 1. Recitals; Defined Terms. The recitals above are incorporated into this Agreement for all purposes.
- 2. Prairie Habitat Payment. Within thirty (30) days following execution of this Agreement by the parties, Westwood shall pay to NRD the sum of \$100,000 (the “**Prairie Habitat Payment**”). NRD agrees to accept and use the Prairie Habitat Payment for the establishment, monitoring, and continued maintenance of the 43.48 acres of reconstructed prairie to be constructed at the Preserve, as shown in Exhibit B below.
- 3. Release. In consideration for this Agreement, and upon Westwood’s payment of the Prairie Habitat Payment, NRD, AND THE CITY HEREBY FOREVER RELEASES WESTWOOD AND ITS OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, CONTRACTORS, ENGINEERS, CONSULTANTS, LEGAL REPRESENTATIVES, AFFILIATES, SUBSIDIARY ORGANIZATIONS, PARENT

ORGANIZATION, SUCCESSOR CORPORATIONS, INSURERS, AGENTS, AND ASSIGNS (COLLECTIVELY, THE "**WESTWOOD PARTIES**"), FROM ANY LIABILITY FOR THE PRAIRIE DAMAGE AS FURTHER DESCRIBED IN THIS AGREEMENT AND HEREBY RELEASES AND DISCHARGES ALL OF THE WESTWOOD PARTIES FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, COSTS (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COSTS OF COURT), AND LIABILITY OF WHATEVER KIND OR NATURE AND ON ANY LEGAL THEORY, RELATING TO OR ARISING OUT OF THE PRAIRIE DAMAGE DEFINED ABOVE. IN VIEW OF THE FACT THAT NO FURTHER PRAIRIE LANDS EXIST ON THE PROPERTY, NRD AND THE CITY HEREBY RELEASE ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, COST AND LIABILITY OF WHATEVER KIND OR NATURE AND ON ANY LEGAL THEORY, RELATING TO OR ARISING OUT OF WESTWOOD PARTIES FUTURE ACTIVITIES ON THE PROPERTY RELATING TO PRAIRIE LANDS.

4. Compromise Settlement. The parties understand that this is a compromise and settlement of all matters relating in any way to the Prairie Damage located on the Property and any other damages suffered or alleged to have been suffered as a result of the Prairie Damage.

5. No Further Payment. Other than the Prairie Habitat Payment, NRD and the City shall have no right to receive any further payment for or with respect to the Prairie Damage on the Property.

6. Enforcement Costs. If any action is commenced in any court of law between the parties to this Agreement in connection with the enforcement of any provision of this Agreement, the prevailing party is entitled to recover reasonable costs and expenses, including attorneys' fees.

7. Entire Agreement. This Agreement reflects the entire agreement of the parties with respect to the matters set forth herein. There are no other agreements, either written or oral, relating to the subject matter hereof.

8. Rules of Construction. The parties each acknowledge that they, and if they choose, their respective counsel, have drafted and/or reviewed this Agreement and that any rule of construction that ambiguities are to be resolved and construed against the drafting party shall not be employed in the interpretation of this Agreement.

9. Execution in Counterparts. This Agreement may be executed in any number of identical counterparts which, taken together, shall constitute collectively one agreement. The parties acknowledge and agree that execution of this Agreement may be accomplished by electronic signature utilizing DocuSign or any other mutually acceptable similar online, electronic, or digital signature technology. The parties agree that this Agreement may be transmitted by facsimile machine or by electronic scanning and email, and the parties intend that faxed, scanned, and electronic signatures shall constitute original signatures. A facsimile or scanned copy or any counterpart or conformed copy

of this Agreement, including use of Adobe PDF technology to merge pages and create a conformed copy of this Agreement, with the signature (original, faxed, or scanned signature or permitted electronic signature) of both parties shall be binding on the parties.

10. Binding Effect. This Agreement is binding upon and inures to the benefit of the parties and their respective heirs, executors, legal representatives, successors and assigns.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Westwood, NRD, and City have executed this Agreement as of the dates set forth below.

WESTWOOD

Westwood Solutions LLC
(a Delaware limited liability company)

By: _____
Name: _____
Title: _____
Date: _____, 2022

NRD

Papio-Missouri River Natural Resources District

By: _____
Name: _____
Title: _____
Date: _____, 2022

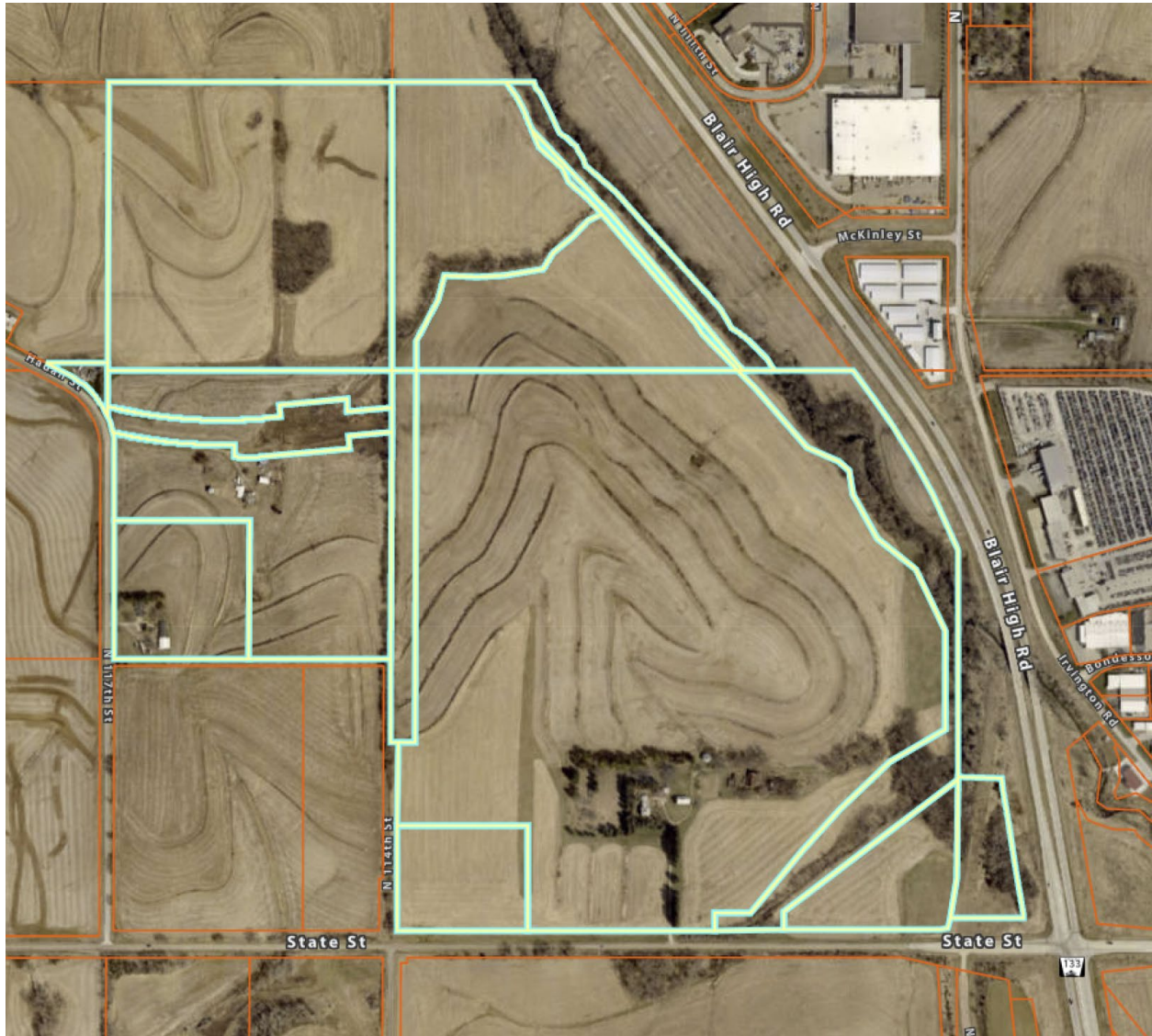
City

City of Omaha, Nebraska

By: _____
Name: _____
Title: _____
Date: _____, 2022

**EXHIBIT A
PROPERTY DESCRIPTION & MAP**

Parcel Numbers 2245320102, 2245320100, 0139410000, 2245320104, 0139450007,
0139420006, 2245320108, 0139380024, 0139430012, 2245320110, 2245320112,
0139430010, 2245320106, 0139450004, 0139380022
as outlined in green



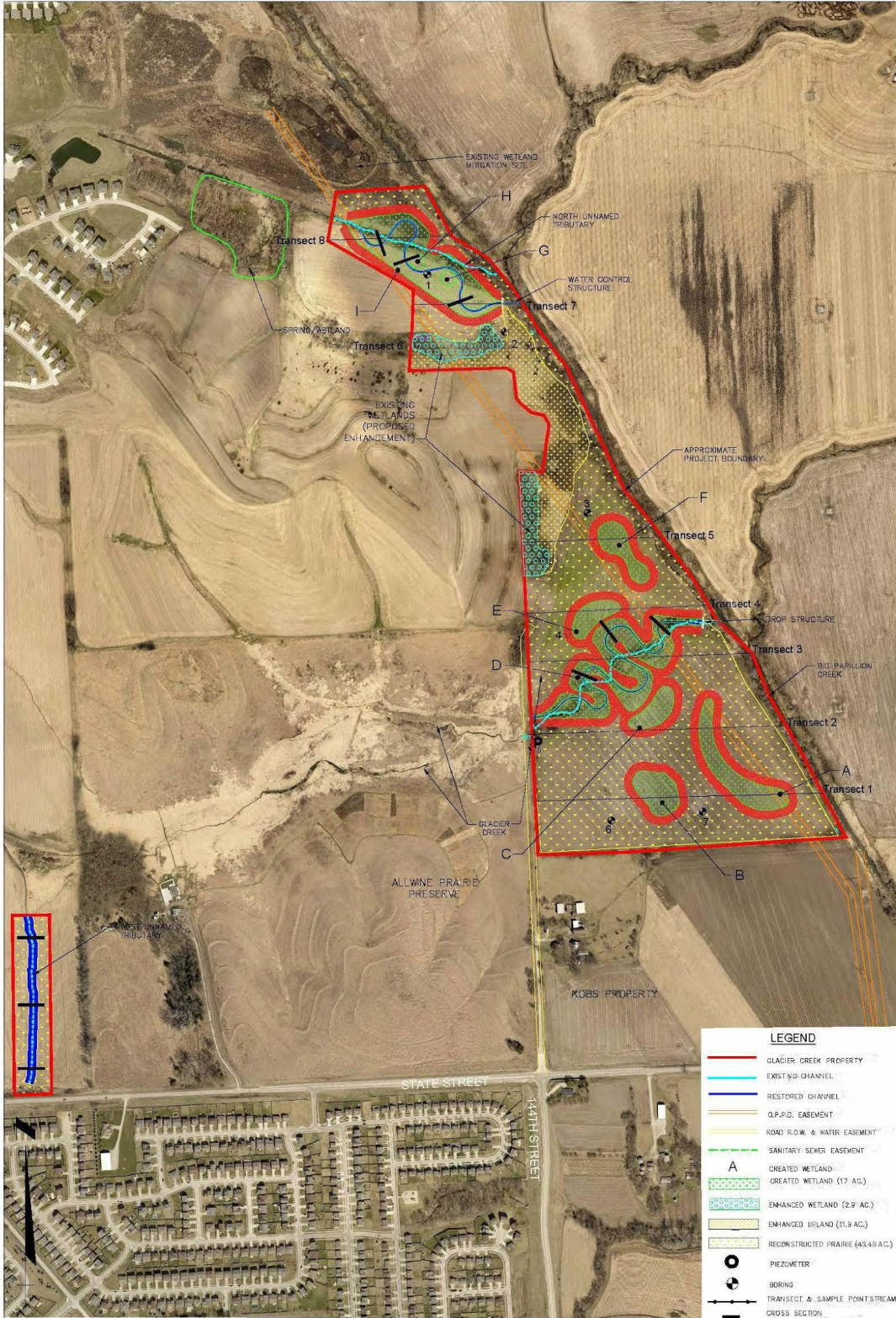


EXHIBIT B - GLACIER CREEK STREAM AND WETLAND BANK CONCEPT