

Memorandum

To: Projects, Programs, and Operations Subcommittee
From: Lori Ann Laster, Stormwater Management Engineer
Date: April 4, 2016
Re: Review and Recommendation on Interlocal Agreement with Village of Arlington for the Arlington Floodplain Buyout Program

The Village of Arlington has requested assistance from the District to begin a Floodplain Buyout Program in the Village. The Bell Creek floodplain affects structures on the eastern edge of the Village of Arlington. Several properties have been repeatedly flooded over the last several years and the owners have indicated interest in a buyout program.

At this time, Flood Mitigation Assistance (FMA) funds are available from FEMA for buyout projects. The FMA program would provide at least 75% of the funds required for purchase of the land and structures, as well as demolition costs. One structure that is being considered for this program is considered by FEMA to be a Severe Repetitive Loss structure, meaning that the structure has had 4 or more separate flood insurance claim payments of more than \$5,000 each or 2 or more separate flood insurance claim payments where the total of the payments exceeds the current value of the property. This property is eligible for 100% federal funding. The other structure meets the requirements of a Repetitive Loss property, meaning that the structure has had 2 or more separate flood insurance claim payments of at least \$1,000 in any 10-year period. If FEMA determines this property meets those requirements, the property may be eligible for 90% federal funding.

The proposed agreement between the District and the Village calls for the District to apply for FMA funds for the purposes of acquisition and demolition of structures. The District will act as the applicant for the purposes of the grant application and will coordinate the necessary actions to complete purchase and demolition. The District and the Village will evenly split the local share of the project costs. The Village will reimburse the District for funds expended during the project and will take ultimate ownership and maintenance of the properties. If the application for FMA funds is not approved by FEMA, the project will not move forward.

The FMA Program is a voluntary program based on a willing seller and willing buyer basis. Eminent Domain cannot be exercised under this program. The total project cost would be approximately \$200,000. Federal funds would cover a minimum of \$150,000, leaving \$50,000 as the local share. Each entity would be responsible for \$25,000.

Management recommends that the General Manager be authorized to execute for and on behalf of the District the Interlocal Agreement with the Village of Arlington and to initiate the application process to obtain federal funding for the Arlington Floodplain Buyout Program, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

NOTES TO USERS

This map is for use in administering the National Flood Insurance Program. It does not necessarily identify all areas subject to flooding...

To obtain more detailed information in areas where Base Flood Elevations (BFEs) and/or floodways have been determined, users are encouraged to consult the Flood Profiles and Floodway Data and/or Summary of Stillwater Elevations tables...

Boundaries of the floodways were computed at cross sections and interpolated between cross sections. The floodways were based on hydraulic considerations with regard to requirements of the National Flood Insurance Program...

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures. Refer to Section 2.4 "Flood Protection Measures" of the Flood Insurance Study report for information on flood control structures for this jurisdiction.

The projection used in the preparation of this map was State Plane Nebraska (Single Zone) FIPS 2600 US feet, Lambert Conformal Conic. The Horizontal datum was NAD 83, GRS1980 spheroid...

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same vertical datum...

NGS Information Services NOAA, NINGS12 National Geodetic Survey SSMC-3, #9202 1315 East-West Highway Silver Spring, Maryland 20910-3282 (301) 713-3242

To obtain current elevation, description, and/or location information for bench marks shown on this map, please contact the Information Services Branch of the National Geodetic Survey at (301) 713-3242, or visit its website at http://www.ngs.noaa.gov/

Base map information was derived from multiple sources. Digital orthophotography shown on this FIRM is provided by Omaha-Council Bluffs Metropolitan Area Planning Agency. These images were originally produced by M.J. Harden and Groupe Alta, in 2007 with 1-foot pixel resolution...

The "profile base lines" depicted on this map represent the hydraulic modeling baselines that match the flood profiles in the FIS report. As a result of improved topographic data, the profile base line, in some cases, may deviate significantly from the channel centerline or appear outside of the SFHA.

Based on updated topographic information, this map reflects more detailed and up-to-date stream channel configurations and floodplain delineations than those shown on the previous FIRM for this jurisdiction...

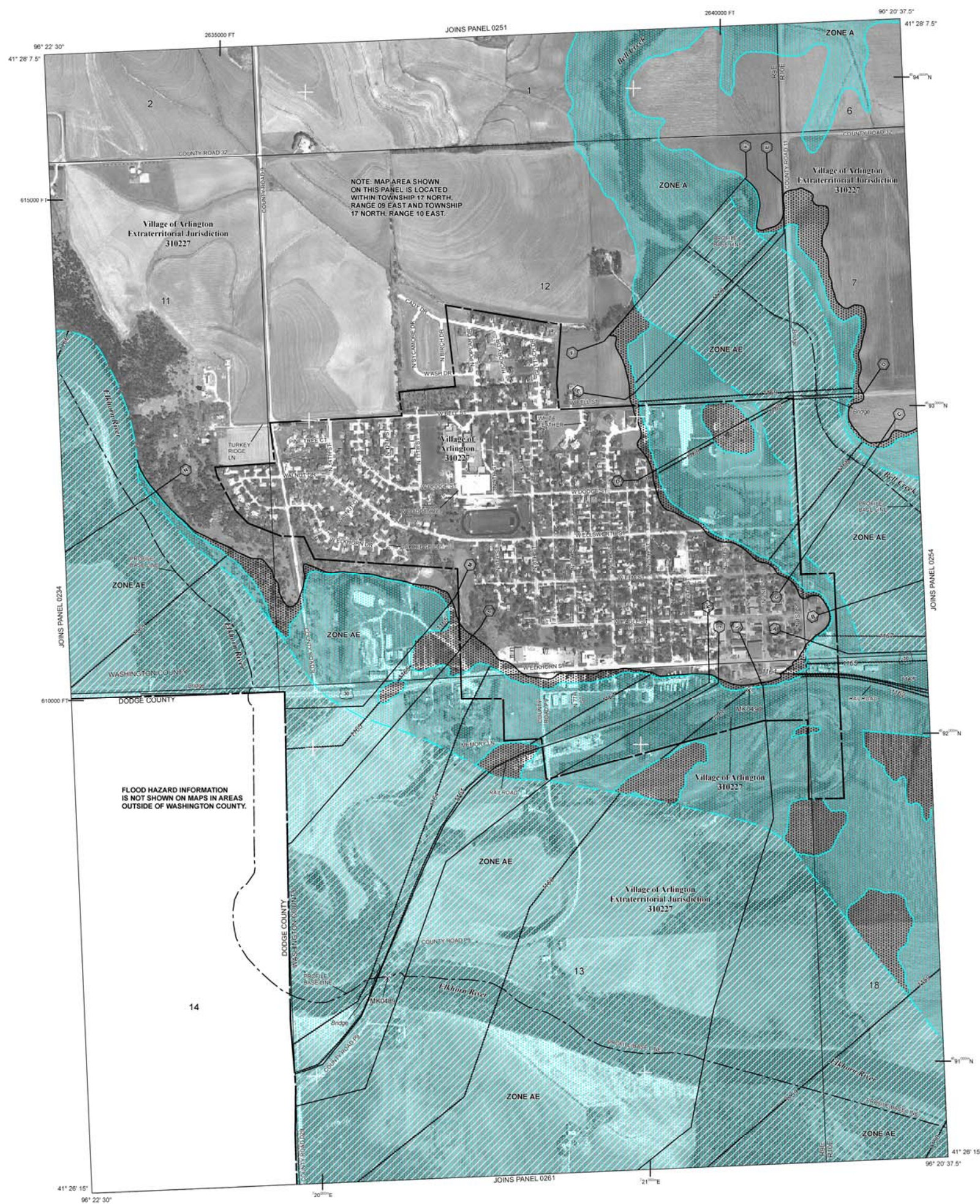
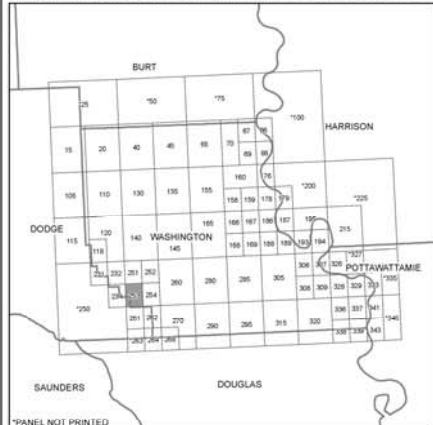
Corporate limits shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

Please refer to the separately printed Map Index for an overview map of the county showing the layout of map panels; community map repository addresses; and a Listing of Communities table containing National Flood Insurance Program dates for each community as well as a listing of the panels on which each community is located.

For information on available products associated with this FIRM visit the Map Service Center (MSC) website at http://msc.fema.gov. Available products may include previously issued Letters of Map Change, a Flood Insurance Study Report, and/or digital versions of this map...

If you have questions about this map, how to order products, or the National Flood Insurance Program in general, please call the FEMA Map Information eXchange (FMIX) at 1-877-FEMA-MAP (1-877-336-2627) or visit the FEMA website at http://www.fema.gov/business/mfiip.

WASHINGTON COUNTY, NE FIRM PANEL LOCATOR DIAGRAM



LEGEND: SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD. Includes definitions for zones A, AE, AR, V, VE, floodway areas, and other flood areas. Also includes a scale bar and map repository information.

NATIONAL FLOOD INSURANCE PROGRAM PANEL 0253D FIRM FLOOD INSURANCE RATE MAP WASHINGTON COUNTY, NEBRASKA AND INCORPORATED AREAS PANEL 253 OF 345. Includes map number 31177C0253D and effective date January 6, 2012.

INTERLOCAL COOPERATION ACT AGREEMENT

**THE VILLAGE OF ARLINGTON, NEBRASKA
AND
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

ARLINGTON FLOODPLAIN BUYOUT PROGRAM

This Agreement (hereinafter “**AGREEMENT**”) is made by and among **THE VILLAGE OF ARLINGTON, NEBRASKA** (hereinafter the “**VILLAGE**”) and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter the “**DISTRICT**”), pursuant to the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 through 13-827.

R E C I T A L S:

WHEREAS, private dwellings and other structures now exist in the designated floodplain adjacent to the Bell Creek in the corporate limits of the **VILLAGE** (hereinafter “**PROGRAM FLOODPLAIN**”); and,

WHEREAS, the Parties desire to establish an **ARLINGTON FLOODPLAIN BUYOUT PROGRAM** (hereinafter “**PROGRAM**”), for the purposes of purchasing, dwellings and other privately-owned structures on land within the **PROGRAM FLOODPLAIN** and removing the same from the **PROGRAM FLOODPLAIN**, in order

to prevent or reduce recurring flood damages, repetitive claims for disaster assistance or flood insurance benefits, and repetitive public outlays for emergency rescues, utility restorations, and other public services; and, the Parties desire to convert such lands to uses which are non-insurable under the National Flood Insurance Act, as amended; and,

WHEREAS, a cooperative federal and state grant program is available to assist the Parties in carrying out the PROGRAM, such program is commonly referred to as the Flood Mitigation Assistance Program, and is jointly administered by the Federal Emergency Management Agency (“FEMA”) and the Nebraska Department of Natural Resources (“DNR”).

Now therefore, for and in consideration of the foregoing recitals and the mutual covenants of the Parties hereinafter expressed, the Parties agree as follows:

1. PURPOSE. The purpose of this Agreement is to provide for cooperative undertakings by and among the VILLAGE and the DISTRICT, without any separate entity being created. The duties and responsibilities of the Parties shall be as defined by this Agreement.

2. THE PROGRAM. The Parties hereby establish the PROGRAM, pursuant to which interests necessary to remove private dwellings and other structures now existing in the PROGRAM FLOODPLAIN will be purchased through voluntary transactions. Following the necessary acquisition, said dwellings and other structures will be removed from the PROGRAM FLOODPLAIN. Thereafter, the land now occupied by said dwellings and other structures will be converted to uses as permitted under the Flood Mitigation Assistance.

3. RESPONSIBILITIES OF THE DISTRICT. The DISTRICT shall be responsible for administering the PROGRAM, and shall have the following responsibilities and duties:

(a) The DISTRICT shall prepare, execute and file with FEMA and/or DNR, a proposals and grant application, and documents related thereto, as the DISTRICT, in its sole discretion, determines necessary for purposes of the PROGRAM;

(b) If the Parties are awarded a grant, the DISTRICT shall acquire, through transactions entered into voluntarily by the property owner and/or interest holder, such real estate and interests therein, including but not limited to leaseholds, as the DISTRICT determines necessary or convenient to remove the dwellings and other structures now located in the PROGRAM FLOODPLAIN;

(c) If the Parties are awarded a grant, the DISTRICT shall employ and compensate such appraisers, negotiators, title searchers, title insurers, surveyors, engineers, attorneys, demolition contractors and other persons, firms and corporations the DISTRICT, in its sole discretion, determines necessary for the PROGRAM pursuant to this AGREEMENT; and,

(d) If the Parties are awarded a grant, the DISTRICT shall execute on its own behalf such contracts, applications, and other documents as the DISTRICT determines necessary for the PROGRAM pursuant to THIS AGREEMENT.

4. RESPONSIBILITIES OF THE VILLAGE. The VILLAGE shall assist the DISTRICT in administering the PROGRAM, and shall have the following responsibilities:

(a) The VILLAGE shall assist the DISTRICT in the preparation, execution, and filing with FEMA and DNR such grant application, and documents related thereto, as the DISTRICT determines necessary for purposes of the PROGRAM.

(b) If the Parties are awarded a grant, the VILLAGE shall cause any and all proceeds of such grant to be delivered to the DISTRICT, or as the DISTRICT may direct, for the DISTRICT'S use as it determines is necessary and convenient for the purposes of the PROGRAM; and,

(c) If the Parties are awarded a grant, the VILLAGE shall reimburse the DISTRICT in the amount of one-half (1/2) of all expenditures made by the DISTRICT in administering the PROGRAM, other than expenditures which are reimbursed by the federal or state grant program (such unreimbursed expenditures hereinafter being referred to as the "**NON-RECOVERABLE EXPENSES**"); provided, however, the VILLAGE shall not be required to reimburse the DISTRICT more than TWENTY-FIVE THOUSAND DOLLARS (\$25,000), for such NON-RECOVERABLE EXPENSES; and, provided, further, the DISTRICT shall not be required to incur NON-RECOVERABLE EXPENSES that require the DISTRICT to expend, without assurance of proportionate reimbursement by the VILLAGE, more than TWENTY-FIVE THOUSAND DOLLARS (\$25,000) of its own funds.

(c) To provide for the VILLAGE'S reimbursement to the DISTRICT of such NON-RECOVERABLE EXPENSES, the Parties shall follow the following procedure:

(1) From time to time, but not more often than quarterly, after actual monetary outlays are made by the DISTRICT for land acquisition and other expenses of administering and/or in connection with the PROGRAM, the DISTRICT shall transmit to the VILLAGE written notifications of the amounts of such outlays. In each such written notification and with respect to each such outlay, the DISTRICT shall state the identity of the payee to whom such outlay was paid, the purpose for such outlay, the date of such outlay, and whether such outlay is a NON-RECOVERABLE EXPENSE.

(2) Within 45 days after receipt by the VILLAGE of such a written notification, the VILLAGE shall reimburse the DISTRICT in the amount of one-half (1/2) of the DISTRICT'S NON-RECOVERABLE EXPENSES described in such written notification.

(d) Upon request from the DISTRICT, the VILLAGE shall provide, without delay, any and all necessary assistance to the DISTRICT to maintain compliance with all applicable rules, regulations and/or requirements of any the grant obtained for the PROGRAM.

5. LAND ACQUISITION. All lands, easements and rights-of-way necessary to be acquired for purposes of the PROGRAM, as determined by the DISTRICT, shall be acquired by the DISTRICT, which shall take title in the name of

the DISTRICT. The VILLAGE, on request of the DISTRICT, shall donate to the DISTRICT such temporary and permanent easements, licenses, and rights-of-way over VILLAGE-owned property and/or right-of-way within the PROGRAM FLOODPLAIN as the DISTRICT determines necessary for the PROGRAM.

6. MAINTENANCE OF ACQUIRED LANDS. Following removal of any and all dwellings and other structures from properties acquired under this PROGRAM and at such time as the DISTRICT deems appropriate, the DISTRICT shall convey to the VILLAGE title to the remaining real property by a deed containing restrictions and conditions substantially similar to those contained in Exhibit A, attached hereto and incorporated herein (the “DEED”). Thereafter, the VILLAGE shall be responsible, at its sole cost and expense, to maintain the real property pursuant to the rules and regulations, as may be amended from time to time, of FEMA’s Flood Mitigation Assistance Program and the restrictions and conditions contained in the DEED. After conveyance of the real property to the VILLAGE, the DISTRICT shall not bear any liability for any costs associated with the real property. In the event the conveyance from the DISTRICT to the VILLAGE of the real property acquired under the PROGRAM requires approval from FEMA and/or DNR, the VILLAGE shall fully cooperate with the DISTRICT to obtain said approval. The VILLAGE shall indemnify and hold the DISTRICT harmless for any and all claims, costs, and liabilities related to the PROGRAM arising after conveyance of the real property to the VILLAGE.

7. **DURATION AND EFFECTIVE DATE.** This AGREEMENT shall be effective upon the execution by both of the Parties, and shall have permanent duration unless voided pursuant to ¶ 8 below.

8. **FEMA FUNDING APPROVAL.** In the event FEMA and/or the Nebraska Department of Natural Resources does not approve a grant committing FEMA to pay at least seventy five percent (75%) of the sums expended under this PROGRAM by December 31, 2017, this AGREEMENT and each Parties rights and obligations herein shall become null and void, and the Parties shall bear their own costs and expenses.

9. **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, and 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.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF the Parties have executed this AGREEMENT on the dates hereinafter indicated pursuant to authorizing resolutions duly adopted at regularly-convened public meetings of their governing bodies.

Executed by the VILLAGE this ____ day of _____, 2016.

THE VILLAGE OF OMAHA, NEBRASKA

By _____
MAYOR

Attest:

VILLAGE Clerk

[ADDITIONAL SIGNATURE PAGE FOLLOWS]

Executed by the DISTRICT this _____ day of _____, 2016.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By _____
GENERAL MANAGER

In reference to the property or properties ("Property") conveyed by the Deed between _____ ("the Grantor") participating in the federally-assisted acquisition project and the _____, ("the Grantee"), its successors and assigns:

WHEREAS, The Robert T. Stafford Disaster Relief and Emergency Assistance Act, ("The Stafford Act"), 42 U.S.C. § 5121 et seq., identifies the use of disaster relief funds under § 5170c, Flood Mitigation Assistance Program ("FMAP"), including the acquisition and relocation of structures in the floodplain;

WHEREAS, the mitigation grant program provides a process for a local government, through the State, to apply for federal funds for mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

Whereas, the State of Nebraska has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency ("FEMA") and has entered into a mitigation grant program Grant Agreement dated _____ with FEMA and herein incorporated by reference; making it a mitigation grant program grantee.

Whereas, the Property is located in _____ County, Nebraska, and _____ County, Nebraska participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of the Deed;

Whereas, the Papio-Missouri River Natural Resources District, acting by and through the Papio-Missouri River Natural Resources District Board, has applied for and been awarded federal funds pursuant to an agreement with the State of Nebraska dated _____ ("State-Local Agreement"), and herein incorporated by reference, making it a mitigation grant program subgrantee;

WHEREAS, the terms of the mitigation grant program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-local Agreement require that the Grantee agree to conditions that restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

Now, therefore, the grant is made subject to the following terms and conditions:

1. Terms. Pursuant to the terms of the Flood Mitigation Assistance Program statutory authorities, Federal program requirements consistent with 44 C.F.R. Part 80, the Grant Agreement, and the State-local Agreement, the following conditions and restrictions shall apply in perpetuity to the Property described in the attached deed and acquired by the Grantee pursuant to FEMA program requirements concerning the acquisition of property for open space:

- a. Compatible uses. The Property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include: parks

for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses consistent with FEMA guidance for open space acquisition, Flood Mitigation Assistance, Requirements for Property Acquisition and Relocation for Open Space.

b. Structures. No new structures or improvements shall be erected on the Property other than:

- i. A public facility that is open on all sides and functionally related to a designated open space or recreational use;
- ii. A public rest room; or
- iii. A structure that is compatible with open space and conserves the natural function of the floodplain, including the uses described in Paragraph 1.a., above, and approved by the FEMA Administrator in writing before construction of the structure begins.

Any improvements on the Property shall be in accordance with proper floodplain management policies and practices. Structures built on the Property according to paragraph b. of this section shall be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required by FEMA, or if required by any State, Tribal, or local ordinance, and in accordance with criteria established by the FEMA Administrator.

c. Disaster Assistance and Flood Insurance. No Federal entity or source may provide disaster assistance for any purpose with respect to the Property, nor may any application for such assistance be made to any Federal entity or source. The Property is not eligible for coverage under the NFIP for damage to structures on the property occurring after the date of the property settlement, except for pre-existing structures being relocated off the property as a result of the project.

d. Transfer. The Grantee, including successors in interest, shall convey any interest in the Property only if the FEMA Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.

- i. The request by the Grantee, through the State, to the FEMA Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.
- ii. The Grantee may convey a property interest only to a public entity or to a qualified conservation organization. However, the Grantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a), of this section, with the prior approval of the FEMA Regional Administrator, and so long as the conveyance does not include

authority to control and enforce the terms and conditions of this section.

iii. If title to the Property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

a) The Grantee shall convey, in accordance with this paragraph, a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or

b) At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

iv. Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the property interest to revert to the State, Tribe, or local government in the event that the transferee ceases to exist or loses its eligible status under this section.

2. Inspection. FEMA, its representatives and assigns including the State or Tribe shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of this part, the Property conveyance and of the grant award.

3. Monitoring and Reporting. Every three years on April 1, the Grantee (mitigation grant program subgrantee – Papio-Missouri River Natural Resources District), in coordination with any current successor in interest, shall submit through the State to the FEMA Regional Administrator a report certifying that the Grantee has inspected the Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of 44 C.F.R. Part 80, the property conveyance, and the grant award.

4. Enforcement. The Grantee (mitigation grant program subgrantee – Papio-Missouri River Natural Resources District), the State, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the Property back into compliance if the Property is not maintained according to the terms of 44 C.F.R. Part 80, the property conveyance, and the grant award. The relative rights and responsibilities of FEMA, the State, the Grantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:

a. The State will notify the Grantee and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.

i. If the Grantee or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at

law or in equity in a court of competent jurisdiction.

ii. FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

a) Withholding FEMA mitigation awards or assistance from the State or Tribe, and Grantee; and current holder of the property interest.

b) Requiring transfer of title. The Grantee or the current holder of the property interest shall bear the costs of bringing the Property back into compliance with the terms of the grant; or

c) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the State, the Tribe, the local community, and their respective successors.

5. Amendment. This agreement may be amended upon signatures of FEMA, the State, and the Grantee only to the extent that such amendment does not affect the fundamental and statutory purposes underlying the agreement.

6. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of this grant and their application shall not be affected and shall remain valid and enforceable.

Dated as of this _____ day of _____, 20____.