

AMENDED MERGER AGREEMENT
BETWEEN
DRAINAGE DISTRICT NO. 5 OF DAKOTA COUNTY, NEBRASKA
AND
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

THIS AGREEMENT (hereinafter referred to as "this Agreement") is made by and between **DRAINAGE DISTRICT NO. 5 OF DAKOTA COUNTY** (hereinafter referred to as "the **DRAINAGE DISTRICT**") and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as "the **NRD**") and is intended to amend and supersede the **MERGER AGREEMENT** between the parties executed by the **DRAINAGE DISTRICT** on December 19, 1997, and by the **NRD** on March 12, 1998.

RECITALS:

WHEREAS, the **DRAINAGE DISTRICT** constructed and now operates, maintains, repairs and replaces portions of the channels of Pigeon Creek and Elk Creek and flood control dikes appurtenant thereto (hereinafter referred to collectively as "the Channel/Dike System") within the boundaries of the **DRAINAGE DISTRICT**; and,

WHEREAS, the Directors of the **DRAINAGE DISTRICT** and the Directors of the **NRD** have concluded that it is in the best interest of the public that such districts should merge, with the **NRD** as the surviving entity (hereinafter referred to as "the Merger"); and,

WHEREAS, Neb. Rev. Stat. §2-3201 provides in part as follows:

***** The Legislature further declares that other special-purpose districts, including rural water districts, ground water conservation districts, drainage districts, reclamation districts, and irrigation districts, are hereby encouraged to cooperate with and, if appropriate, to merge with natural resources districts."

WHEREAS, in accordance with Neb. Rev. Stat. §2-3206, the Merger shall be accomplished in the manner provided in Neb. Rev. Stat. §§2-3207 to 2-3212 by the Nebraska Natural Resources Commission (hereinafter "the **COMMISSION**") with the approval of the **NRD**, and in accordance with the criteria and procedures provided by Neb. Rev. Stat. §§2-3201 to 2-3212; and, the assets, liabilities and obligations of the **DRAINAGE DISTRICT** shall be assumed by the **NRD**; and,

WHEREAS, in accordance with Neb. Rev. Stat. §2-3208, a hearing by the **COMMISSION** on the Merger may be initiated by written request of a majority of the directors of the **NRD** or by formal written request of a majority of the directors of the **DRAINAGE DISTRICT**, and a majority of the directors of the **DRAINAGE DISTRICT** and of the **NRD** do hereby desire to make such requests for a hearing by the **COMMISSION**; and,

WHEREAS, in accordance with Neb. Rev. Stat. §2-3211.03, the **COMMISSION** shall, whenever consistent with applicable law and the state's interests, give effect to the desires of the **NRD** including the terms of any written agreements between or among districts; and, the **DRAINAGE DISTRICT** and the **NRD** do hereby express their mutual desire that the Merger, in accordance with this Agreement, be approved by the **COMMISSION**; and,

WHEREAS, in accordance with Neb. Rev. Stat. §3-3211, the parties contemplate that, after the **COMMISSION**'s hearing and approval of the Merger, the Merger would not become effective until the Board of Directors of the **NRD** and the Board of Directors of the **DRAINAGE DISTRICT** both apply to the Secretary of State for a certificate evidencing the Merger, and such certificate is issued.

N O W, T H E R E F O R E, for and in consideration of the foregoing recitals and the mutual covenants of the parties hereinafter expressed, the **DRAINAGE DISTRICT** and the **NRD** do hereby agree as follows:

1. **REQUEST FOR HEARING.** The **DRAINAGE DISTRICT** and the **NRD**, and the undersigned individual members of the Boards of Directors of the **DRAINAGE DISTRICT** and **NRD**, respectively, do hereby request that a hearing on the Merger be held by the **COMMISSION** and that the **DRAINAGE DISTRICT** and the **NRD** be merged by order of the **COMMISSION**, as authorized by law and pursuant to this Agreement, with the **NRD** as the surviving entity.

2. **BOUNDARY IDENTIFICATION.** The **DRAINAGE DISTRICT** has prepared and has attached hereto, and the parties do hereby incorporate herein by reference as Exhibit "A," a complete, written legal description of the boundaries of the **DRAINAGE DISTRICT**.

3. **ACCOUNTING.** The **DRAINAGE DISTRICT** has prepared, and has attached hereto, and the parties do hereby incorporate herein by reference as Exhibit "B," a complete, written and itemized inventory of all personal property including, without limitation, intangible property and accounts receivable, of the **DRAINAGE DISTRICT**, which on the effective date of the Merger shall be assigned to the **NRD** as required by law and used by the **NRD** to operate, maintain, repair, replace and improve the Channel/Dike System; and, the **DRAINAGE DISTRICT** has prepared, and has attached hereto, and the parties do hereby incorporate herein by reference as Exhibit "C," a complete, written, and itemized inventory of all accounts payable and other obligations and liabilities of the **DRAINAGE DISTRICT**, certified as complete and correct by the the Board of Directors of the **DRAINAGE DISTRICT**, including without limitation all known contingent obligations and liabilities which shall be assumed by the **NRD** on the effective date of the Merger, as required by law, and which shall be paid from the Special Assessment Account. After the effective date of this agreement and prior to the effective date of the Merger the **DRAINAGE DISTRICT** shall not incur obligations or liabilities additional to those itemized in Exhibit "C" without the prior written consent of the **NRD**.

4. **ASSESSMENT SCHEDULE.** The **DRAINAGE DISTRICT** has prepared and has attached hereto, and the parties do hereby incorporate herein by reference as Exhibit "D," the **DRAINAGE DISTRICT's** most recent schedule of special assessments, heretofore used to fund the cost of operation, maintenance, repair and replacements of the Channel/Dike System. In accordance with Neb. Rev. Stat. §2-3252, the **NRD** may establish an improvement project area to carry out the operation, maintenance, repair, replacement and improvement of the Channel/Dike System and may adopt such assessment schedule, or adopt a new assessment schedule, for such purposes.

5. **LEVY AND FUND LIMITATIONS** Without the affirmative vote of a majority of the units of benefit shown on the assessment schedule adopted by the **NRD**, the **NRD** shall not levy more than \$50,000 in special assessments against real property within the boundaries of the **DRAINAGE DISTRICT** in any fiscal year nor at the end of any fiscal year have more than \$500,000 of uncommitted funds in the **NRD** account containing transferred **DRAINAGE DISTRICT** assets and funds obtained by special assessments levied against land benefited by the Channel/Dike System (hereinafter referred to as "the Special Assessment Account"); provided, however, on every third anniversary of the effective date of this Agreement, each such respective limitation amount shall be adjusted for prospective application by multiplying such respective limitation amount by a fraction, the numerator of which is the "Consumer Price Index-Seasonally Adjusted U. S. City Average For All Urban Consumers (1982-84=100)," published for the month of such anniversary in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor ("CPI-U"), and the denominator of which is the CPI-U published in such publication for the month of the effective date of the Merger; provided, however, if the CPI-U is discontinued, the "Consumer Price Index-Seasonally Adjusted U. S. City Average For All Items for Urban Wage Earners and Clerical Workers," published for such month in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor

("CPI-W) shall be used for making the foregoing computations; and, provided further, if both the CPI-U and CPI-W are discontinued, comparable statistics published by a responsible financial periodical selected by the **NRD** shall be used for making such computations.

6. **CHANNEL/DIKE SYSTEM DITCH MAINTENANCE.** After the effective date of the Merger, the **NRD** shall operate, maintain, repair and replace the Channel/Dike System in such manner and at such times as the Board of Directors of the **NRD** determines reasonable and feasible; and, except as otherwise provided in this Agreement, shall pay the cost thereof from the Special Assessment Account.

7. **CORPS EMERGENCY REPAIR PROGRAM.** Insofar as can be funded within the levy and fund limitations provided in this Agreement, and after the effective date of the Merger, the **NRD** shall operate, maintain, repair, replace, and improve the Channel/Dike System in a manner designed to ultimately qualify the Channel/Dike System for the U. S. Army Corps of Engineers PL 84-99 Emergency Repair Program, and shall perform such functions with the goal of obtaining such qualification within 10 years after the effective date of the Merger. For this purpose the **NRD** will make every reasonable effort, within the levy and fund limitations provided by this Agreement and within the availability of its own general funds appropriated for such purpose, to construct those improvements needed to qualify the Channel/Dike System for such program.

8. **MAJOR REPAIRS, RENOVATIONS, REPLACEMENTS AND IMPROVEMENTS.** The cost of any separate, unified project which, at once, (a) the **NRD** determines necessary to be performed; (b) involves major repairs, renovations, replacements or improvement of the Channel/Dike System; and (c) requires outlays which the **NRD** estimates will exceed \$50,000, including land rights expenses, shall be paid in equal shares from the Special Assessment Account and from the general fund of the **NRD**. For purposes of this paragraph all repairs to the Channel/Dike System necessitated

by a common hydrologic event shall be deemed to constitute a separate, unified project. For purposes of the computations called for by this paragraph, a grant received by the NRD from a third party for a project which qualifies for NRD general fund assistance under this paragraph shall be disregarded in determining net project cost but shall be deemed to be contributed to project costs from the Special Assessment Account and from the general fund of the **NRD**, in equal shares.

9. **LAND RIGHTS.** Prior to the effective date of the Merger, with document drafting and surveying assistance provided by the **NRD** but without other **NRD** cost or obligation, the **DRAINAGE DISTRICT** will quitclaim to the **NRD** those parcels of land along and on either side of the channels of Pigeon Creek and Elk Creek which comprise the **DRAINAGE DISTRICT's** rights-of way for the Channel/Dike System (hereinafter referred to as "the Channel/Dike ROW").

10. **PRIVATE ACCESS.** The **DRAINAGE DISTRICT** has prepared and attached hereto, and the parties do hereby incorporate herein by reference as Exhibit "E" a written schedule identifying all persons, firms and corporations who have written easements for ingress or egress, or who are known to regularly and lawfully cross or traverse a portion of the Channel/Dike ROW other than on public road rights-of-way, such schedule including an identification of the respective portions of the Channel/Dike ROW so used by any such party for such purpose(s).

11. **ADVISORY COMMITTEE.** The parties do hereby establish the Drainage District No. 5 Advisory Committee (hereinafter referred to as "the Advisory Committee"), to advise the Board of Directors of the NRD in connection with the operation, maintenance, repair, replacement, and improvement of the Channel/Dike System, the initial Advisory Committee to consist of the present members of the **DRAINAGE DISTRICT's** Board of Directors, each of whom shall serve for a term of five years commencing on the effective date of the Merger. Successor members of the Advisory Committee shall be owners of land within the **DRAINAGE DISTRICT** and

appointed by the Board of Directors of the NRD after consultation with the undersigned present members of the DRAINAGE DISTRICT Board of Directors and such other persons as the NRD Board of Directors deems appropriate.

12. **PUBLIC AND RECREATIONAL USES.** This Agreement shall not be deemed to preclude the NRD from improving or utilizing, or permitting the improvement or utilization, of any portion of the Channel/Dike ROW or any other lands within the boundaries of the **DRAINAGE DISTRICT** at the NRD's own cost and expense for any public recreational purpose including, without limitation, recreational trails or wetland and/or wildlife habitat restoration or enhancement, after obtaining such additional rights-of-way as may be required.

13. **SPECIAL WATERSHED PROGRAM.** After the effective date of the Merger the **NRD**, at the **NRD's** cost and expense will establish a Special Watershed Program for cost-sharing for prevention of soil erosion in the watersheds of Pigeon Creek and Elk Creek above the Channel/Dike System.

14. **TERMINATION.** If for any reason the **NRD** is prevented from establishing a special improvement project area to operate, maintain, repair, replace, and improve, the Channel/Dike System, or prevented from adopting an assessment schedule, or prevented from levying or collecting special assessments in accordance with this Agreement, the **NRD**, by resolution of a majority of its Board of Directors, may unilaterally declare a termination of this Agreement.

15. **NON-SEVERABILITY.** In the event the Merger or any portion or provision of this Agreement is held invalid or unenforceable for any reason, either the **DRAINAGE DISTRICT** or the **NRD** may unilaterally declare a termination of this Agreement.

16. **EFFECTIVE DATE.** This Agreement shall be effective commencing upon the execution of the same by the **DRAINAGE DISTRICT** and the **NRD**. It is

intended that, pursuant to Neb. Rev. Stat. §§2-3211 and 2-3212, after the COMMISSION's hearing and approval of the Merger, the Merger would not become effective until both the Board of Directors of the NRD and the Board of Directors of the DRAINAGE DISTRICT have applied to the Secretary of State for a certificate evidencing the Merger and such certificate is issued.

IN WITNESS WHEREOF,

This Agreement is executed by the DRAINAGE DISTRICT on this 29th day of May, 19 98, pursuant to a resolution duly adopted at a regularly called meeting of the Board of Directors of the DRAINAGE DISTRICT.

**DRAINAGE DISTRICT NO. 5 OF
DAKOTA COUNTY**

By [Signature]
CHAIRPERSON, BOARD OF DIRECTORS

This Agreement is executed by the NRD on this 14 day of MAY, 19 98, pursuant to a resolution duly adopted at a regularly called meeting of the Board of Directors of the NRD.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By [Signature]
CHAIRPERSON, BOARD OF DIRECTORS

The undersigned Chairperson and Directors of the DRAINAGE DISTRICT, constituting a majority thereof, do hereby request a hearing by the COMMISSION on the Merger.

Roger Parly
CHAIRPERSON, BOARD OF DIRECTORS

Kenneth A. Baitch
DIRECTOR

Wayne Knudsen
DIRECTOR

Louis A. Knudsen
DIRECTOR

William Walsh
DIRECTOR

DIRECTOR

The undersigned Chairperson and Directors of the NRD, constituting a majority thereof, do hereby request a hearing by the COMMISSION on the Merger.

Richard W. Connealy
CHAIRPERSON, BOARD OF DIRECTORS

Jim Sharp
DIRECTOR

Wayne Knudsen
DIRECTOR

Tom Foster

DIRECTOR

Richard W. Jones

DIRECTOR

Raymond J. Knecht

DIRECTOR

Larry Peterson

DIRECTOR

Joseph [unclear]

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR