

Agenda Item: 14.

Memorandum

To: Projects, Programs, and Operations Subcommittee
From: Lori Ann Laster, Stormwater Management Engineer
Date: June 4, 2012
Re: Missouri River Floodway Buyout Program in Sarpy County

The District's Missouri River Floodway Purchase Program involves the Elbow Bend, Holub's Place, and Iske Place communities located in the floodway of the Missouri River just south of Bellevue in Sarpy County (see attached map). The Program began in April of 1994 when the Federal Emergency Management Agency (FEMA) approved the application to purchase properties in these three areas. The District administered the program and equally divided the local cost-share with Sarpy County.

The District and Sarpy County have been able to acquire approximately 105 out of 164 possible structures in the Missouri River floodway. Since the District and Sarpy County acquired the 105 properties, the City of Bellevue has expanded its jurisdictional boundaries. Bellevue's extraterritorial jurisdiction now includes Elbow Bend and Iske Place.

In November 2011, the Board approved an interlocal agreement with Sarpy County and the City of Bellevue to evenly split the local share of the costs of a buyout program for the 45 properties along the Missouri River. At the time, Sarpy County approved the agreement, with some minor changes; however, the City of Bellevue declined to participate in the program.

On May 29, 2012 the City of Bellevue reconsidered the program and voted to approve the interlocal agreement with a few changes (see attached agreement):

- All three parties (District, Sarpy County, Bellevue) participate in the program.
- The program is contingent upon receiving 75% of the project costs from FEMA.
- The maximum contribution by any of the three parties be \$250,000.
- The program is contingent upon receiving funds from the Nebraska Environmental Trust (NET). This provision is the major change requested by the City of Bellevue. Staff has spoken with representatives of NET and although funding depends upon the numerical ranking the project receives, it is believed that this buyout program will be considered favorably. Staff anticipates the application will be for \$500,000 over a two-year period, but the grant awarded may be much less. As proposed, the revised interlocal agreement does not specify the amount of NET funds that must be secured, but any funding received would reduce the contribution by all three parties equally.

Sarpy County voted to approve the revised agreement on June 5, 2012.

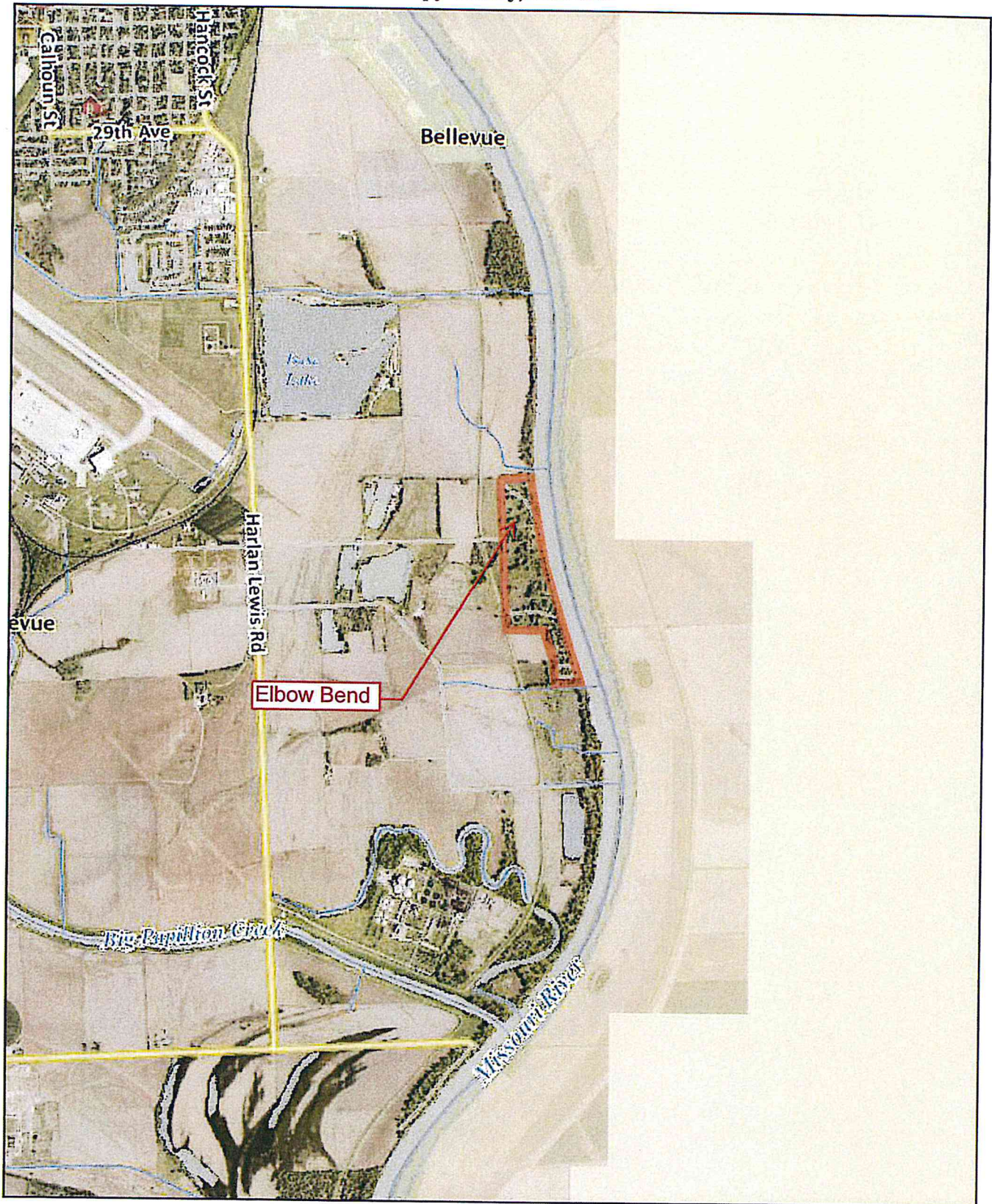
The Floodway Purchase Program is a voluntary program based on a willing seller and willing buyer basis. Eminent Domain cannot be exercised under this program. At this time, there are 45 properties eligible for buyout in the Elbow Bend and Iske Place areas. Hazard Mitigation Grant Program (HMGP) funds available from FEMA can provide 75% of the funds required for the program. If all 45 sellers accept a buyout, the total project cost would be approximately \$3 million. These federal funds would cover \$2.25 million, leaving \$750,000 as the non-federal local share.

The District will act as the applicant for the purposes of the grant applications and will coordinate the necessary actions to complete the purchases and demolitions. Due to the detail and timeframe involved, the District is working with Olsson Associates to prepare the grant applications. Olsson Associates completed the update to the District's Multi-Hazard Mitigation Plan and has prepared HMGP project applications for the District under that contract. The contract to prepare the applications is expected to be under \$20,000.

The Metropolitan Area Planning Agency (MAPA) is currently providing administration services of HMGP funds for the Pottawattamie County, Iowa buyout program. Staff is proposing to contract with MAPA to administer the Missouri River Buyout Program. Their services would include property appraisals, owner negotiations, acquisition closings, demolition contract administration and other necessary administration required as part of the HMGP funding.

It is Management's recommendation that the General Manager be authorized to fully execute for and on behalf of the District the proposed Interlocal Agreement with the City of Bellevue and Sarpy County for the Missouri River Floodway Purchase Program, to contract with Olsson Associates for professional services to assist with the application process to obtain federal and state funding for the program, and to contract with MAPA to assist with administration of the program, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

Sarpy County, Nebraska

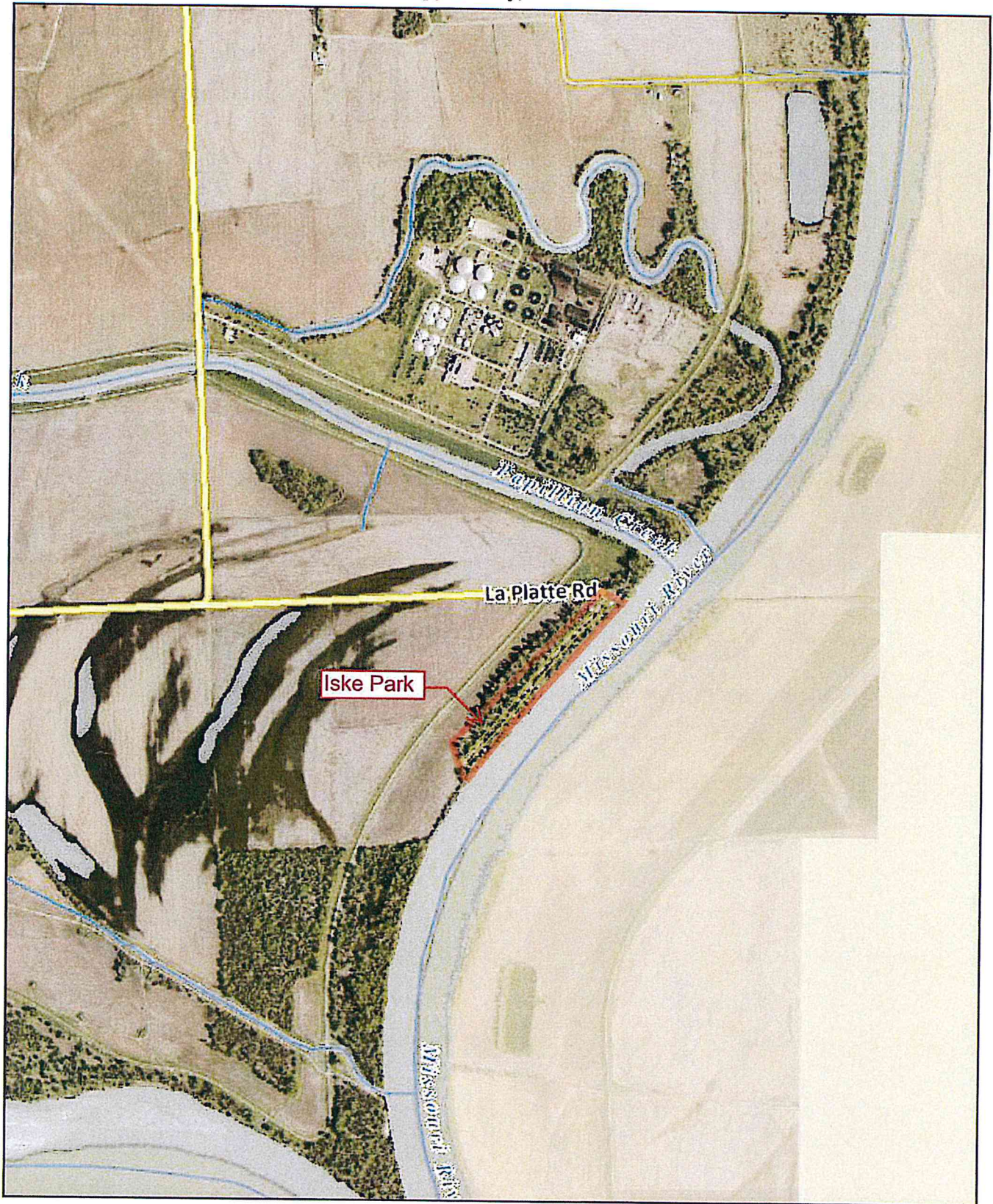


Disclaimer: This data is for informational purposes only, and should not be substituted for a true titles search, property appraisal, survey, or for zoning district verification. Sarpy County and the Sarpy County GIS Coalition assume no legal responsibility for the information contained in this data.

Map Scale
1 inch = 0.5 mile

10/7/2011

Sarpy County, Nebraska



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Map Scale
1 inch = 1376 feet

10/7/2011

INTERLOCAL COOPERATION ACT AGREEMENT

**THE CITY OF BELLEVUE, NEBRASKA,
THE COUNTY OF SARPY, NEBRASKA
AND
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

MISSOURI RIVER FLOODWAY PURCHASE PROGRAM

This Agreement (hereinafter “**THIS AGREEMENT**”) is made by and among **THE CITY OF BELLEVUE, NEBRASKA** (hereinafter “**the CITY**”), **THE COUNTY OF SARPY, NEBRASKA** (hereinafter “**the COUNTY**”), and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter “**the DISTRICT**”), pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801, R.R.S. Neb., 1943, et seq.

R E C I T A L S:

WHEREAS, numerous private dwellings and other structures now exist in the designated floodway adjacent to the Missouri River Levee Unit R-613 and R-616 flood control levees in the CITY and COUNTY (hereinafter “**the PROGRAM FLOODWAY**”); and,

WHEREAS, the parties desire to establish a MISSOURI RIVER FLOODWAY PURCHASE PROGRAM (hereinafter “**the PROGRAM**”), for the purposes of

purchasing, dwellings and other privately-owned structures on land within the PROGRAM FLOODWAY and removing the same from the PROGRAM FLOODWAY, 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 federal Flood Insurance Act; and,

WHEREAS, federal and state grant programs are available to assist the parties to carry out the PROGRAM, such programs including the Hazard Mitigation Grant Program, administered by the Federal Emergency Management Agency (hereinafter “FEMA”).

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 CITY, the COUNTY and the DISTRICT, without any separate entity being created; and, 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 ownership of private dwellings and other structures now existing in the PROGRAM FLOODWAY will be purchased in voluntary transactions, pursuant to which such dwellings and other structures will be removed from the PROGRAM FLOODWAY and pursuant to which the land now occupied by such dwellings and

other structures will be converted to uses which are not insurable under the flood insurance programs administered by FEMA.

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 acquire, by voluntary purchase and sale, such real estate and interests therein, including leaseholds, as the DISTRICT determines necessary or convenient in order to obtain removal of private dwellings and other structures, now located in the PROGRAM FLOODWAY, which presently are eligible for disaster assistance, flood damage insurance and other benefits under federal disaster assistance and flood insurance programs, and shall make such payments in respect to such acquisitions as the DISTRICT determines necessary or convenient;

(b) The DISTRICT shall prepare, execute and file with appropriate federal and state agencies, such proposals and grant applications, and documents related thereto, as the DISTRICT determines necessary for purposes of the PROGRAM;

(c) The DISTRICT shall employ and compensate such appraisers, title searchers, title insurers, surveyors, engineers, attorneys, demolition contractors and other persons, firms and corporations, and pay such other expenses, as the DISTRICT determines necessary to administer the PROGRAM pursuant to THIS AGREEMENT; and,

(d) The DISTRICT shall execute on its own behalf such contracts, applications, and other documents as the DISTRICT determines necessary to administer the PROGRAM pursuant to THIS AGREEMENT.

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

(a) The CITY and the COUNTY each shall prepare, execute, and file with appropriate federal and state agencies such grant applications, and documents related thereto, as the DISTRICT determines necessary for purposes of the PROGRAM; and, the CITY and the COUNTY each shall direct the proceeds of such grants to the DISTRICT, or as the DISTRICT may direct, for purposes of the PROGRAM; and,

(b) The CITY and the COUNTY each shall reimburse the DISTRICT in the amount of one-third (1/3) of all expenditures made by the DISTRICT in administering the PROGRAM, other than expenditures which are reimbursed by federal or state grant programs or recouped by sale of structures and other property in the PROGRAM FLOODWAY acquired by the DISTRICT during the course of administering the PROGRAM (such unreimbursed and unrecouped expenditures hereinafter being referred to as “the **NON-RECOVERABLE EXPENSES**”); provided, however, neither the CITY nor the COUNTY shall be required to reimburse the DISTRICT more than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), each, 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 CITY and COUNTY, more than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) of its own funds.

(c) To provide for the CITY'S and the COUNTY'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 the PROGRAM, the DISTRICT shall transmit to the CITY and the COUNTY 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 CITY and the COUNTY of such a written notification, the CITY and the COUNTY each shall reimburse the DISTRICT in the amount of one-third (1/3) of the DISTRICT'S NON-RECOVERABLE EXPENSES described in such written notification.

(3) The parties agree to cooperate with the DISTRICT in diligently seeking and obtaining funding from the Nebraska

Environmental Trust that would pay part of the 25% local share required by the FEMA Hazard Mitigation Grant Program. Grants receivable by any of the parties from the Nebraska Environmental Trust or from any other source for any expenses of the PROGRAM shall be credited to the parties hereto in equal shares against their respective duties hereunder to pay or reimburse NON-RECOVERABLE EXPENSES of the DISTRICT.

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 CITY and the COUNTY, on request of the DISTRICT, respectively shall donate to the DISTRICT such temporary and permanent easements and rights-of-way over CITY-owned or COUNTY-owned rights-of-way within the PROGRAM FLOODWAY as the DISTRICT determines necessary for the PROGRAM.

6. OPERATION AND MAINTENANCE. After acquisition of land pursuant to THIS AGREEMENT, the DISTRICT, at the DISTRICT'S sole cost and expense, shall maintain or dispose of such land in such manner and at such times as the DISTRICT determines necessary or convenient, for uses and purposes consistent with THIS AGREEMENT, and shall be entitled to the rents and profits therefrom.

7. DURATION AND EFFECTIVE DATE. THIS AGREEMENT shall be effective, and shall have permanent duration, commencing (1) upon the occurrence of the signatures of all of the parties being affixed hereto, (2) upon receipt by the

DISTRICT of FEMA’S commitment to pay 75% of the sums expended by the DISTRICT during the course of administering the PROGRAM, and (3) upon receipt by the DISTRICT of the Nebraska Environmental Trust’s commitment to partially fund the 25% local share required by the FEMA Hazard Mitigation Grant Program, whichever is the later date.

8. 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.

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 CITY this ____ day of _____, 2012.

THE CITY OF BELLEVUE, NEBRASKA

By _____
MAYOR

Attest:

City Clerk

Executed by the COUNTY this ____ day of _____, 2012.

THE COUNTY OF SARPY, NEBRASKA

By _____
CHAIRPERSON, BOARD OF
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PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By _____
GENERAL MANAGER

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PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By _____
GENERAL MANAGER