

Agenda Item: 10.

Memo to the Programs, Projects and Operations Subcommittee

Subject: Millard Park SID (Sarpy County #162) Interlocal Agreement

Date: September 5, 2013

From: Gerry Bowen

Millard Park SID (Sarpy County #162) has requested the District enter into an interlocal agreement for the purpose of installing bank stabilization measures on Mission Creek in the subdivision.

In April, 2013, the Board approved cost sharing on this project under the Urban Drainageway Program in the amount of \$358,080 (see attached March 19, 2013 letter from Richard Hanson) subject to funds being included in the FY 14 Budget. Currently, this project funding is not included in the proposed FY 14 budget.

Millard Park SID bid the project and received very favorable bids for construction and has decided to proceed with the project without District funding. However, the SID's bond counsel believes that the SID does not have the authority to carry out such a project and is therefore reluctant to approve the SID warrants for the project. The SID is requesting the District provide the authority for the project through an interlocal agreement (see attached August 26, 2013 letter from SID legal counsel Larry Forman).

The District would not be responsible for any of the costs, nor future operation and maintenance of the project. The draft interlocal agreement is attached for your review. Management recommends approval.

- **It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Interlocal Agreement with Millard Park SID (Sarpy County #162) for Phase III of the Mission Creek Reestablishment Project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

March 19, 2013

Mr. Gerry Bowen  
Papio-Missouri River Natural Resources District  
8901 S 154<sup>th</sup> Street  
Omaha, NE 68138

RE: Mission Creek Channel Reestablishment Phase III  
SID 162 - Millard Park Subdivision, Sarpy County NE  
Urban Drainageway Program Funding

Dear Mr. Bowen:

On behalf of Sanitary & Improvement District 162, Millard Park, we would like to request continued funding through the NRD Urban Drainageway Program for Phase III of the Mission Creek Channel Rehabilitation. The Phase III project corresponds to the Area "A" improvements as outlined in the rehabilitation Master Plan submitted to the NRD in March 2011. An aerial drawing indicating the phases of the project is attached. Phases I and II of the five phase rehabilitation project were funded and constructed as follows:

	Year Constructed	Total Cost	NRD Funding (60%)
Phase I	2009	\$258,123.35	\$154,874.01
Phase II	2011	\$290,630.05	\$168,700.00


Phase III is located on a 350 foot stretch of Mission Creek just southeast of the 167<sup>th</sup> Street and Harrison Street intersection. Preliminary drawings of the proposed improvements are attached as well as a current project cost estimate.

The current total project cost estimate is \$596,800.00 with a requested cost share of \$358,080.00 from the Urban Drainageway Program.

If you have any questions or need additional information, please contact me at 402-891-0607 or SID 162 Engineer Bill Glismann, HGM Associates, at 402-346-7559.

Sincerely,

**MILLARD PARK SID 162**

  
Richard L. Hansen  
Board Chairman

Millard Park SID 162  
c/o Larry Forman  
7171 Mercy Road, Suite 650  
Omaha, NE 68106

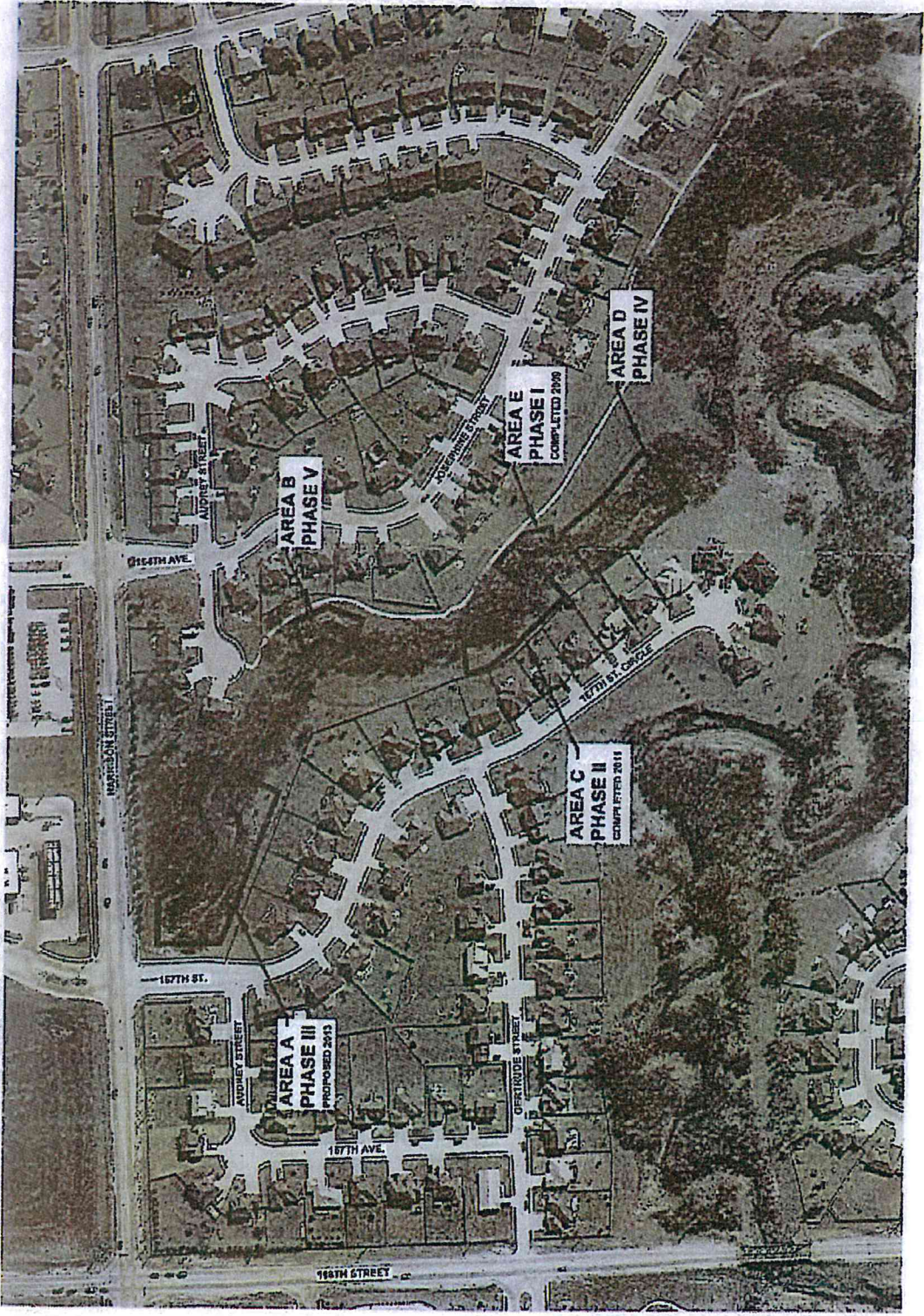
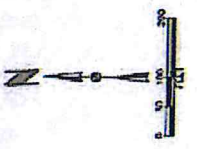
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**hgm**  
 ASSOCIATES INC.  
 ENGINEERING ARCHITECTURE SURVEYING  
 10000 W. 16TH AVENUE  
 SUITE 1000  
 DENVER, CO 80202  
 (303) 751-1000

DATE	DESCRIPTION

**PHASING PLAN**  
 PHASE I SANITARY AND IMPROVEMENT DISTRICT 122  
 PHASE II MOUND PARK REDRESSOR  
 PHASE III MESON CREEK CHANNEL RESTABILIZATION

1  
 703510-100  
 10/1/2010



**PHASING PLAN**  
 SCALE 1"=40'

**MISSION CREEK CHANNEL REESTABLISHMENT PHASE 3  
MILLARD PARK - SID 162  
HGM PROJECT No. 703510-008**

**PRELIMINARY OPINION OF PROBABLE PROJECT COSTS  
March 15, 2013**

ITEM No.	DESCRIPTION	ESTIMATED QUANTITIES	UNIT	UNIT PRICE	TOTAL AMOUNT
1	Mobilization	1	LS	\$10,000.00	\$10,000.00
2	Clearing and Grubbing General	1	LS	\$20,000.00	\$20,000.00
3	Earthwork (Excavation)	2200	CY	\$25.00	\$55,000.00
5	Haul and Place Topsoil	180	CY	\$25.00	\$4,500.00
6	Remove Sidewalk	80	SF	\$7.00	\$560.00
7	Construct 4" Concrete Sidewalk	80	SF	\$11.00	\$880.00
8	Geotextile Fabric	1600	SY	\$9.00	\$14,400.00
9	Gabion Basket	570	CY	\$372.00	\$212,040.00
10	Steel Sheet Piling	920	SF	\$41.00	\$37,720.00
11	Construct Rock Rip Rap Type B	1350	TN	\$56.00	\$75,600.00
12	24" Reinforced Concrete Pipe	24	LF	\$65.00	\$1,560.00
13	Pipe Outlet Structure	1	EA	\$2,800.00	\$2,800.00
14	Rolled Erosion Control Blanket - S150	2200	SY	\$1.60	\$3,520.00
15	Rolled Erosion Control Blanket - C350	1000	SY	\$5.00	\$5,000.00
16	Seeding - Type A	2200	SY	\$1.50	\$3,300.00
17	Seeding - Channel	1000	SY	\$3.00	\$3,000.00
18	Sodding	20	SY	\$20.00	\$400.00
19	Silt Fence	200	LF	\$5.00	\$1,000.00
<b>Subtotal</b>					<b>\$451,280</b>
Contingencies (15%)					\$67,690
<b>Total Construction Cost</b>					<b>\$518,970</b>
Engineering & Construction Mgmt. (15%)					\$77,850
<b>Total Project Cost</b>					<b>\$596,800</b>
P-MR NRD Urban Drainageway Program Funding (60%)					\$358,080

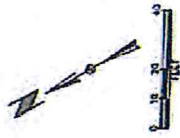
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**hgm**  
 ASSOCIATES INC.  
 ENGINEERING ARCHITECTURE SURVEYING  
 1000 16TH STREET, SUITE 100  
 DENVER, CO 80202  
 PHONE: 303.733.1100  
 FAX: 303.733.1101  
 WWW: HGM-ASSOCIATES.COM

DATE	DESCRIPTION

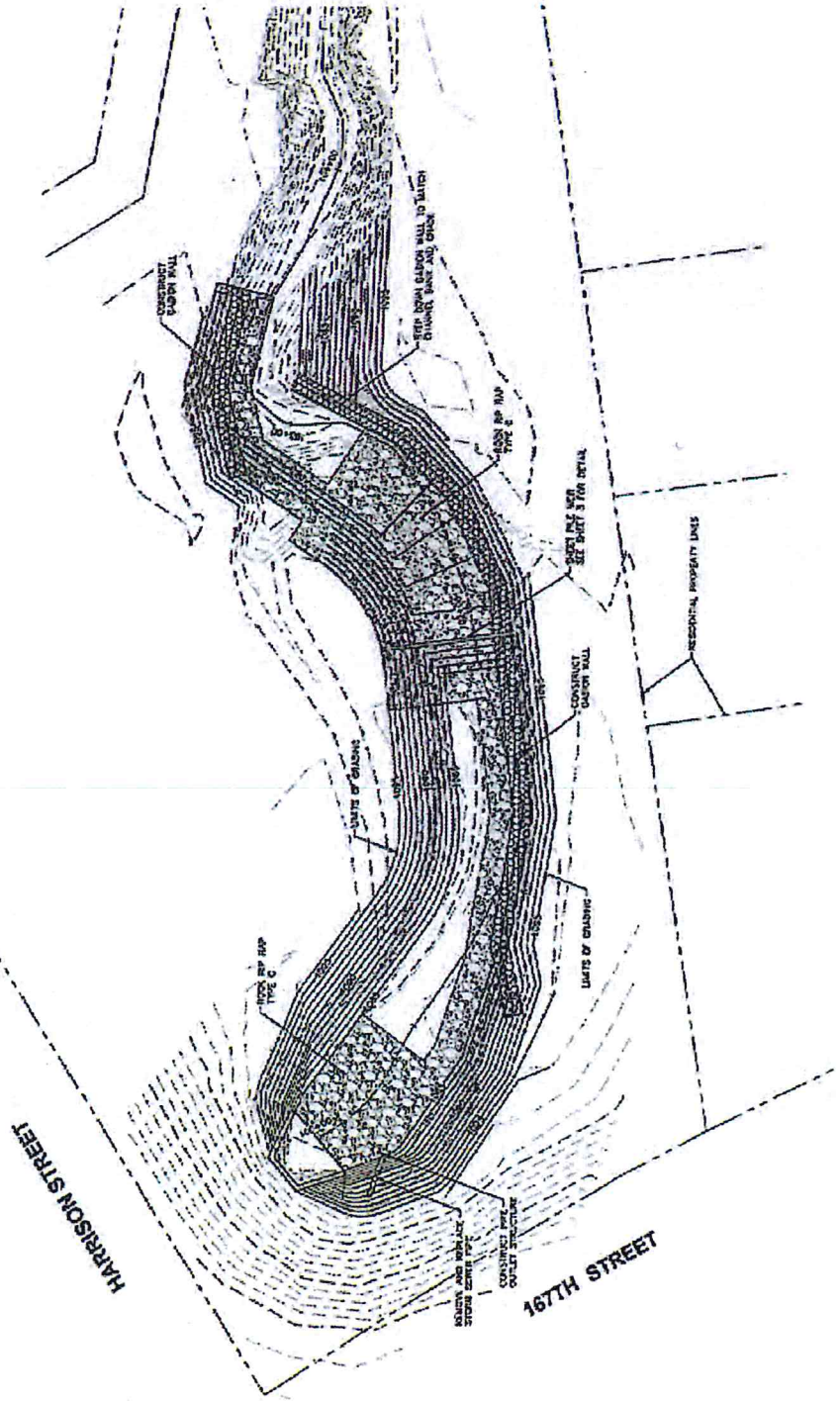
PROJECT: MISSOURI CREEK CHANNEL RESTABILIZATION - PHASE III  
 CLIENT: SALTARY AND IMPROVEMENT DISTRICT 162  
 TITLE: SITE AND GRADING PLAN - AREA A

DATE: 08/15/2011  
 SHEET NO: 2



**LEGEND**

(Symbol)	EXISTING MAJOR CONTOUR
(Symbol)	EXISTING MINOR CONTOUR
(Symbol)	PROPOSED MAJOR CONTOUR
(Symbol)	PROPOSED MINOR CONTOUR
(Symbol)	PROPOSED GRADING LIMITS
(Symbol)	PROPOSED SLOANT WALL
(Symbol)	PROPOSED 2' TOP OF RIP RAP
(Symbol)	PROPOSED 4' TOP OF RIP RAP



**SITE AND GRADING PLAN - AREA A**  
 SCALE: 1" = 10'

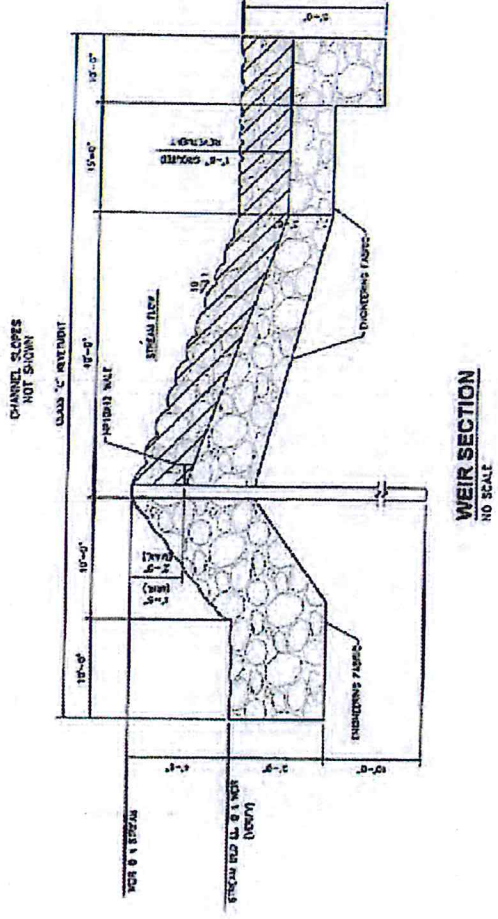
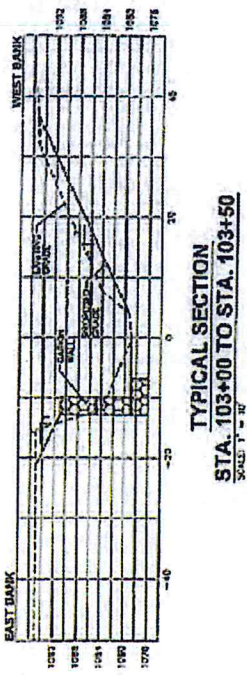
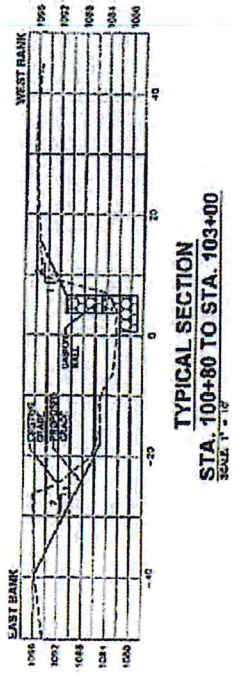
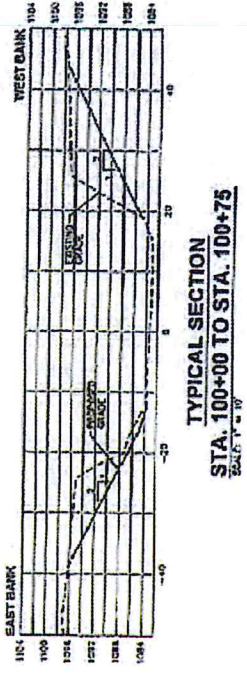
THESE PLANS AND SPECIFICATIONS ARE TO BE USED IN CONNECTION WITH THE CONTRACT DOCUMENTS FOR THE PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR OBTAINING ALL NECESSARY INFORMATION FROM THE LOCAL AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE LOCAL AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE LOCAL AGENCIES.

**hym**  
 ASSOCIATES, INC.  
 ENGINEERS ARCHITECTS SURVEYORS  
 1000 WEST 10TH AVENUE  
 DENVER, COLORADO 80202

DATE: 12/15/03  
 DRAWN BY: JLM  
 CHECKED BY: JLM  
 PROJECT: MISSION CREEK CHANNEL RESTABILMENT - PHASE III  
 SHEET: 3

**CHANNEL IMPROVEMENT DETAILS**  
 SANITARY AND IMPROVEMENT DISTRICT 162  
 RELAY PUMP STATION

PROJECT NO. 702310-003  
 SHEET NO. 3



LAW OFFICES  
HILLMAN, FORMAN,  
CHILDERS & McCORMACK  
7171 Mercy Road • Suite 650  
Omaha, Nebraska 68106-2669  
(402) 397-8051 • Fax: (402) 397-2868  
e-mail: hillmanforman@hfncm.com

EUGENE L. HILLMAN\*  
LARRY R. FORMAN  
EMMETT D. CHILDERS  
PATRICIA McCORMACK  
\*ALSO ADMITTED IN COLORADO

OF COUNSEL  
WILLIAM J. ELDER\*  
JOHN R. McCORMACK  
(1910 - 1999)

August 26, 2013

Mr. Gerry Bowen  
Natural Resources Planner  
Papio-Missouri NRD  
8901 South 154<sup>th</sup> Street  
Omaha, NE 68138-3621

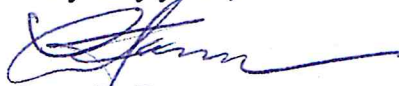
RE: SID 162 of Sarpy County  
Urban Drainageway Program  
Millard Park SID 162 Channel Improvements

Dear Mr. Bowen:

Confirming our conversation of Monday, August 26, SID 162 of Sarpy County wishes to proceed with the above-referenced project even though the NRD has determined it is not in a position to participate in partial funding of this project this year. However, since bond counsel is taking the position that the SID cannot undertake this project entirely on its own authority (see attached email from Jon Blumenthal), I would like to request that the NRD agree to enter into an Interlocal Agreement with SID 162 which would allow the SID to proceed with this project. Under the scenario we have in mind, the NRD would simply agree to be a party to an Interlocal Agreement under an arrangement where all costs in connection with the project would be borne by the SID. According to Mr. Blumenthal, it is permissible for one public agency to agree to pay all costs associated with a project covered by an Interlocal Agreement.

Would you please verify with your people that they would be willing to enter into such an Interlocal Agreement. Assuming that is the case, I will be happy to submit such a document to you for your review immediately.

Very truly yours,

  
Larry R. Forman

LRF:sr  
Encl.  
cc: Board Members  
Rich Harman

AUG 26 2013

**Diane**

**From:** Jon Blumenthal [jblumenthal@bairdholm.com]  
**Sent:** Friday, August 02, 2013 7:44 AM  
**To:** larryforman@hfncm.com  
**Cc:** rharman@ameritas.com; Chuck Addy  
**Subject:** FW: SID #162 of Sarpy County - Mission Creek Channel Reestablishment Phase III  
**Attachments:** Plat.pdf; Resolution of Necessity Mission Creek.pdf; Notice to Contractors - Mission Creek Phase 3.pdf; Bid Tabs.pdf

Larry, Chuck asked me to reply to your email below. We do not feel this project falls within the scope of dikes and levees for flood protection, but rather is bank stabilization (or similar) to redirect water runoff. Accordingly, we do not believe the District, on its own, has the power to undertake this project. The Interlocal Cooperation Act (Neb. Rev. Stat. Sec. 13-801 to 13-827) permits two public agencies to jointly cooperate for such projects, if one political agency otherwise has the power. The NRD has the power to construct a bank stabilization project and otherwise maintain any stream of drainage of surface water. One public agency may agree to pay all of the costs of a project.

Accordingly, we can issue an opinion on the warrants if the District has entered into a satisfactory interlocal agreement with the NRD for this phase of the project. If an interlocal agreement does not presently exist, the District must enter into one with the NRD for this phase for us to be in a position to approve the warrants.

Regards,

Jon

**Jon E. Blumenthal**  
 Baird Holm LLP  
 1700 Farnam Street  
 Suite 1500  
 Omaha, NE 68102-2068  
[www.bairdholm.com](http://www.bairdholm.com)

402.636.8331 Direct Dial Phone  
 402.344.0588 Fax  
[jblumenthal@bairdholm.com](mailto:jblumenthal@bairdholm.com)

**BAIRD HOLM<sup>LLP</sup>**  
 ATTORNEYS AT LAW

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**From:** Larry Forman [mailto:larryforman@hfncm.com]  
**Sent:** Wednesday, July 31, 2013 2:01 PM  
**To:** Chuck Addy  
**Cc:** rharman@ameritas.com



## INTERLOCAL AGREEMENT

THIS AGREEMENT is made and executed on the date or dates hereinafter set forth by and between the Papio-Missouri River Natural Resources District, a municipal corporation and political subdivision of the State of Nebraska (herein "NRD") and SANITARY AND IMPROVEMENT DISTRICT NO. 162 OF SARPY COUNTY, NEBRASKA, a municipal corporation and a political subdivision of the State of Nebraska (herein "District"),

WHEREAS, NRD is a municipal corporation serving persons and property located within portions of eastern Nebraska including but not limited to Douglas and Sarpy Counties, Nebraska; and

WHEREAS, District is a municipal corporation serving persons and property within the Millard Park subdivisions situated southeasterly of 168<sup>th</sup> & Harrison Street in Sarpy County, Nebraska; and

WHEREAS, District desires to construct, at its expense and at no expense to NRD, certain improvements and to perform certain work under the project designated Mission Creek Channel Reestablishment Phase III (the "Project") within the boundaries of District to preserve and protect the waterway depicted on Exhibit "A" attached hereto and the properties abutting thereon in accordance with the plans and specifications pertaining thereto as prepared by HGM Associates, Inc. ("Project Engineers") under Project No. 703510-008; and

WHEREAS, NRD, having authority to deal with projects involving waterways within Douglas and Sarpy Counties of Nebraska, has an interest in the Project; and

WHEREAS, District desires to enter into this Interlocal Agreement with NRD since the power to contract for performance of the work included within the Project is within the scope of purposes and powers possessed by NRD; and

WHEREAS, NRD is willing to participate in this Interlocal Agreement provided District agrees to indemnify, hold harmless and defend NRD from any claims made by the Project Engineers or Contractors regarding the Project,

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the parties hereto and their respective constituents, the parties hereto, pursuant to the Interlocal Cooperation Act, hereby covenant and agree as follows:

1. **Approval of Final Design Work.** The parties hereby approve the final design work for the Project as incorporated in the plans and specifications therefore as prepared by the Project Engineers.

2. **Publication of Notice to Contractors.** The parties acknowledge that the Project Engineers have heretofore prepared such documents as were necessary to permit District to publish a Notice to Contractors for the work included within the Project, a copy of said Notice to Contractors being attached hereto as Exhibit "B".

3. **Adoption of Requisite Resolutions to Permit Award of Contract.** The District covenants that it has heretofore adopted such Resolutions as are necessary for it to proceed with the Project and NRD covenants that it shall adopt such Resolutions as shall be necessary to approve this Interlocal Agreement. The parties agree that they shall comply fully and completely with all conditions precedent to the legal and binding adoption of said Resolutions. Each party shall furnish a certified copy of any Resolution so adopted by it to the other party hereto.

4. **Contract Requirements.** The contract for the Project shall be prepared by the Project Engineers and approved by counsel for the District.

5. **Payments to Contractor.** Payment shall be made to the contractor by the District based upon monthly progress estimates approved by the Project Engineers as to the amount of work satisfactorily completed during the preceding month less retainage customarily required under contracts to which District is a party. The District shall be solely responsible for payments to the contractor for its work in connection with the Project.

6. **Payments to Project Engineers.** The District shall be solely responsible for payments to the Project Engineers for their services in connection with the Project.

7. **Future Operation and Maintenance Costs.** The District shall be solely responsible for payment of future operation and maintenance expenses in connection with the Project.

8. **Administrator.** The project Administrator under this Interlocal Agreement shall be Richard Hansen, Chairman of the District.

9. **Conditions Precedent to Binding Agreement.** This Agreement shall be deemed a proposal for an Interlocal Agreement pending the execution of three original copies hereof by the signatories whose names and titles are set forth hereafter, said executions to be accomplished subsequent to adoption of necessary enabling resolutions by the parties, preceded by compliance with all applicable legal requirements including those dealing with advance publications, notices, and other requirements of law, approving this Interlocal Agreement and authorizing its execution by the parties designated by each governing body.

10. **Indemnification.** District hereby covenants to indemnify, hold harmless and defend NRD from any claims made by the Project Engineers or Contractors regarding the Project.

11. **Notice.** Any notices to be given hereunder shall be in writing and shall be hand-delivered or sent by certified mail or overnight courier, said notices being deemed effective on the

date of receipt by the recipient or, in the event of refusal by the recipient to accept delivery, on the date of attempted delivery, to the following persons:

A. To NRD - General Manager, Papio-Missouri River Natural Resources District, 8901 South 154<sup>th</sup> Street, Omaha, Nebraska 68138-3621.

B. To District - Chairman, Sanitary and Improvement District No. 162 of Sarpy County, Nebraska, c/o Larry R. Forman, Esq., Hillman, Forman, Childers & McCormack, 7171 Mercy Road, Suite 650, Omaha, NE 68106.

C. To Administrator - Richard Hansen, 15831 Josephine Street, Omaha, NE 68136-1050.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the dates indicated opposite their respective names at Papillion, Sarpy County, Nebraska.

PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT

ATTEST:

By: \_\_\_\_\_  
John Winkler, General Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

SANITARY AND IMPROVEMENT  
DISTRICT NO. 162 OF SARPY COUNTY,  
NEBRASKA

ATTEST:

By: \_\_\_\_\_  
Richard Hansen, Chairman

Date: \_\_\_\_\_

\_\_\_\_\_  
Nancy Wackerhagen, Clerk