

Agenda Item: 10.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Martin P. Cleveland, Construction Engineer

SUBJECT: Thompson Creek Levee Improvement Project - Interlocal Cooperation Agreement with City of La Vista

DATE: June 30, 2014

The Thompson Creek Levee Improvement Project extends between 66th and 60th Street and south of Harrison Street in La Vista, NE. The current levees were built in 1960-1970 period, prior to the existence of District and the levee maintenance was assumed by the District after its formation in 1975. The levee side slopes are very steep and the levees are being eroded by creek bank erosion. The levees have been deemed "unacceptable" by the Corps of Engineers (USACE) and do not meet current levee safety standards. The District is required to upgrade the levees in order to stay in the USACE Public Law 84-99 cost share program for repair assistance (75%/25%) after flood events. The proposed project consists of relocating levee away from the creek, constructing riverside berms and levees with 3:1 side slopes. In addition, a La Vista sanitary sewer, OPPD electrical transmission line and La Vista recreation facilities at the base of the current levee will have to be relocated northward away from the new left bank (north side) levee. Attached are maps and photos related to the project.

As a result of the impact of the proposed project on the La Vista sports complex and sanitary sewer, it is proposed that an Interlocal Agreement be adopted between the City and the District to facilitate the project related relocation work, real estate (easements) and soil for the project. Enclosed is the proposed Interlocal Agreement.

Major provisions of the Interlocal Agreement are as follows:

- District will design and construct levee improvements at its cost. .
- District will acquire all necessary land rights for the project, with La Vista providing 1.635 acres of permanent easement and 1.337 acres of temporary easement ROW at no cost to the District.
- District to design and relocate La Vista's sanitary sewer at District's expense. Total (engineering and construction) cost is estimated at \$450,000
- La Vista will relocate and reconstruct Sports Complex and maintenance facilities at its own cost.

It is Management's recommendation that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Cooperation Agreement with the City of LaVista, Nebraska for the Thompson Creek Levee Improvement Project, subject to changes deemed necessary by the General Manager and approval as to form by District legal counsel.

INTERLOCAL COOPERATION ACT AGREEMENT
Between
THE CITY OF LAVISTA, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
THOMPSON CREEK LEVEE IMPROVEMENT PROJECT

THIS AGREEMENT (hereinafter "**THIS AGREEMENT**") is made by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** ("the **NRD**") and the **CITY OF LAVISTA, NEBRASKA** in the County of Sarpy, State of Nebraska ("the **CITY**"), pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1997, et seq.)

WHEREAS, the aforesaid parties to THIS AGREEMENT ("the **PARTIES**", each being "a **PARTY**") desire to undertake a project ("the **PROJECT**") (a) to rehabilitate and relocate the Thompson Creek flanking levees that provide flood protection for nearby CITY recreational and other facilities (b) relocate the CITY'S existing sanitary sewer ("the **CITY SEWER**") consisting of approximately 2,000 feet of 27" RCP sewer pipe that is presently laid parallel to immediately north of the levee running along the north side of the Thompson Creek channel; and, (c) relocate existing Omaha Public Power District power lines (at an estimated cost of \$326,000), all in the approximately 2,000 foot reach of Thompson Creek between 60th Street and 66th Street, in the extra-territorial zoning jurisdiction of the CITY ("the **PROJECT REACH**"); and ,

WHEREAS, the CITY desires that the NRD design, engineer and obtain construction of the PROJECT; and,

WHEREAS, the NRD desires to receive cost-sharing assistance from the CITY for a share of the costs of the PROJECT; and,

WHEREAS, the NRD has authority under Neb.Rev.Stat §2-3229 to "develop and execute, through the exercise of powers and authorities granted by law, plans, facilities,

works, and programs relating to * * *, (2) prevention of damages from flood water and sediment, (3) flood prevention and control * * * *,” and the PROJECT is an example of such facilities, works and programs.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants of the PARTIES hereinafter expressed, the PARTIES hereby agree as follows:

1. PROJECT BENEFITS. The PARTIES do hereby find and determine that the PROJECT will be of predominantly general benefit to the CITY and the NRD, with only an incidental special benefit.

2. PROJECT PARTICIPANTS. The PROJECT shall be undertaken without any separate entity being created, and the duties and responsibilities of the PARTIES with respect to the PROJECT shall be as defined by THIS AGREEMENT.

3. CITY SEWER ENGINEERING CONTRACT. The NRD shall enter into a professional services contract with Lamp, Rynearson and Associates (“the **ENGINEERS**”), in the form determined by the NRD and approved by the CITY (“the **ENGINEERING CONTRACT**”), pursuant to which the ENGINEERS shall undertake engineering services for relocation of the CITY SEWER, such tasks including, without limitation, the preparation and administration of bidding documents and performance of construction services. The provisions of the ENGINEERING CONTRACT also shall include, but shall not be limited to, covenants and conditions calling for the ENGINEERS to submit to the CITY, for its written approval and concurrence, copies of all change orders and other deliverables that the ENGINEERING CONTRACT provides for submission by the ENGINEERS to the NRD. The ENGINEERING CONTRACT shall provide that the CITY shall be named as an additional insured in any insurance provided to the NRD by the ENGINEERS in accordance with the ENGINEERING CONTRACT.

4. CITY SEWER PLAN APPROVALS. Prior to commencing relocation of the CITY SEWER, the NRD shall submit to the CITY and obtain its approval of the plans, bid documents, construction contract and implementation schedules, all for relocation of the CITY SEWER, such approvals to not be unreasonably withheld or delayed.

5. **CITY SEWER TECHNICAL ASSISTANCE.** The CITY shall provide technical assistance to the NRD within the limits of its expertise and shall provide representatives at all necessary meetings regarding relocation of the CITY SEWER, as requested by the NRD.

6. **RIGHTS-OF-WAY.** Lands, easements and rights-of-way that the ENGINEERS and the NRD determine are necessary for construction, operation, maintenance, repair, replacement, management and regulation of the PROJECT (collectively, “the **PROJECT RIGHTS-OF-WAY**”) shall be secured for the PROJECT by the respective PARTIES as follows, to-wit:

a) **Tract 1:** The NRD, at its sole cost and expense, shall obtain such temporary and permanent easements as the ENGINEER and the NRD determine necessary for levee and channel construction, reconstruction, operation and maintenance, in, on, under, over and across the respective parcels of land in the NW ¼ of the SE ¼ and Tax Lot 7 of Sec. 13, Twp14N, R12E Sarpy County, Nebraska that are depicted and hereinafter referred to collectively as “Tract 1” in the aerial photo overlay attached hereto as Exhibit “A” and incorporated herein by reference.

b) **Existing ROW:** The NRD, at its sole cost and expense, shall obtain assignments from the County of Sarpy, Nebraska of such County’s existing levee and channel rights-of-way in Tax Lot 4 in Sec. 13, Twp 14 N, R12E Sarpy County, Nebraska, in the PROJECT REACH and rights-of-way extending east to the confluence with the Big Papillion Creek, that are presently occupied by the channel of Thompson Creek, its levees and the CITY SEWER, as depicted in Exhibit “A”; and, the NRD at its sole cost shall obtain such other and further temporary and permanent easements in said existing right-of-way as the ENGINEER and the NRD determine necessary for levee and channel construction, reconstruction, operation and maintenance, in, on, under, over and across such parcels of land.

c) **Tract 3:** The NRD, at its sole cost and expense, shall obtain fee simple rights of way for the NRD’S levee construction, operation and maintenance of the PROJECT, in, on, under, over and across the parcel of land in Tax Lot 14B in

the NE ¼ of Sec. 13, Twp 14 N, R12E Sarpy County, Nebraska that is depicted and hereinafter referred to as “Tract 3” in Exhibit “A”.

d) **Tracts 4-5:** The CITY shall grant to the NRD temporary and permanent easements for the NRD’S levee construction, operation and maintenance, and for relocation of the CITY SEWER, in, on, under, over and across those parcels of land presently owned by the CITY in Tax Lot 14A, Sec. 13, Twp 14 N, R12E Sarpy County, Nebraska, that are depicted and hereinafter referred to as “Tract 4” and “Tract 5” in Exhibit “A”.

e) **Tract 6:** The NRD, at its sole cost and expense, shall obtain temporary easements for the NRD’S levee, channel and CITY SEWER reconstruction, and permanent easements for levee, channel and CITY SEWER operation and maintenance, in, on, under, over and across the parcels of land in Tax Lots 14C and 16 in the NE ¼ of Sec. 13, Twp 14 N, R12E Sarpy County, Nebraska, that are depicted and hereinafter referred to collectively as “Tract 6” in Exhibit “A”.

7. **PERMITS.** All necessary local, state and federal permits, which the ENGINEERS or the NRD determine are necessary for reconstruction of the PROJECT, or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT, shall be obtained at the sole cost and expense of the NRD, which shall hold the same; provided, however, all necessary local, state and federal permits, which the ENGINEERS or the CITY determine are necessary for reconstruction, operation, maintenance, repair, replacement, management and regulation of the CITY SEWER, shall be obtained at the sole cost and expense of the CITY, which shall hold the same.

8. **UTILITY AND ROAD RELOCATIONS.** The NRD, at its sole cost and expense, shall be responsible for the costs of relocating the existing OPPD power lines serving the CITY’S maintenance yard, and the costs of relocating other utilities that are determined to interfere with construction of the PROJECT, or with the operation, maintenance, repair, replacement, management or regulation of the PROJECT. As part of the PROJECT the NRD, at its sole cost and expense, also will construct a road on the

north bank relocated levee, from 66th Street east to the City maintenance yard in “Tract 5”.

9. **CITY SEWER CONSTRUCTION CONTRACT.** The NRD shall solicit competitive sealed bids for construction of the CITY SEWER pursuant to contract documents submitted to and approved in writing by the CITY (“the **CONSTRUCTION CONTRACT**”). The provisions of the **CONSTRUCTION CONTRACT** shall include, but shall not be limited to, covenants and conditions providing that the CITY shall be named as an additional insured in all insurance provided by the CONTRACTOR.

10. **EMBANKMENT FILL.** The CITY, at its sole cost and expense, at the request of the NRD will provide up to 20,000 cubic yards of clean embankment fill for the PROJECT, delivered to the PROJECT site, with the remaining fill needed for the PROJECT to be obtained by the NRD at its own cost from the low-flow berm of the Big Papio channel located near the PROJECT.

11. **CITY SEWER COMPETITIVE BIDS.** Within a reasonable time after the NRD’S receipt and opening of sealed bids for construction of the CITY SEWER, the NRD shall deliver a summary thereof to the CITY, together with the identification by the NRD of the bidder who or which the NRD determines is the lowest responsible bidder. In the absence of good cause to the contrary being shown to the NRD by the CITY, the NRD shall award to such bidder the contract to construct the CITY SEWER portions of the PROJECT. The NRD, through the CONTRACTOR, shall construct the CITY SEWER portions of the PROJECT in accordance with the CITY-approved plans and specifications.

12. **OPERATION AND MAINTENANCE OF THE PROJECT.** After the completion and acceptance of the CITY SEWER from the CONTRACTOR and NRD completion of the PROJECT and other PROJECT tasks provided for herein, (a) the NRD, at its sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the channel and levee features of the PROJECT during their useful lives, in such manner and at such time(s) as the NRD determines necessary, and in accordance with applicable and generally-accepted engineering practices, FEMA regulations and requirements for continuation of flood insurance; and, any applicable USACE requirements necessary to preserve the eligibility of PROJECT for benefits

under the Public Law 84-99 maintenance program; and (b) the CITY, at its sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the CITY SEWER features of the PROJECT during their useful lives, in such manner and at such time(s) as the CITY determines necessary, and in accordance with applicable and generally-accepted engineering practices, FEMA regulations and requirements for continuation of flood insurance, and any applicable USACE requirements necessary to preserve the eligibility of the PROJECT for benefits under the Public Law 84-99 maintenance program.

13. RISK OF LOSS. The NRD shall have the insurable interest in, and shall bear the sole risk of casualty loss of or damage to the channel, levee and road features of the PROJECT, whether such loss or damage results from flood or other casualty whatsoever. The CITY shall have the insurable interest in, and shall bear the sole risk of casualty loss of or damage to the CITY SEWER features and components of the PROJECT, whether such loss or damage results from flood or other casualty whatsoever.

14. INDEMNIFICATION BY THE NRD. Except as otherwise provided herein, the NRD shall defend and indemnify the CITY and hold the CITY harmless (1) from and against any and all PROJECT costs exceeding the CITY CONTRIBUTION under THIS AGREEMENT; (2) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of or caused by the negligence of the NRD, its employees, officers, agents or the ENGINEER or CONTRACTOR, in the design, construction, operation, maintenance, repair, replacement and regulation of the levee and channel features of the PROJECT, other than as may be caused by the comparative negligence of the CITY; and, (3) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising from the introduction or presence in or on any PROJECT RIGHTS-OF-WAY obtained by the NRD of any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to

protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any PROJECT RIGHTS-OF-WAY obtained by the NRD, and also including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination on the PROJECT RIGHTS-OF-WAY, but excepting costs and expenses relating to any such substances or materials introduced solely by the CITY or its employees, officers, contractors or agents.

15. INDEMNIFICATION BY THE CITY. Except as otherwise provided herein, the CITY shall defend and indemnify the NRD and hold the NRD harmless (1) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of or caused by the negligence of the CITY, its employees, officers, agents in the maintenance, repair, replacement and regulation of the CITY SEWER, other than as may be caused by the comparative negligence of the NRD; and, (2) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising from the introduction or presence in or on any PROJECT RIGHTS-OF-WAY obtained by the CITY of any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any PROJECT RIGHTS-OF-WAY obtained by the CITY, and also including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination on the PROJECT RIGHTS-OF-WAY, but excepting costs and expenses relating to any such substances or materials introduced solely by the NRD or its employees, officers, contractors or agents.

16. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall be in force and effect upon and after its execution by both PARTIES, and shall have permanent duration.

17. NON-DISCRIMINATION. The PARTIES shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination by any contractors in violation of federal or state laws or local ordinances because of race, disability, color, sex, age, political or religious opinions, affiliations or national origin.

18. APPROVALS. Approvals by the CITY and other CITY actions, contemplated or called for by THIS AGREEMENT are hereby authorized to be provided by the Mayor of the CITY. Approvals by the NRD and other NRD actions contemplated by or called for by THIS AGREEMENT are hereby authorized to be provided by the General Manager or Assistant General Manager of the NRD.

19. ENTIRE AGREEMENT. THIS AGREEMENT contains the entire agreement between the PARTIES, and each of the PARTIES hereto agrees that neither the other PARTY, nor any of the officers, agents, employees or contractors of the other PARTY, have made any representations or promises with respect to the PROJECT not expressly contained herein.

20. TIME. Time is of the essence of THIS AGREEMENT.

21. DEFAULT. If either of the PARTIES shall default hereunder, the other PARTY shall be entitled to enforce specific performance of THIS AGREEMENT or may have any other remedy allowed by law or equity.

22. NOTICES. All notices herein required shall be in writing and shall be served on the PARTIES at their principal offices, or at such other address as either PARTY may hereafter designate to the other PARTY in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service hereunder.

23. BINDING EFFECT. The provisions of THIS AGREEMENT shall inure to the benefit of, and shall be binding upon, the successors and assigns of the respective PARTIES.

24. APPLICABLE LAW. Each of the PARTIES to THIS AGREEMENT shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance and terms of THIS AGREEMENT.

25. 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, 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.

26. CAPTIONS. Captions used in THIS AGREEMENT are for convenience and not for use in the construction of THIS AGREEMENT.

IN WITNESS WHEREOF, the PARTIES have executed THIS AGREEMENT, on the respective dates hereinafter indicated, pursuant to authorizing resolutions duly adopted at regularly-called meetings of their governing bodies.

The CITY executed THIS AGREEMENT on _____, 20 ____.

THE CITY OF LAVISTA

By _____
_____, Mayor

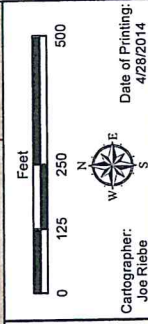
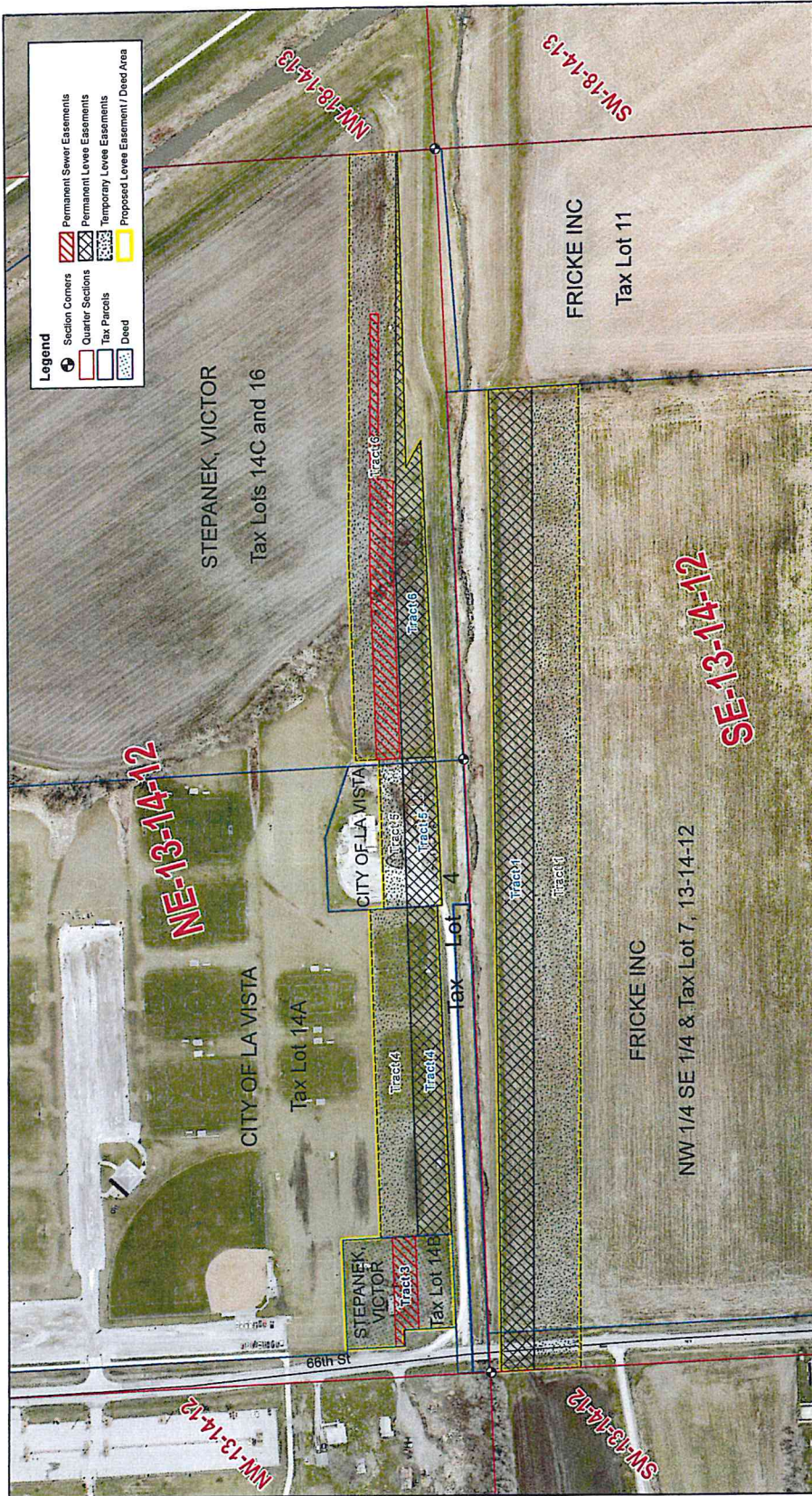
Attest:

City Clerk

The NRD executed THIS AGREEMENT on _____, 20 ____.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
JOHN WINKLER, General Manager



THOMPSON CREEK LEVEE IMPROVEMENT PROJECT
 Section 13, Township 14 North, Range 12 East
OVERALL TRACT MAP

**PAPIO-MISSOURI RIVER
 NATURAL
 RESOURCES
 DISTRICT**

 8001 S. 154th Street
 Omaha, NE 68144-6222
www.papio.org

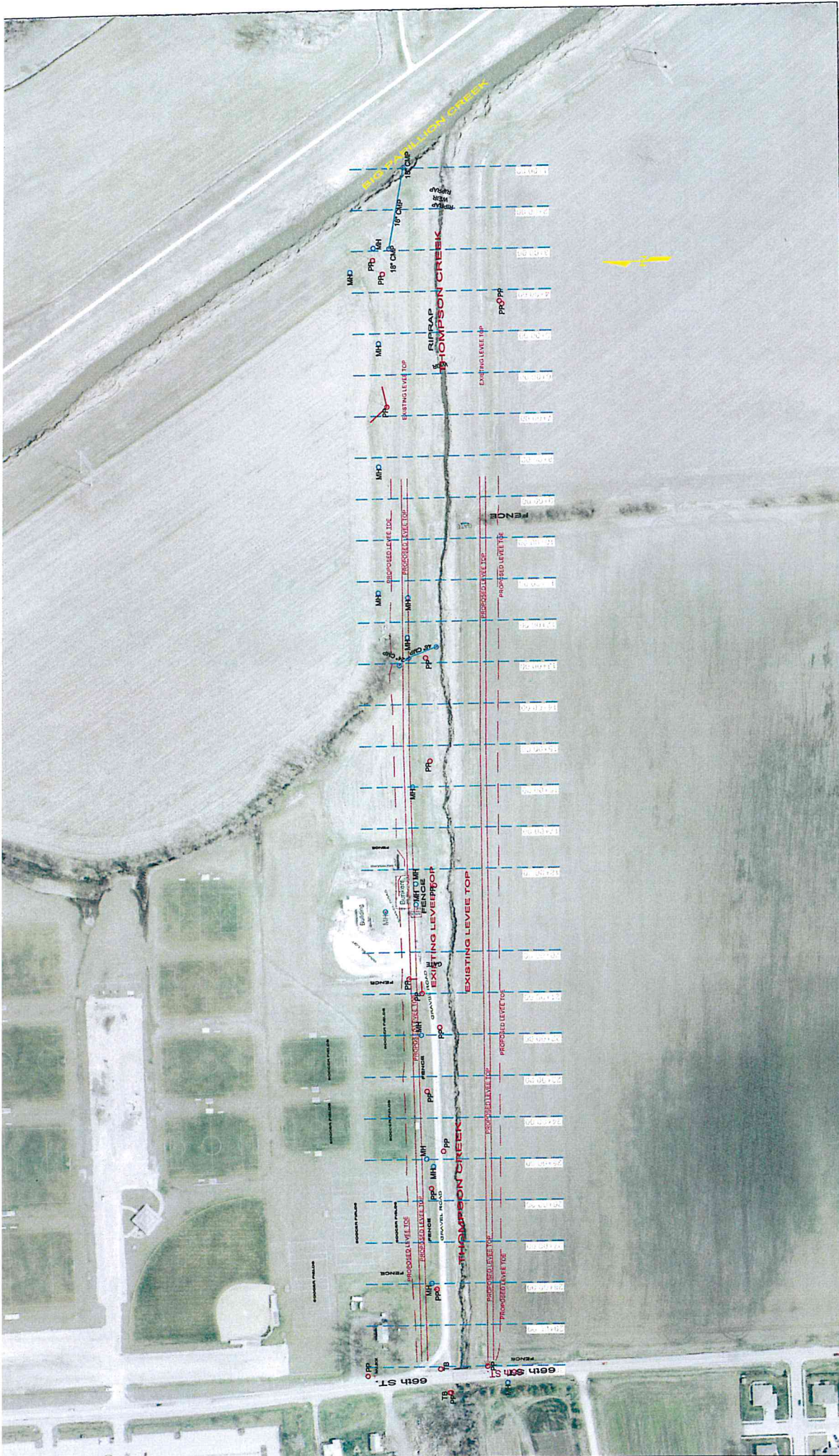


Drawn by:
DATE: 2/2/2014
DRAWN BY: JRM
SCALE: NO SCALE
SHEET: 1 of 11

THOMPSON CREEK
LEVEE IMPROVEMENT PROJECT
PLAN MAP

PAPIO-MISSOURI RIVER NATURAL
RESOURCES
DISTRICT
www.papioinc.org

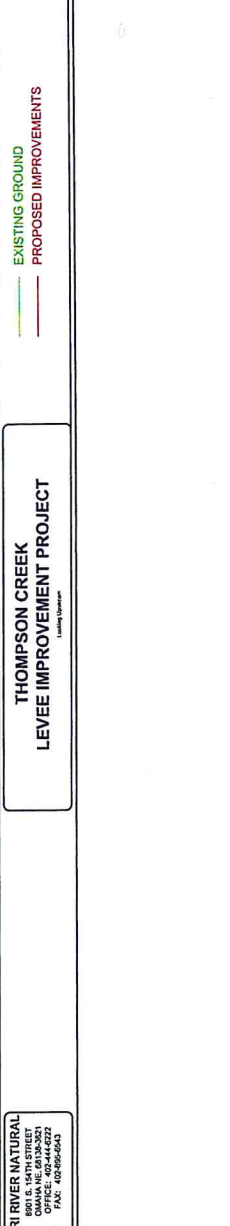
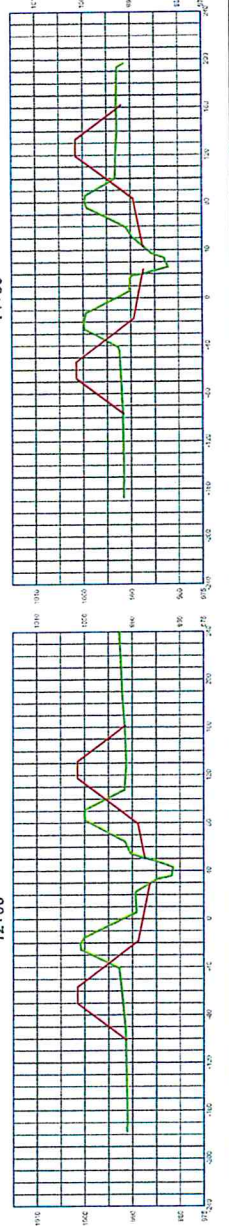
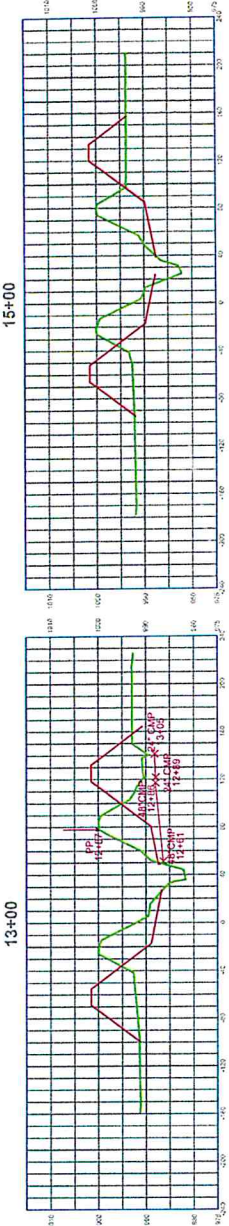
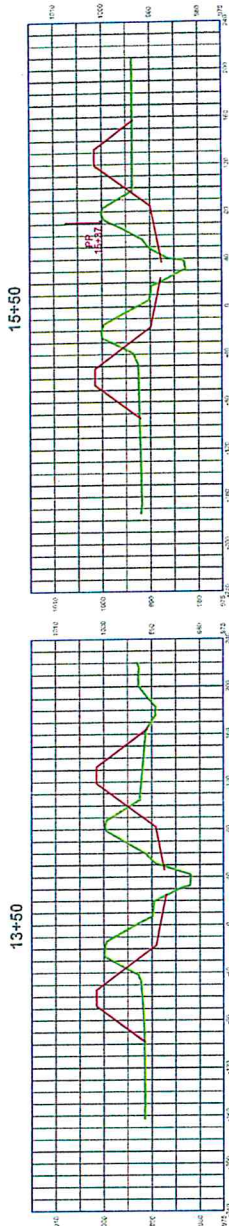
8001 S. 154TH STREET
OMAHA, NE 68138-3521
OFFICE: 402-444-8222
FAX: 402-995-5543



PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
 8801 S. 154TH STREET
 OMAHA NE 68138-3621
 OFFICE: 402-444-6222
 FAX: 402-295-6543
www.papioand.org

**THOMPSON CREEK
 LEVEE IMPROVEMENT PROJECT
 PLAN MAP**

DATE: 01/11/2011
 DRAWN BY: JIM
 SCALE: 1"=50' SCALE
 SHEET: 1 OF 11



13+50

13+00

12+50

12+00

14+00

14+50

DATE	10/10/11
BY	JDH
CHECKED BY	JDH
SCALE	AS SHOWN
SHEET	1 OF 11

EXISTING GROUND
PROPOSED IMPROVEMENTS

THOMPSON CREEK LEVEE IMPROVEMENT PROJECT



PAPIO-MISSOURI RIVER NATURAL
RESOURCES
DISTRICT
www.papiond.org
8001 S. 154TH STREET
OMAHA, NE 68134
OFFICE: 402-444-6222
FAX: 402-556-5543