

Agenda Item: 10.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Martin P. Cleveland

SUBJECT: Western Sarpy/Clear Creek Flood Reduction Project--
Amendment to Interlocal Agreement with Sarpy County

DATE: June 6, 2012

The Western Sarpy/Clear Creek Flood Reduction Project is located in eastern Saunders County and western Sarpy County, west of Gretna, Nebraska. The 50 year level flood reduction project, consisting of levees and floodwalls is being designed and constructed by the US Army Corps of Engineers and land rights are provided by Lower Platte North NRD and Papio-Missouri River NRD.

The Corps of Engineers is funding 65% of the project cost and the non-federal partners (Lower Platte North NRD, Lower Platte South NRD and Papio-Missouri River NRD) are providing 35% of the project cost. The non-federal cost share has been split as follows: Nebraska Department of Natural Resources (NDNR) 60%; Lower Platte North NRD 14%, Lower Platte South NRD 6%, Papio-Missouri River NRD 20%. Sarpy County has agreed via an Interlocal agreement to provide 25% reimbursement of Papio-Missouri River NRD expenses, so in effect, the Papio-Missouri River NRD is paying 15% of the non-federal costs.

The Interlocal Cooperation Act Agreement between Sarpy County and the Papio-Missouri River NRD, dated August 2001(enclosed) provided for reimbursement of 25% of the Papio-Missouri River NRD expenses, up to a maximum of \$130,000 per year and with a not to exceed limit of \$346,667. As of May 2012, Sarpy County has reimbursed \$558,497 of \$599,423 total (25% reimbursement level) expenses.

In 2005, the overall project cost was estimated at \$17,008,700 plus an estimated cabin raise/buyout cost of \$1,000,000. In 2012, the overall project cost is estimated at \$42,000,000 plus the actual cabin raise/buyout cost of approximately \$1,500,000. As a result in increase in project costs over the past 11 years since the Interlocal agreement was approved, there is now a need to increase the Sarpy County reimbursement maximum level to reflect the new cost estimate. The project is currently 85% complete with total expenditures to date of approximately \$33 million.

Enclosed is a proposed amendment to the Interlocal cooperation act agreement between Sarpy County and the Papio-Missouri River NRD. The amendment provides for a new maximum level of \$810,000 (up from \$346,667) and a maximum payment per year of \$65,000. The County approved the agreement on June 5, 2012.

Management recommends that the Programs, Projects and Operation Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Amendment to Interlocal Cooperation Act Agreement with Sarpy County for the Western Sarpy Clear Creek Flood Control Project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

AMENDMENT TO INTERLOCAL COOPERATION ACT AGREEMENT

BETWEEN

THE COUNTY OF SARPY

AND PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

FOR THE

WESTERN SARPY/CLEAR CREEK FLOOD CONTROL PROJECT

WHEREAS, an Interlocal Cooperation Act Agreement (attached as Exhibit A) and hereinafter referred to as "the Original Agreement" was entered into by and between the County of Sarpy (hereinafter referred to as "the County") and the Papio-Missouri River Natural Resources District (hereinafter referred to as "the P-MRNRD") for the Western Sarpy/Clear Creek Flood Control Project; and,

WHEREAS, significant design changes were required by the Corps of Engineers after the Original Agreement was approved; and,

WHEREAS, inflation has affected the original cost estimates in the 10 ½ years since the Original Agreement was approved; and,

WHEREAS, it is necessary to increase the maximum contribution required by the County.

NOW, THEREFORE, for and in consideration of their mutual covenants hereinafter expressed, the Original Agreement is amended as follows:

1. The maximum total reimbursement required of the County as set forth in Section 3 of the original Agreement will be \$ 810,000.
2. The maximum annual reimbursement required of the County as set forth in Section of the original Agreement will be \$65,000.
3. All other terms of the original Agreement shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the dates hereinafter indicated.

THIS AMENDMENT is executed by the COUNTY OF SARPY on this 5th day of June 2012.

COUNTY OF SARPY, NEBRASKA

BY: _____
CHAIRMAN, BOARD OF COMMISSIONERS

APPROVED AS TO FORM:

Deputy County Attorney

THIS AMENDMENT is executed by the P-MRNRD on this _____ day of
_____ 2012,

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

BY: _____
GENERAL MANAGER

INTERLOCAL COOPERATION ACT AGREEMENT
Between
THE COUNTY OF SARPY
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For The
WESTERN SARPY/CLEAR CREEK FLOOD CONTROL PROJECT

THIS AGREEMENT (hereinafter referred to as "**THIS AGREEMENT**") is entered into by and between the **COUNTY OF SARPY, NEBRASKA** (hereinafter referred to as "**the COUNTY**") and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as "**the P-MRNRD**").

RECITALS:

WHEREAS, the Department of the Army Corps of Engineers (hereinafter referred to as "**the CORPS**") has been authorized by Congress to undertake design and construction of the Western Sarpy/Clear Creek Flood Control Project (hereinafter referred to as "**the WS/CC PROJECT**"); and,

WHEREAS, the purpose of the WS/CC PROJECT is to provide flood control levee improvements along a reach of the Platte River extending from Highway 6 to a point 1½ miles south of Highway 92, the east bank portion of which reach lies wholly in the **COUNTY**; and,

WHEREAS, the Nebraska Army National Guard intends to construct a companion flood control levee project (hereinafter referred to as "**the NE-ARNG PROJECT**") along the west bank of the Platte River, extending from Highway 6 to the north end of the Nebraska Army National Guard ring levee; and,

WHEREAS, the P-MRNRD, the Lower Platte North Natural Resources District and the Lower Platte South Natural Resources District have entered into an Agreement

(hereinafter referred to as "the **P-MRNRD/LPNNRD/LPSNRD AGREEMENT**") a true and correct copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, pursuant to which such parties have agreed to provide non-Federal co-sponsorship of the WS/CC PROJECT and possibly of the NE-ARNG PROJECT, which would involve undertaking certain responsibilities and requirements which are preliminarily described in the P-MRNRD/LPNNRD/LPSNRD AGREEMENT; and,

WHEREAS, in light of the substantial benefit which the COUNTY will receive from the WS/CC PROJECT, the COUNTY desires to assist the P-MRNRD in performing its duties under the P-MRNRD/LPNNRD/LPSNRD AGREEMENT with respect to the WS/CC PROJECT and possibly the NE-ARNG PROJECT, such COUNTY assistance to consist of reimbursing P-MRNRD for a portion of the costs which the P-MRNRD pays from its own funds pursuant to the P-MRNRD/LPNNRD/LPSNRD AGREEMENT,

NOW, THEREFORE, for and in consideration of their mutual covenants hereinafter expressed, the parties agree as follows:

1. AUTHORITY. THIS AGREEMENT is made pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.), without a separate entity being created, and the duties and responsibilities of the PARTIES shall be as defined by THIS AGREEMENT.

2. COST REIMBURSEMENTS. The, subject to the limitations provided in paragraph 3 of this AGREEMENT, the COUNTY hereby agrees to reimburse to the P-MRNRD twenty-five percent (25%) of the costs which the P-MRNRD pays from its own funds pursuant to the P-MRNRD/LPNNRD/LPSNRD AGREEMENT (excepting costs of operating, maintaining, replacing, repairing, or rehabilitating the WS/CC PROJECT or NE-ARNG PROJECT after completion).

3. REIMBURSEMENT DUE DATES. Reimbursement under the previous paragraph shall be due from the COUNTY to the P-MRNRD for each separate cost payment made by the P-MRNRD pursuant to the P-MRNRD/LPNNRD/LPSNRD

AGREEMENT, and each such corresponding reimbursement shall be paid within thirty (30) days after the COUNTY receives written notice from the P-MRNRD of such respective cost payment; provided, however, the COUNTY shall not be required to reimburse more than \$86,667.00 in COUNTY fiscal year 2002, and the COUNTY shall not be required to reimburse more than \$130,000.00 in any succeeding COUNTY fiscal year, any reimbursable amount in excess of any such limitation to be carried over for reimbursement in the next succeeding COUNTY fiscal year when such limitation has not been exceeded; and, provided further, that the COUNTY shall not in any event be required to reimburse more than a total of \$346,667.00 pursuant to THIS AGREEMENT.

4. **EFFECTIVE DATE.** THIS AGREEMENT shall be in force and effect from and after its execution by the parties hereto, and shall terminate when all COUNTY reimbursements under THIS AGREEMENT have been made.

5. **APPLICABLE LAW.** Each party hereto shall follow all applicable federal and Nebraska statutes in carrying out the faithful performance and terms of THIS AGREEMENT.

6. **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.

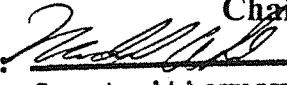
7. **CAPTIONS.** Captions used in THIS AGREEMENT are for convenience only and are not for use in the construction of THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed THIS AGREEMENT on the dates hereinafter indicated.

THIS AGREEMENT is executed by the COUNTY OF SARPY on this 14th day of August, 2001.

COUNTY OF SARPY, NEBRASKA

By 
Chairperson, Board of Commissioners

Approved as to form: 
County Attorney

THIS AGREEMENT is executed by the P-MRNRD on this 13th day of
September, 2001.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By 
General Manager

INTERLOCAL COOPERATION ACT AGREEMENT

Among

LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT,
LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT

And

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

For The

WESTERN SARPY/CLEAR CREEK FLOOD CONTROL PROJECT

THIS AGREEMENT (hereinafter referred to as "THIS AGREEMENT") is made and entered into by and among the LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT (hereinafter referred to as "the LPNNRD"), the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT (hereinafter referred to as "the LPSNRD") and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (hereinafter referred to as "the P-MRNRD," the LPNNRD, the LPSNRD and the P-MRNRD hereinafter being referred to collectively as "the PARTIES" or singularly as "a PARTY").

RECITALS:

WHEREAS, the Department of the Army Corps of Engineers' (hereinafter referred to as "the CORPS") has been authorized by Congress to undertake design and construction of the Western Sarpy/Clear Creek Flood Control Project (hereinafter referred to as "the WS/CC PROJECT"); and,

WHEREAS, the purpose of the WS/CC PROJECT is to provide flood control levee improvements along a reach of the Platte River extending from Highway 6 to a point 1½ miles south of Highway 92, all within the collective boundaries of the LPNNRD, the LPSNRD and the P-MRNRD; and,

Exhibit "A"

WHEREAS, the Nebraska Army National Guard (hereinafter referred to as "the NE-ARNG") intends to construct a companion flood control levee project (hereinafter referred to as "the NE-ARNG PROJECT") along the west bank of the Platte River, extending from Highway 6 to the north end of the Nebraska Army National Guard ring levee; and,

WHEREAS, the WS/CC PROJECT will provide substantial general benefit with only an incidental special benefit; and,

WHEREAS, the PARTIES have been requested to provide non-Federal sponsorship of the WS/CC PROJECT, which would involve undertaking certain responsibilities and requirements (hereinafter referred to as "the NON-FEDERAL SPONSORS' DUTIES") to which the non-Federal sponsors must agree prior to WS/CC PROJECT implementation, the NON-FEDERAL SPONSORS' DUTIES being preliminarily described as follows, to-wit:

a. Provide a minimum of 35 percent, but not to exceed 50 percent, of total project costs allocated to structural flood control as further specified below, to-wit:

(1) Enter into an agreement which provides, prior to execution of the project cooperation agreement, 25 percent of design costs;

(2) Provide, during construction, any additional funds needed to cover the non-Federal share of design costs;

(3) Provide, during construction, a cash contribution equal to 5 percent of total project costs allocated to structural flood control;

(4) Provide all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform or assure the performance of all relocations determined by the Government to be necessary for the construction, operation and maintenance of the project;

(5) Provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged or excavated material disposal areas required for the construction, operation, and maintenance of the project; and

(6) Provide, during construction, any additional costs as necessary to make its total contribution equal to at least 35 percent of total project costs allocated to structural flood control.

b. Give the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the local sponsor owns or controls for access to the project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the project.

c. Assume responsibility for operating, maintaining, replacing, repairing, and rehabilitating (OMRR&R) the project or completed functional portions of the project, including mitigation features without cost to the Government, in a manner compatible with the project's authorized purposes and in accordance with applicable Federal and State laws and specific directions prescribed by the Government in the OMRR&R manual and any subsequent amendments thereto.

d. Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element.

e. Hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the project and any project-related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

f. Keep and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the project to the extent and in such detail as will properly reflect total project costs.

g. Perform, or cause to be performed, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675, that may exist in, on, or under lands, easements or rights-of-way necessary for the construction, operation, and maintenance of the project; except that the non-Federal sponsor shall not perform such investigations on lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude without prior specific written direction by the Government.

h. Assume complete financial responsibility for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights-of-way that the Government determines necessary for the construction, operation, or maintenance of the project.

i. Agree that, as between the Federal Government and the non-Federal sponsor, the non-Federal sponsor shall be considered the operator of the project for the purpose of CERCLA liability, and, to the maximum extent practicable, operate, maintain, repair, replace, and rehabilitate the project in a manner that will not cause liability to arise under CERCLA.

j. Prescribe and enforce regulations to prevent obstruction of or encroachment on the project that would reduce the level of protection it affords or that would hinder operation or maintenance of the project.

k. Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR part 24, in acquiring lands, easements, and rights-of-way, and performing relocations for construction, operation, and maintenance of the project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said act.

l. Comply with all applicable Federal and State laws and regulations, including Section 601 of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7 entitled, "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army," and Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), requiring non-Federal preparation and implementation of floodplain management plans.

m. Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project, in accordance with the cost sharing provisions of the agreement.

n. Participate in and comply with applicable Federal floodplain management and flood insurance programs.

o. Do not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized.

p. Inform affected interests, at least annually, regarding the limitations of the protection afforded by the project.

q. Publicize floodplain information in the area concerned and provide this information to zoning and other regulatory agencies for their guidance and leadership in preventing unwise future development in the floodplain and in adopting such regulations as may be necessary to ensure compatibility between future development and protection levels provided by the project.

WHEREAS, the PARTIES desire to indicate their intent to provide for the performance of the NON-FEDERAL SPONSORS' DUTIES with respect to the WS/CC PROJECT, including performance of the same duties with respect to the NE-ARNG PROJECT if the NE-ARNG fails to so provide, and desire to indicate their intent to in the future provide for the execution of a pre-construction, engineering and design agreement for the WS/CC PROJECT (hereinafter referred to as "the PED AGREEMENT") and a Project Cooperation Agreement for the WS/CC PROJECT (hereinafter referred to as "the WS/CC PROJECT PCA"), both in the form as reasonably determined by the CORPS, generally consistent with the foregoing description of the NON-FEDERAL SPONSORS' DUTIES, providing for the performance of the NON-FEDERAL SPONSORS' DUTIES; and,

WHEREAS, the PED AGREEMENT and the WS/CC PROJECT PCA, among other things, will call for the non-federal sponsors to pay a share (hereinafter referred to as the NON-FEDERAL SHARE") of all those costs which, as expected to be defined by the WS/CC PROJECT PCA, will comprise WS/CC PROJECT costs (herein referred to as "the TOTAL WS/CC PROJECT COSTS"); and,

WHEREAS, the CORPS' present estimate is that the TOTAL WS/CC PROJECT COSTS (including, without limitation, cost-sharing due under the PED AGREEMENT) will be the sum of \$13,737,593.00 and that the NON-FEDERAL SHARE of the TOTAL WS/CC PROJECT COSTS will be the sum of \$5,180,061.00; and,

WHEREAS, among other things, the WS/CC PROJECT PCA also will call for the NON-FEDERAL SPONSORS to pay all of the costs of operating, maintaining, replacing, repairing, and rehabilitating the WS/CC PROJECT (herein referred to as "the PROJECT OMRR&R") after its completion; and,

WHEREAS, the PARTIES, with financial assistance expected to be provided by the Nebraska Department of Natural Resources (hereinafter referred to as "the NDNR"), desire to cooperate with each other in providing non-federal sponsorship of the WS/CC PROJECT, as hereinafter agreed upon by the PARTIES, and,

WHEREAS, the PARTIES have determined that the P-MRNRD should pay 50%, the LPNNRD should pay 35%, and the LPSNRD should pay 15% of that remaining portion of the NON-FEDERAL SHARE of the TOTAL WS/CC PROJECT COSTS not funded by NDNR (such remaining portion hereinafter being referred to as "the LOCAL SHARE OF TOTAL WS/CC PROJECT COSTS"); and

WHEREAS, The PARTIES anticipate that sufficient State funds will be appropriated to allow NDNR to fund 50% to 75% of the NON-FEDERAL SHARE of the TOTAL WS/CC PROJECT COSTS.

NOW, THEREFORE, for and in consideration of their mutual covenants hereinafter expressed, the parties agree as follows:

1. THIS AGREEMENT is made pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.), without a separate entity being created, and the duties and responsibilities of the PARTIES shall be as defined by THIS AGREEMENT.
2. PURPOSE OF THIS AGREEMENT. The purpose of THIS AGREEMENT is to provide for the sharing and partial delegation by and among the PARTIES of the NON-FEDERAL SPONSORS' DUTIES with respect to the WS/CC PROJECT.
3. GENERAL BENEFIT. The PARTIES hereby find and determine that the WS/CC PROJECT will be of general benefit, with only an incidental special benefit.
4. EXECUTION OF PROJECT DOCUMENTS. The LPNNRD and the P-MRNRD hereby agree to execute the PED AGREEMENT, the WS/CC PROJECT PCA, and other antecedent or subsequent agreement(s) with the CORPS (all such agreements

hereinafter being referred to collectively as "the PROJECT DOCUMENTS") as necessary to effectuate the WS/CC PROJECT.

5. **SHARING OF NON-FEDERAL SPONSORS' DUTIES.** The P-MRNRD, at its sole and unreimbursed cost and expense, shall perform or provide PROJECT OMRR&R, and perform or provide for the performance of all other NON-FEDERAL SPONSORS' DUTIES, with respect to all those portions of the WS/CC PROJECT which are physically located within the boundaries of the P-MRNRD; and, the LPNNRD, at its sole and unreimbursed cost and expense, shall perform or provide PROJECT OMRR&R, and perform or provide for the performance of all other NON-FEDERAL SPONSORS' DUTIES, with respect to all those portions of the WS/CC PROJECT which are physically located within the boundaries of either the LPSNRD or the LPNNRD, including, without limitation, performing or providing for the performance of the NON-FEDERAL SPONSORS' DUTIES with respect to the NE-ARNG PROJECT if the NE-ARNG fails to so perform or provide, all except as follows, to-wit:

a) **DESIGN APPROVALS.** The P-MRNRD, for itself and as agent for the other PARTIES, is hereby designated to examine and approve the CORPS' designs for the WS/CC PROJECT.

b) **FUNDING.** The NON-FEDERAL SHARE of the TOTAL WS/CC PROJECT COSTS shall be paid as follows, to-wit:

i) The PARTIES hereby agree to seek State appropriations through NDNR sufficient to enable NDNR to pay 50% to 75% of the NON-FEDERAL SHARE of the TOTAL WS/CC PROJECT COSTS.

ii) The PARTIES hereby severally agree to pay, as the same become due, the following respective proportions of that portion of the NON-FEDERAL SHARE of the TOTAL WS/CC PROJECT COSTS which are not funded by the NDNR, that is, the P-MRNRD will pay 50.0%, the LPNNRD will pay 35.0%, and the LPSNRD will pay 15.0% (hereinafter collectively

referred to as "the PARTIES' SHARES") of the LOCAL SHARE OF TOTAL WS/CC PROJECT COSTS, subject to the following, to-wit:

a) The P-MRNRD, for itself and as agent for the other PARTIES, is hereby designated to collect and disburse the PARTIES' SHARES; and,

b) The P-MRNRD, for itself and as the agent for the other PARTIES, is hereby designated to make any grant applications which shall be necessary to obtain NDNR's payment of a portion of the NON-FEDERAL SHARE of the TOTAL WS/CC PROJECT COSTS; and,

c) The P-MRNRD shall notify the other PARTIES when the PARTIES' SHARES are due from the PARTIES to the CORPS or to each other; and,

d) The PARTIES' SHARES shall be paid as follows, to-wit:

(1) To the CORPS from time to time as installments of the NON-FEDERAL SHARE OF TOTAL WS/CC PROJECT COSTS become due to the CORPS in accordance with the WS/CC PROJECT DOCUMENTS; and,

(2) To one or more of the PARTIES for reimbursement of expenditures made by such other PARTY or PARTIES pursuant to THIS AGREEMENT for TOTAL WS/CC PROJECT COSTS incurred by such PARTY or PARTIES; and,

e) Any monetary contributions made by a city, county, district or other entity towards the LOCAL SHARE OF TOTAL WS/CC PROJECT COSTS shall be credited against the obligations

under THIS AGREEMENT of the PARTY within which such entity is located, except that any such contributions made by the City of Lincoln shall be credited against the obligations of LPSNRD under THIS AGREEMENT and any such contributions made by Metropolitan Utilities District shall be credited against the obligations of LPNNRD under THIS AGREEMENT.

c) REAL ESTATE ACQUISITIONS AND RELOCATIONS: All lands, easements and other rights-of-way which the Corps determines are necessary for construction, operation and maintenance of the WS/CC PROJECT, including, without limitation, rights-of-way necessary for conservation measures for endangered species mitigation (all such rights-of-way hereinafter being referred collectively to as "the WS/CC PROJECT ROW"), will be acquired, and all necessary relocations related thereto will be performed or provided, by the LPNNRD in the case of WS/CC PROJECT ROW tracts located either in the LPNNRD or in the LPSNRD, or by the P-MRNRD in the case of WS/CC PROJECT ROW tracts located in the P-MRNRD. In the event any rights-of-way heretofore or hereafter purchased by a PARTY is used as WS/CC PROJECT ROW, such PARTY shall be entitled to credit, in the amount of all outlays necessarily made by such PARTY to accomplish the acquisition of such rights-of-way, against the obligations of such PARTY under THIS AGREEMENT.

d) FLOOD MITIGATION. Any structure removals or structure elevating which the CORPS determines is necessary for the WS/CC PROJECT shall be provided by the LPNNRD in the case of structures on tracts located in the LPNNRD, by the LPSNRD in the case of structures on tracts located in the LPSNRD, or by the P-MRNRD in the case of structures on tracts located in the P-MRNRD; and, such providing PARTY shall be entitled to credit, in the amount of all outlays made by such PARTY necessary to accomplish such structure removals or

structure elevating, against the obligations of such PARTY under THIS AGREEMENT.

e) ENVIRONMENTAL INVESTIGATIONS. Any investigations necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675, that may exist in, on, or under lands, easements or other rights-of-way necessary for the construction, operation, and maintenance of the WS/CC PROJECT, shall be performed, or caused to be performed, by the LPNNRD in the case of rights-of-way located either in the LPNNRD or in the LPSNRD, or by the P-MRNRD in the case of rights-of-way located in the P-MRNRD; and, such PARTY shall be entitled to credit, in the amount of the outlays actually made by such PARTY for such investigations, against the obligations of such PARTY under THIS AGREEMENT.

6. **RISK OF LOSS.** The LPNNRD in the case of completed portions of the WS/CC PROJECT located either in the LPNNRD or in the LPSNRD, or the P-MRNRD in the case of completed portion of the WS/CC PROJECT located in the P-MRNRD, at its sole and unreimbursed cost and expense, shall permanently bear the sole risk of loss of or damage to such portion of the WS/CC PROJECT, whether such loss or damage results from flood or any other casualty whatsoever.

7. **INDEMNIFICATION.** The LPNNRD in the case of completed portions of the WS/CC PROJECT located either in the LPNNRD or in the LPSNRD, or the P-MRNRD in the case of completed portion of the WS/CC PROJECT located in the P-MRNRD, at its sole and unreimbursed cost and expense, shall indemnify and hold and save each other PARTY harmless from and against all costs and damages arising from the OMRR&R of such portion of the WS/CC PROJECT, except damages due solely to the fault of such indemnified PARTY.

8. EFFECTIVE DATE. THIS AGREEMENT shall be in force and effect from and after its execution by all of the PARTIES, and shall have permanent duration.

9. NONDISCRIMINATION. The PARTIES shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination in violation of federal or state laws because of race, color, sex, age, political or religious opinions, affiliations or national origin.

10. APPLICABLE LAW. Each PARTY shall follow all applicable federal and Nebraska statutes in carrying out the faithful performance and terms of THIS AGREEMENT.

11. 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.

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

IN WITNESS WHEREOF, the PARTIES have executed THIS AGREEMENT on the dates hereinafter indicated.

THIS AGREEMENT is executed by the LPNNRD on this 14th day of May, 2001.

LOWER PLATTE NORTH NATURAL
RESOURCES DISTRICT

By [Signature]
General Manager

THIS AGREEMENT is executed by the LPSNRD on this 25 day of April, 2001.

LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT

By 
General Manager

THIS AGREEMENT is executed by the P-MRNRD on this ~~24th~~ day of April, 2001.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By 
General Manager