

MERGER AGREEMENT
BETWEEN
WESTERN SARPY COUNTY DRAINAGE DISTRICT
AND
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

T H I S M E R G E R A G R E E M E N T (hereinafter referred to as "this Agreement") is made by and between THE WESTERN SARPY COUNTY DRAINAGE DISTRICT (hereinafter referred to as "the DRAINAGE DISTRICT") and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (hereinafter referred to as "the NRD").

R E C I T A L S:

WHEREAS, the Directors of the DRAINAGE DISTRICT have determined that it is in the best interests of their district to merge with the NRD; and,

WHEREAS, Section 2-3201, R.R.S. Neb., 1943, 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 Section 2-3206, R.R.S. Neb., 1943, such a merger shall be done in the manner provided in Sections 2-3207 to 2-3212, R.R.S. Neb., 1943, 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 sections 2-3201 to 2-3212, R.R.S. Neb., 1943; and, the assets, liabilities and obligations of the DRAINAGE DISTRICT shall be assumed by the NRD; and,

WHEREAS, in accordance with Section 2-3208, R.R.S. Neb., 1943, a hearing by the COMMISSION on a proposed 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, 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 Section 2-3211.03, R.R.S. Neb., 1943, 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 such merger, in accordance with this Agreement, be approved by the COMMISSION; and,

WHEREAS, in accordance with Section 3-3211, R.R.S., 1943, 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 each apply to the Secretary of State for a certificate evidencing the merger.

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 a majority of the members of the Boards of Directors of the DRAINAGE DISTRICT and NRD, respectively, do hereby request that a hearing 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.

2. LAND RIGHTS. Prior to the effective date of the merger, the DRAINAGE DISTRICT, with all technical and legal assistance and surveys provided by the NRD, but without other cost or obligation to the NRD, will obtain:

a. Written and recordable agreements, executed and acknowledged by the landowners and determined sufficient by the NRD, granting to the NRD and the DRAINAGE DISTRICT, and their successors and assigns, the permanent right, running with the land, to construct, operate, maintain, repair and replace the Platte River flood control dike in the contiguous corridor of land comprising:

(1) all the land presently occupied by such dike, including the tie-back dike along Melia Ditch, plus all

the land within 15 feet of both the river and land-side toes of such dikes, in Section 28, Township 14 North, Range 10 East, Sarpy County, Nebraska, such land presently being owned by Harold Horn, et al.; and,

(2) all the land presently occupied by such dike, plus all the land within 15 feet of both the river and land-side toes of such dike, in Section 33, Township 14 North, Range 10 East, Sarpy County, Nebraska, such land presently being owned by Alvin Glasshoff, et al.; provided, however, the existing fence along the east or south side of the dike in said section will not be moved unless the NRD and the holder(s) of title to such land mutually agree to such action.

The NRD will not acquire any land by eminent domain for diking purposes in either of the above-mentioned sections without landowner consent, and the agreements referred to in this subparagraph shall provide that nothing therein contained shall give or grant to the NRD or the DRAINAGE DISTRICT any right or privilege to use or devote to any recreational use any of the land in either of the above-mentioned sections.

b. Marketable fee title or permanent easements, free of leases, liens and other encumbrances, to or over and across a contiguous corridor of land, 200 feet in width, comprising all the land lying within 50 feet of the west

side, and all the land lying within 150 feet of the east side, of the centerline of the Platte River dike in Sections 4, 5, 8, 9, 19 and 20, in the North 1/2 of Sections 17 and 18, and in Section 29 other than those portions thereof lying within 800 feet and North of the Burlington Northern Railroad right-of-way, all in Township 13 North, Range 10 East, Sarpy County, Nebraska (as such centerline is reasonably determined by the NRD), together with written and recordable agreements running with the land, executed and acknowledged by the owners of the land adjacent to such corridor, determined sufficient by the NRD, and providing that such landowners shall not excavate within 200 feet on either side of such corridor to any depth (measured below the natural ground plane) deeper than one-fourth the horizontal distance from the point of excavation to the nearest boundary of such corridor of land.

c. Marketable fee title or permanent easements, free of leases, liens and other encumbrances, to or over and across a contiguous corridor of land, 110 feet in width, comprising all the land lying within 50 feet of the west side and within 60 feet of the east side of the centerline of the Platte River dike in the south one-half of Sections 17 and 18, and in the portions of Section 29 lying within 800 feet and North of the Burlington Northern Railroad right-of-way, all in Township 13 North, in Range 10 East,

Sarpy County, Nebraska (as such centerline is reasonably determined by the NRD); provided, however, the DRAINAGE DISTRICT will obtain permanent easements, determined sufficient by the NRD, over and across all of the area of land lying within 90 feet of the east side of the immediately aforesaid corridor of land, for the purpose of construction, operation and maintenance of future dike improvements, which easement areas will be allowed to be used by the holder(s) of title thereto for any uses not inconsistent with the rights granted by such easements; and, provided, further that the DRAINAGE DISTRICT will obtain written and recordable agreements running with the land, determined sufficient by the NRD, executed and acknowledged by the owners of the land adjacent to the corridor formed by the combination of the fee title and easement areas referred to above, and providing that such landowners shall not excavate within 200 feet on either side of the corridor formed by such combination of fee title and easement areas, to any depth (measured below the natural ground plane) deeper than one-fourth the horizontal distance from the point of excavation to the nearest boundary of such corridor combination.

d. Permanent easements, determined sufficient by the NRD, granting to the NRD and the DRAINAGE DISTRICT, and their successors and assigns, the permanent right to

construct, operate, maintain, repair and replace existing and future Platte River jetties extending from the aforesaid dike corridor and into the Platte River, in Sections 4, 5, 8, and 9, , and existing and future Elkhorn River jetties extending from the aforesaid dike corridor and into the Elkhorn River in Section 33, all in Township 13 North, Range 10 East, Sarpy County, Nebraska; and

e. Permanent easements, determined sufficient by the NRD, granting to the NRD and the DRAINAGE DISTRICT, and their successors and assigns, the permanent right to construct, operate, maintain, repair and replace existing drainage ditches

(1) in the contiguous corridors of land, 150 feet in width, comprising all the land lying within 75 feet on either side of the centerline of the DRAINAGE DISTRICT'S existing main drainage ditch; and,

(2) in the contiguous corridors of land, 50 feet in width, comprising all the land (except County road right-of-way) lying within 25 feet on either side of the centerline of the DRAINAGE DISTRICT'S existing laterals and other drainage ditches,

in Sections 27, 28, 33, and 34 in Township 14 North; in Sections 3, 4, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 32, and 33 in Township 13 North; and, in Sections 3, 4, 9, 10, and 11 in Township 12 North, all in Range 10 East,

Sarpy County, Nebraska (as such centerlines are reasonably determined by the NRD).

3. **PRESERVATION OF ACCESS.** The **DRAINAGE DISTRICT** has prepared, has attached hereto, and the parties do hereby incorporate herein by reference as Exhibit "A," a written schedule identifying all persons, firms and corporations who regularly and lawfully cross or traverse a portion of the dike corridor, described in paragraph 2 of this Agreement, for purposes of ingress and egress, such schedule including an identification of the respective portions of such corridors so used by such parties for such purpose(s). The NRD shall adopt reasonable rules and regulations allowing such parties so identified, and his, her, or their heirs, successors and assigns, to continue such use, and allowing such parties to install and use their own locks (in a chain of locks system) on any gates constructed by the NRD in the portion of such corridor so used by such party

4. **DIKE OPERATION AND MAINTENANCE.** After the effective date of the merger described in this Agreement, the NRD, at the NRD's sole cost and expense, shall operate, maintain, repair and replace the dike and jetties described in paragraph 2 of this Agreement, during such periods, in such manner and at such times as the Board of Directors of the **DISTRICT** determine reasonable and feasible.

5. **DRAINAGE DITCH OPERATION AND MAINTENANCE.** After the effective date of the merger described in this Agreement, the NRD shall operate, maintain, repair and replace the drainage ditches described in paragraph 2 of this Agreement, during such periods, in such manner and at such times as the Board of Directors of the DISTRICT determine reasonable and feasible, using assets of the DRAINAGE DISTRICT and the proceeds of special assessments levied against land benefited by such drainage ditches pursuant to the NRD's statutory special improvement project authority; provided, however, if the NRD is prevented from establishing a special improvement project area to operate, maintain, repair and replace the drainage ditches, or is prevented from levying or collecting such special assessments, the NRD may declare this Agreement, and the merger hereby contemplated, void; and, provided further, that, without the affirmative vote of a majority of the units of benefit shown on Exhibit "B" referred to in the following paragraph, the NRD shall not levy more than \$20,000 in special assessments in any calendar year nor, at the end of any such calendar year, hold in NRD accounts more than \$100,000 in uncommitted funds obtained by special assessments levied against land benefited by such drainage ditches.

6. **ASSESSMENT SCHEDULE.** The DRAINAGE DISTRICT has prepared and has attached hereto, and the parties do hereby incorporate herein by reference as Exhibit "B," the DRAINAGE

DISTRICT's most recent special assessment schedule for the drainage ditches.

7. **ACCOUNTING.** 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 assets, including accounts receivable, of the DRAINAGE DISTRICT, which shall be assigned to the NRD as required by law and used by the NRD to operate, maintain, repair and replace the drainage ditches described in paragraph 2 of this Agreement; and, the DRAINAGE DISTRICT has prepared, and has attached hereto, and the parties do hereby incorporate herein by reference as Exhibit "D," a complete, written, and itemized inventory of all accounts payable and other obligations and liabilities of the DRAINAGE DISTRICT, including all known contingent obligations and liabilities, which shall be assumable by the NRD as required by law; provided, however, the NRD shall not assume the DRAINAGE DISTRICT's expenses, obligations or liabilities for land rights acquisition.

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

9. **ADVISORY COMMITTEE.** The parties do hereby establish the Western Sarpy County Drainage 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 and replacement of the dike and drainage ditches referred to in paragraph 2 of this Agreement, and in connection with the use of explosives and other methods which may be required to free ice jams which may threaten such dike. The Advisory Committee shall consist of five owners of land within the DRAINAGE DISTRICT, the initial Advisory Committee consisting of the present members of the DRAINAGE DISTRICT's Board of Directors, each of whom shall serve for a term of five years. Successor members of the Advisory Committee shall be appointed by the Board of Directors of the NRD after consultation with the present members of the DRAINAGE DISTRICT Board of Directors and such other persons as the NRD Board of Directors deems appropriate.

10. **RECREATIONAL USES.** The NRD will not improve, utilize, or open, or permit the improvement, utilization or opening, of any portion of the dike corridor or drainage ditches to which it has fee title or permanent easements, described in paragraph 2 of this Agreement, for any recreational purposes without first obtaining the written consent of all of the owner(s) of the land abutting such portion of the dike corridor.

11. **FLOODWAY PURCHASE PROGRAM.** The NRD agrees that, in the event the NRD determines to implement its Floodway Purchase Program to purchase and remove presently-existing houses, cabins,

or mobile homes from the floodway riverward of the Platte River dike, within the present boundaries of the DRAINAGE DISTRICT (such Floodway Purchase Program being described in the copy of NRD Policy 17.30 attached hereto as Exhibit "F" and incorporated herein by reference), or, in the event the NRD otherwise determines to remove such structures from such portion of the floodway, all such purchases shall be voluntary and accomplished without the exercise of eminent domain.

12. NON-SEVERABILITY. In the event any portion of this Agreement is held invalid or unenforceable for any reason, either the DRAINAGE DISTRICT or the NRD may declare the entire agreement void.

13. EFFECTIVE DATE. This Agreement shall be effective commencing upon the execution of the same by the DRAINAGE DISTRICT and the NRD. Pursuant to Sections 2-3211 and 2-3212, R.R.S., Neb., 1943, after the COMMISSION's hearing and approval of the merger, such merger would not become effective until the Board of Directors of the NRD and the Board of Directors of the DRAINAGE DISTRICT each apply to the Secretary of State for a certificate evidencing the merger.

I N W I T N E S S W H E R E O F ,

This Agreement is executed by the DRAINAGE DISTRICT on this 4 day of MARCH, 1994, pursuant to a resolution duly adopted at a regularly called meeting of the Board of

Directors of the DRAINAGE DISTRICT held on such day; and, the undersigned Chairperson and Directors of the DRAINAGE DISTRICT, by their endorsement, do hereby request a hearing by the COMMISSION on the merger contemplated by this Agreement.

WESTERN SARPY COUNTY DRAINAGE DISTRICT

By Frank Cochran
CHAIRPERSON, DRAINAGE DISTRICT
BOARD OF DIRECTORS

Frank Cochran
CHAIRPERSON, DRAINAGE DISTRICT
BOARD OF DIRECTORS, individually

Robert C. Buel
DIRECTOR

Thomas Glavin
DIRECTOR

Richard W. Jensen
DIRECTOR

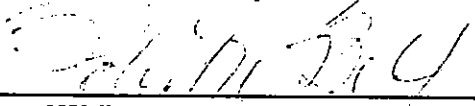
William F. ...
DIRECTOR

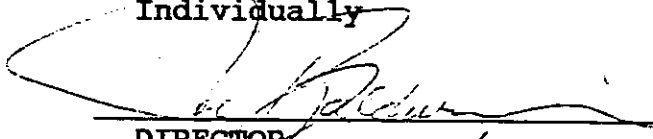
This Agreement is executed by the NRD on this 10th day of March, 1994, pursuant to a resolution duly adopted at a regularly called meeting of the Board of Directors of the NRD held on such day; and, the undersigned Chairperson and Directors of the NRD, by their endorsement, do hereby request a

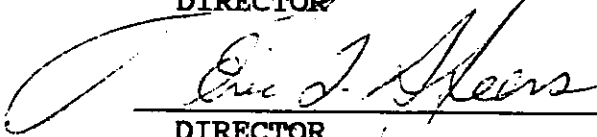
hearing by the COMMISSION on the merger contemplated by this Agreement.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT


By 
CHAIRPERSON, BOARD OF DIRECTORS

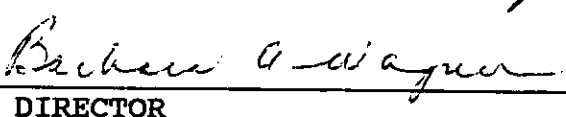

CHAIRPERSON, BOARD OF DIRECTORS,
Individually



DIRECTOR

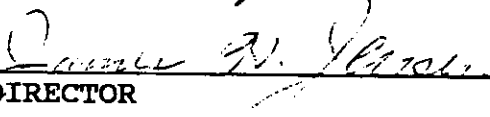

DIRECTOR

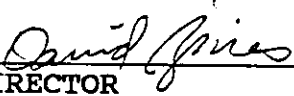

DIRECTOR


DIRECTOR


DIRECTOR


DIRECTOR


DIRECTOR


DIRECTOR



DIRECTOR

Orlando M. Fuchs

DIRECTOR

George W. Donaldson

DIRECTOR

John D. Campbell

DIRECTOR

DIRECTOR