

Agenda Item: 6.

Memorandum

To: PPO Subcommittee
From: Amanda Grint, Water Resources Engineer
Date: August 4, 2014
Re: West Papillion Regional Basin Number 5 (WP5) Amended Interlocal w/Papillion and Sarpy County

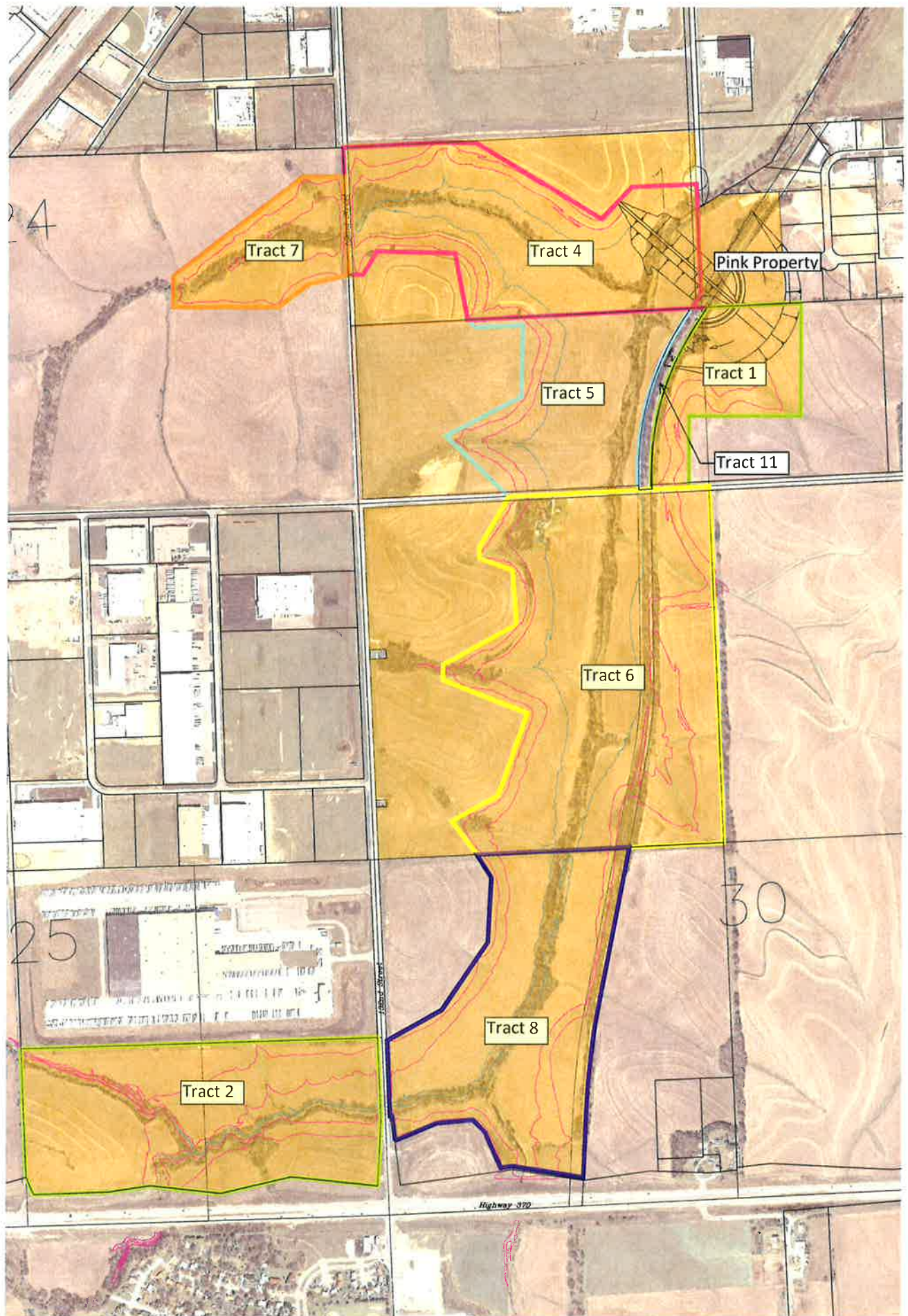
In February 2012, an Interlocal Agreement was approved by the PMRNRD Board to address the construction, operation and maintenance of the WP5 reservoir and associated improvements.

The WP5 regional detention reservoir, was designed, constructed and paid for by the NRD. Ownership and maintenance of the facility, except the flood control and water quality basin dams, will be transferred to the City of Papillion when private land adjacent to the reservoir is annexed or on June 1, 2025, whichever occurs first.

The following is a summary of the revised provisions in the agreement:

- The Lincoln Road Extension final costs inserted in to the agreement to be shared by the NRD, SID 290, the City and County.
- Additional easements added for the future expansion of 132nd Street.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the amended West Papillion Creek Flood Control Interlocal Agreement with the City of Papillion, SID 290 and Sarpy County subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.



AMENDED INTERLOCAL COOPERATION ACT AGREEMENT

Among

**COUNTY OF SARPY, NEBRASKA,
CITY OF PAPILLION, NEBRASKA,**

**SANITARY AND IMPROVEMENT DISTRICT NO. 290 OF SARPY COUNTY,
NEBRASKA**

And

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

For

WEST PAPILLION CREEK FLOOD CONTROL

THIS AGREEMENT (“**THIS AGREEMENT**”) is entered into by and among the **CITY OF PAPILLION, NEBRASKA (“the CITY”)**, the **COUNTY OF SARPY, NEBRASKA (“the COUNTY”)**, **SANITARY AND IMPROVEMENT DISTRICT NO. 290 OF SARPY COUNTY, NEBRASKA (“SID 290”)** and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (“the NRD”)**.

The CITY, the COUNTY, SID 290 and the NRD are referred to collectively hereinafter as “**the PARTIES**” and sometimes individually as a “**PARTY**”.

RECITALS:

WHEREAS, the existing West Papillion Creek flood control levee system currently fails to contain a 1% annual chance flood event (also known as 100-year flood) according to criteria established by the Federal Emergency Management Administration (“**FEMA**”); and,

WHEREAS, pursuant to authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.); the PARTIES desire to provide for the design, development, construction, operation and maintenance of a project (“the **FLOOD**

CONTROL PROJECT”) intended to improve flood control on the West Papillion Creek, in general accordance with Scenario 3 contained in the report (“the **WORK PLAN**”) entitled “West Papillion Creek Levee Restoration Evaluation – Sarpy County, Nebraska – March 2008,” prepared for the NRD by HDR Engineering, Inc. (“the **NRD’S ENGINEERS**”).

WHEREAS, the upstream Watershed Regional Detention structures described in the **WORK PLAN** are being implemented through the Papillion Creek Watershed Partnership’s Watershed Plan, which is also an integral part of the overall plan to improve flood control on the West Papillion Creek; and,

WHEREAS, the **FLOOD CONTROL PROJECT** consists of

A. A project (“**the WP-5 PROJECT**”) to construct a multi-purpose flood control and recreational dam and reservoir (including two water quality basins) on a site near 126th Street and Cornhusker Road in Sarpy County;

WHEREAS, the following projects (“**the SUPPLEMENTAL PROJECTS**”) will be carried out by respective **PARTIES**, to-wit:

A. A new sanitary sewer (“**the EAST SANITARY SEWER**”) on the East side of the **WP-5 PROJECT** site will be constructed; and,

B. The existing sanitary sewer (“**the WEST SANITARY SEWER**”), on the West side of the proposed **WP-5 PROJECT** site will be relocated and reconstructed out of the reservoir waters; and,

C. The portion of present Cornhusker Road that now bisects the proposed WP-5 PROJECT reservoir will be closed and demolished (“**the CORNHUSKER ROAD CLOSING**”); and,

D. A new portion of Lincoln Road extended (“**the LINCOLN ROAD EXTENSION**”) will be constructed running across the WP-5 PROJECT reservoir; and,

E. Certain recreational improvements determined by the NRD (“**the NRD’S RECREATIONAL IMPROVEMENTS**”) will be constructed by the NRD on the WP-5 PROJECT site; and,

F. Certain recreational improvements requested by the CITY (“**the CITY’S RECREATIONAL IMPROVEMENTS**”) will be constructed by the NRD on the WP-5 PROJECT site; and,

G. Future City and/or County road, sewer or other infrastructure improvements affecting the WP-5 PROJECT (“**FUTURE INFRASTRUCTURE PROJECTS**”) will be constructed.

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. BENEFITS. The PARTIES do hereby find, determine and agree that the FLOOD CONTROL PROJECT and the SUPPLEMENTAL PROJECTS will be of general benefit to the PARTIES, with only incidental special benefits.

2. PROJECT PARTICIPANTS. The FLOOD CONTROL PROJECT and the SUPPLEMENTAL PROJECTS shall be undertaken by a PARTY or the PARTIES as provided herein, without any separate entity being created, and the duties and responsibilities of the PARTIES with respect to the design, construction, operation,

maintenance, repair, replacement, management and regulation of the FLOOD CONTROL PROJECT and the SUPPLEMENTAL PROJECTS shall be as defined by THIS AGREEMENT.

WP-5 PROJECT

3. WP-5 PROJECT PRIMARY RESPONSIBILITIES. The NRD agrees to assume primary responsibility for design, construction, operation, maintenance, repair, replacement, management and regulation of the WP-5 PROJECT.

4. WP-5 PROJECT PRIMARY RESPONSIBILITIES.

a) The NRD generally agrees to assume and undertake, at the NRD'S sole cost and expense, sole responsibility for construction of the WP-5 PROJECT.

b) After the TRANSFER DATE provided in THIS AGREEMENT, the CITY agrees to assume and undertake at the CITY'S sole cost and expense, responsibility for the operation, maintenance, repair, replacement, management and regulation of the trail and other recreational improvements situated on the DAM and other portions of the WP-5 PROJECT site.

c) After the TRANSFER DATE provided in THIS AGREEMENT, the NRD, at the NRD'S sole cost and expense, will have permanent responsibility for operation, maintenance, repair, replacement of the WP-5 PROJECT DAM (including the two water basin dams) and the non-recreational appurtenances thereto.

5. WP-5 PROJECT DESIGN. The NRD shall retain and compensate the NRD'S ENGINEERS to design and administer construction of the WP-5 PROJECT.

6. WP-5 PROJECT PLANS. The plans and specifications for the WP-5 PROJECT shall be drawn by the NRD'S ENGINEERS in accordance with the WORK PLAN and other written design criteria provided by the NRD, and the preliminary and

final plans and specifications for the WP-5 PROJECT shall be subject to the written approval by the CITY and the COUNTY, which approvals shall not be withheld or delayed unreasonably.

7. COOPERATIVE PORTIONS OF THE WP-5 PROJECT. The COOPERATIVE PORTIONS OF THE WP-5 PROJECT shall consist of those planning elements, constructible elements and features of the WP-5 PROJECT as the PARTIES from time to time in the future in writing agree should be cooperatively funded with the funding assistance of the PARTIES.

8. RIGHTS-OF-WAY ACQUISITION. Lands, easements and rights-of-way that the NRD'S ENGINEERS or the NRD determine are necessary for the WP-5 PROJECT ("WP-5 PROJECT RIGHTS-OF-WAY") shall be obtained by the NRD, without cost or expense to the other PARTIES, to which WP-5 PROJECT RIGHTS-OF-WAY the NRD shall hold title.

9. PERMITS. All necessary local, state and federal permits that the NRD'S ENGINEERS or the NRD determine are necessary for the WP-5 PROJECT shall be obtained by the NRD without cost or expense to the other PARTIES.

10. CONTRACT FOR WP-5 PROJECT CONSTRUCTION. Following the NRD's ENGINEER'S preparation of final plans and specifications for construction of the WP-5 PROJECT, and approval of the same by the NRD and the CITY and the COUNTY, such approvals to not be withheld or delayed unreasonably, the NRD shall solicit competitive sealed bids for construction thereof.

11. WP-5 PROJECT CONSTRUCTION. The NRD, through its contractor, shall construct the WP-5 PROJECT in accordance with the plans and specifications approved by the NRD and the CITY and the COUNTY.

12. WP-5 PROJECT COSTS INDEMNIFICATION. Except as otherwise specifically provided in THIS AGREEMENT, the NRD shall defend and indemnify the other PARTIES and hold the other PARTIES harmless from and against any and all costs of construction of the WP-5 PROJECT.

13. TRANSFER DATE. Upon the date of the CITY's annexation of private land adjacent to the WP5 PROJECT, or on June 1, 2025, whichever date shall be earlier (hereinafter referred to as "the **TRANSFER DATE**") the NRD shall convey and transfer to the CITY by full warranty deed (hereinafter referred to as "the **TRANSFER DEED**") title to the mutually agreed upon real estate comprising WP-5 PROJECT RIGHTS-OF-WAY, subject to easements of record. For the purposes of this agreement, public right-of-way such as Lincoln Road is not considered private land. Furthermore, the June 1, 2025 transfer date shall be dependent upon the City being able to legally annex WP-5

14. TRANSFER DEED. The TRANSFER DEED shall include the reservation by the NRD of permanent easements and restrictive covenants in favor of the NRD and its successors, over and across all of the real estate comprising WP-5 PROJECT RIGHTS-OF-WAY, such easements and restrictive covenants to:

a) Reserve and grant to the NRD the permanent right to enter WP-5 PROJECT RIGHTS-OF-WAY during flood emergencies and during all other reasonable times; the permanent right to use the roads in the WP-5 PROJECT RIGHTS-OF-WAY as the NRD deems necessary; the permanent and exclusive right to operate, maintain, repair, replace, manage and regulate the DAM (including the two water quality basin dams) and the non-recreational appurtenances thereof, together with such future flood control improvements as the NRD deems necessary and the CITY may approve in writing

(such approval to not be unreasonably withheld or delayed); and, to include the NRD'S right to use any and all unimproved portions of WP-5 PROJECT RIGHTS-OF-WAY for the borrow of earthen material for use in operation, maintenance, repair, replacement of the DAM and/or the non-recreational appurtenances thereto. The CITY shall have the right to construct, operate and maintain a public pedestrian and bicycle trail and other recreational improvements, approved in writing by the General Manager of the NRD, in, on, over and across the DAM, with the provision that the CITY shall be required from time-to-time to re-locate any of such improvements as to the NRD may be deemed interfere with the NRD'S operation, maintenance, repair, replacement, management or regulation of the DAM and/or the non-recreational appurtenances thereto, and,

b) Reserve and grant to the NRD the permanent power, privilege, right and authority to periodically flow and overflow waters, sediment, and flood debris detained by the DAM in the RESERVOIR, upon all areas of WP-5 PROJECT RIGHTS-OF-WAY (such areas hereinafter being collectively referred to as “the **REGULATED FLOOD POOL**”) which portions, at once, are located within the watershed of the DAM and, have a ground surface elevation lower than 1,085.5 feet above mean sea level, referenced to the North American Vertical Datum of 1988 (hereinafter referred to as “**NAVD**”), which elevation the PARTIES agree is approximately one foot (1') above the mean sea level elevation of the 500-year flood pool of the RESERVOIR. Such permanent easement and restrictive covenant also shall generally prohibit the construction or maintenance, within the REGULATED FLOOD POOL, of structures, fixtures or other improvements without the prior written approval of the NRD; provided, however, it shall not prevent the CITY from:

i) Dredging or other removal of silt from the REGULATED FLOOD POOL from time to time;

ii) Excavation or filling of earth or rock in the REGULATED FLOOD POOL in order to construct, operate and maintain within the REGULATED FLOOD POOL sheet-pilings, revetments or other temporary or permanent shoreline erosion prevention and bank protection devices or methods; or

iii) Installation in the REGULATED FLOOD POOL of landscaping, low-voltage lighting, boat ramps, decks, docks or boat lifts.

c) Reserve and grant to the NRD the permanent power, privilege, right and authority to periodically flow and overflow waters, sediment, and flood debris detained by the DAM, upon those areas of WP-5 PROJECT RIGHTS-OF-WAY which, at once, are located within the watershed of the DAM and have a ground surface elevation lower than 1,092.0 feet above mean sea level, NAVD (such areas hereinafter being collectively referred to as “the **MAXIMUM POOL**”). Such permanent easement and restrictive covenant also shall prohibit the CITY from placing any earthen fill or other fill in any area of the MAXIMUM POOL except limited filling in the REGULATED FLOOD POOL permitted by the prior sub-paragraph.

d) Reserve and grant to the NRD the right to periodically adjust the elevation of the permanent pool of the RESERVOIR in order to perform necessary operation, maintenance, repair or replacement of the DAM.

15. OPERATION AND MAINTENANCE OF WP-5 PROJECT.

a) Prior to the TRANSFER DATE the NRD, at its own cost and expense, shall operate, maintain, repair, replace, manage and regulate all aspects and portions of the WP-5 PROJECT;

b) After the TRANSFER DATE the CITY, at its own cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate all of the aspects and portions WP-5 PROJECT, except the DAM and the other facilities of the WP-5 PROJECT that exist strictly for flood control purposes, all in such manner as the CITY in its sole discretion determines necessary, in accordance with any applicable and generally-accepted engineering practices.

c) After the TRANSFER DATE the NRD, at its own cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the DAM (including the two water quality basin dams) and the other facilities of the WP-5 PROJECT that exist strictly for flood control purposes, all as the NRD in its sole discretion determines necessary, in accordance with any applicable and generally-accepted engineering practices.

16. WP-5 PROJECT RISK OF LOSS.

a) Prior to the TRANSFER DATE the NRD shall have and bear the sole risk of loss of or damage to the WP-5 PROJECT, regardless whether such loss or damage results from flood or other casualty whatsoever.

b) After the TRANSFER DATE the CITY shall have and bear the sole risk of loss of or damage to the WP-5 PROJECT, except the DAM and the other facilities of the WP-5 PROJECT that exist strictly for flood control purposes, regardless whether such loss or damage results from flood or other casualty whatsoever.

SUPPLEMENTAL PROJECTS

17. EAST SANITARY SEWER. Contemporaneously with construction of the WP-5 PROJECT, the CITY, without cost and expense to the other PARTIES, shall procure the design and construction of a new regional sanitary sewer line running along the East side of the DAM and permanent pool of the RESERVOIR in an permanent

easement corridor located within one or more parcels of land that shall be acquired in fee simple by the NRD for the WP-5 PROJECT prior to May 17, 2012. Such permanent easement shall be granted to the CITY, which shall permanently operate and maintain such sewer line without cost or expense to the other PARTIES. Plans and specifications for such project shall be subject to the prior written approvals of the NRD and the COUNTY, such approvals to not be unreasonable withheld or delayed.

18. WEST SANITARY SEWER. Contemporaneously with construction of the WP-5 PROJECT, the existing regional sanitary sewer line on the West side of the WP-5 PROJECT reservoir site shall be relocated by the NRD, at the NRD'S sole cost and expense, to a permanent easement corridor located within one or more parcels of land that shall be acquired in fee simple by the NRD for the WP-5 PROJECT, outside and west of DAM and permanent pool of the RESERVOIR. Such permanent easement shall be granted to the COUNTY which shall permanently operate and maintain such sewer line without cost or expense to the other PARTIES. Plans and specifications for such project shall be subject to the prior written approval of the COUNTY, such approval to not be unreasonable withheld or delayed.

19. CORNHUSKER ROAD CLOSING. Contemporaneously with construction of the WP-5 PROJECT, the portion of present Cornhusker Road that now bisects the WP-5 PROJECT site, and is bounded by WP-5 Project ROW on both sides, will be abandoned and vacated by the COUNTY and ownership of such portion shall revert to the NRD. Such abandonment and vacation shall be accomplished effective no sooner than April 1, 2012, and shall be coordinated with the NRD and their ENGINEER, whereupon the County shall barricade, and restrict public access to, the abandoned and vacated road. The current bridge located on such road shall become the property of the

NRD and be removed by the NRD at the NRD'S sole and unreimbursed cost and expense.

20. LINCOLN ROAD EXTENSION. Contemporaneously with construction of the WP-5 PROJECT, a sub-project to extend Lincoln Road from 132nd Street to the western edge of the Schewe Farms Final Plat ("**LINCOLN ROAD EXTENSION**") with matching cross-section and alignment, will be designed and constructed by the NRD as one of the SUPPLEMENTAL PROJECTS OF THE WP-5 PROJECT. The PARTIES hereby provide for their contributions to the design, features and costs of the LINCOLN ROAD EXTENSION, to-wit:

a) The LINCOLN ROAD EXTENSION will be constructed in a permanent easement corridor located within one or more parcels of land that shall be acquired by easement or in fee simple by the NRD for the WP-5 PROJECT. Such permanent easement shall be granted to the COUNTY which shall operate and maintain such road and roadway without cost or expense to the other PARTIES until annexation may occur or as may otherwise be provided by law.

b) For purposes of this paragraph, the assumed design and features of the LINCOLN ROAD EXTENSION are reflected on pages 06-01 through 06-34 of the plans and specifications prepared by the NRD'S ENGINEERS, entitled "LINCOLN ROAD," dated as of February 1, 2012 ("the **APPROVED PLANS**"), and the APPROVED PLANS, together with the cost estimates (the "**SCHEDULE OF VALUES**"), prepared by the NRD'S ENGINEERS in connection with the APPROVED PLANS are hereby incorporated herein by reference.

c) ~~The NRD'S ENGINEERS have computed in the SCHEDULE OF VALUES that the costs to the NRD for design and construction of the LINCOLN ROAD~~

~~EXTENSION as a part of the WP-5 PROJECT in accordance with the APPROVED PLANS will be \$3,505,200. The total actual cost for the LINCOLN ROAD EXTENSION is \$2,245,510.57, see attached pay application to CONTRACTOR, Exhibit "A".~~

d) The CITY, SID 290 and the COUNTY have requested that the NRD include in the LINCOLN ROAD EXTENSION various features, such as paving, storm sewers, lighting, embankments and other features that now have been incorporated in the APPROVED PLANS and shall be constructed by the NRD as a part of the WP-5 PROJECT (the "**ADDITIONAL FEATURES**").

e) The PARTIES estimate that the actual cost of the portion of the ADDITIONAL FEATURES requested by the CITY and SID 290, jointly, will constitute 12.125% of the total actual cost of the LINCOLN ROAD EXTENSION (the "**CITY COST SHARE**"), and estimate that the actual cost of the portion of the ADDITIONAL FEATURES requested by the COUNTY also will constitute 12.125% of the total actual cost of the LINCOLN ROAD EXTENSION (the "**COUNTY COST SHARE**"), payment of such total actual cost to be advanced by the NRD.

f) The CITY and SID 290 hereby agree to contribute to the NRD towards CITY COST SHARE 12.125% of the total actual cost of the ADDITIONAL FEATURES, not to exceed a total of \$425,000 without additional CITY approval, to-wit: SID 290 shall pay to the NRD \$325,000 of the CITY COST SHARE in three (3) equal annual installments; the first installment shall be due no later than sixty (60) days after issuance of the engineering certificate of completion for the LINCOLN ROAD EXTENSION, and the second and third installments shall be paid on the subsequent yearly anniversary dates of the due date of the first installment; and, the CITY agrees to pay any remainder of the first \$425,000 of the CITY COST SHARE in a single

installment on the subsequent one year anniversary date of the due date of the final payment by SID 290. In the event the CITY COST SHARE exceeds a total actual cost of \$425,000, the NRD may send an invoice to the CITY for the excess amount, together with a request for payment thereof. The NRD recognizes that any approval of excess amount will require formal authorization by the Papillion City Council.

i) The COUNTY hereby agrees to contribute to the NRD the first \$425,000 of the COUNTY COST SHARE in four (4) equal annual installments; the first installment shall be due sixty (60) days after issuance of the engineering certificate of completion for the LINCOLN ROAD EXTENSION, and the second, third and fourth installments shall be paid on the subsequent yearly anniversary dates of the due date of the first installment. In the event the COUNTY COST SHARE exceeds a total actual cost of \$425,000, the NRD may send an invoice to the COUNTY for the excess amount, together with a request for payment thereof. The NRD recognizes that any approval of such excess amount will require formal authorization by the COUNTY'S Board of Commissioners.

ii) Upon development of the land south of the LINCOLN ROAD EXTENSION, between 126th Street and 132nd Street and adjacent to the same, the CITY shall cause the developer of such property to enter into a modified agreement with the CITY and SID 290 to provide for the reimbursement to SID 290 by such developer or its assigns of the portion of the CITY COST SHARE actually paid to the NRD by

iii) SID 290 including interest at a rate no greater than that actually paid by SID 290.

iv) Additional features of the LINCOLN ROAD EXTENSION subproject that may be requested of the NRD by other PARTIES and that are not reflected in the

APPROVED PLANS will require that such other PARTIES negotiate with the NRD for an addendum to THIS AGREEMENT calling for such other PARTIES to commensurately increase its or their contribution(s) to the NRD for the LINCOLN ROAD EXTENSION.

21. NRD'S RECREATIONAL IMPROVEMENTS. Contemporaneously with construction of the WP-5 PROJECT The NRD will carry out a supplemental project to design and construct, on the WP-5 PROJECT site, without cost or expense to the other parties, a system of bicycle and pedestrian trails, a boat ramp, a system of in-park recreational access roads, in-lake fishery facilities, picnic areas, shelters and rest rooms, the plans and specifications for such project to be subject to the prior written approval of the CITY, such approval to not be unreasonable withheld or delayed

22. CITY'S RECREATIONAL IMPROVEMENTS. Contemporaneously with construction of the WP-5 PROJECT the NRD will carry out a SUPPLEMENTAL PROJECT to design and construct, at the CITY'S sole cost and expense, any additional in-park public recreational facilities requested by the CITY, the plans and specifications for such project to be subject to the prior written approval of the CITY, such approval to not be unreasonable withheld or delayed.

23. FUTURE INFRASTRUCTURE PROJECTS. The NRD will donate WP-5 PROJECT rights-of-way to the CITY and/or COUNTY necessary for future CITY and/or COUNTY road, sewer or other infrastructure projects, the plans and specifications for such projects to be subject to the prior written approval of the NRD, such approval to not be unreasonable withheld or delayed. Specifically, the NRD will dedicate as permanent easement an additional seventeen feet (17') of right-of-way along

the east side of 132nd Street that is part of the WP-5 PROJECT for future expansion of 132nd Street.

GENERAL CONDITIONS

24. DEADLINE FOR COMPLETIONS. All COOPERATIVELY FUNDED PROJECTS and SUPPLEMENTAL PROJECTS provided for in THIS AGREEMENT will be completed prior to the expiration of 10 years from and after the effective date of THIS AGREEMENT.

25. RIGHTS-OF WAY-DONATIONS. Each of the PARTIES having lands, easements, or other rights-of-way necessary for the COOPERATIVELY-FUNDED PROJECT or one or more of the SUPPLEMENTAL PROJECTS contemplated by THIS AGREEMENT shall donate such rights-of-way to the PARTY having primary responsibility for such project or projects.

26. ADDITIONAL WATERSHED REGIONAL DETENTION STRUCTURES. The PARTIES hereby agree to enter into future supplemental agreements containing provisions comparable to THIS AGREEMENT, providing for construction, operation and maintenance of the additional planned regional detention projects, now referred to as Structures WP-6 and WP-7, identified in the WORK PLAN.

27. WP-5 PROJECT INDEMNIFICATIONS. Except as otherwise specifically provided in this AGREEMENT, after the TRANSFER DATE provided in THIS AGREEMENT:

a) The CITY shall defend and indemnify the NRD and hold the NRD harmless (1) from and against any and all costs of operation, maintenance, repair, replacement, management and regulation of the WP-5 PROJECT, except the features of the WP-5 PROJECT that exist strictly for flood control purposes; (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 (i) the operation, maintenance, repair, replacement, management and regulation of the WP-5 PROJECT, except the DAM and the other features of the WP-5 PROJECT that exist strictly for flood control purposes; (ii) the use of the WP-5 PROJECT by members of the public; or, (iii) negligence or other actions or inactions of the CITY, its employees, officers, contractors and agents in the operation, maintenance, repair, replacement, management or regulation of the WP-5 PROJECT, except the DAM and the other features of the WP-5 PROJECT that exist strictly for flood control purposes (except as may be caused solely by the negligence of the NRD or its employees, officers, contractors or agents); 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 post-TRANSFER DATE introduction in WP-5 PROJECT RIGHTS-OF-WAY of asbestos or any form thereof, or 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 introduced in WP-5 PROJECT RIGHTS-OF-WAY after the TRANSFER DATE, including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination introduced in WP-5 PROJECT RIGHTS-OF-WAY after the

TRANSFER DATE (except costs and expenses relating to any such substances or materials introduced by the NRD or its employees, officers, contractors or agents); and, The NRD shall defend and indemnify the CITY and hold the CITY harmless (1) from and against any and all costs of operation, maintenance, repair, replacement, management and regulation of the DAM and the non-recreational appurtenances thereof; and (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 (i) the operation, maintenance, repair, replacement, management and regulation of the DAM and the non-recreational appurtenances thereof; or (ii) caused by the negligence or other actions or inactions of the NRD, its employees, officers, contractors and agents in the operation, maintenance, repair, replacement, management or regulation of the DAM and the non-recreational appurtenances thereof (except as may be caused solely by the negligence of the CITY or its employees, officers, contractors or agents).

28. OTHER INDEMNIFICATIONS. Except as otherwise specifically provided in THIS AGREEMENT with respect to the WP-5 PROJECT, each of the PARTIES shall defend and indemnify the other PARTIES, and hold the other PARTIES harmless from and against,

a) all claims, demands, causes of action, costs and expenses, including costs of investigations, court costs and attorneys fees, for negligently-caused personal injuries or property damages in whole or in part arising out of the design, construction, operation, maintenance, repair, replacement, management or regulation of the project or activity for which, under this AGREEMENT, such party has responsibility;

b) all claims, demands, causes of action, costs and expenses, including costs of investigations, court costs and attorneys fees, for costs of land, easements or rights-of-way for the project or activity for which, under this AGREEMENT, such party has responsibility; and,

c) all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising out of the introduction or presence in or on any rights-of-way which, under this AGREEMENT, such party has responsibility, of asbestos or any form thereof, or 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, 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, including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination in or on the PROJECT RIGHTS-OF-WAY (except costs and expenses relating to any such substances or materials introduced by the CITY or its employees, officers, contractors or agents).

29. PROJECT NAMING. The CITY shall have the right to assign permanent names to the separate and separable components of the WP-5 PROJECT with the approval of the NRD.

30. INVOICES. Invoices referred to herein shall set out the following information with respect to each cost being invoiced for partial reimbursement, to-wit:

a) the amount of such cost,

- b)** the date such cost was incurred,
- c)** the person to whom such amount was paid, and,
- d)** the purpose(s) for such cost;

provided, however, with respect to an invoicing PARTY'S own personnel and their supervisors, and such PARTY'S owned or leased equipment, materials, supplies and fuel utilized in design, engineering, administration and performance of such PARTY'S project, the invoicing PARTY may include invoices for reasonable amounts representing the actual cost and expense to the invoicing PARTY of providing such personnel, equipment, materials, supplies and fuel.

31. AUTHORITY FOR APPROVALS.

a) Approvals by the CITY, and other CITY discretionary actions contemplated by THIS AGREEMENT, are authorized to be provided by the City Administrator of the CITY; and,

b) Approvals by the COUNTY, and other COUNTY discretionary actions contemplated by THIS AGREEMENT, are authorized to be provided by the County Administrator of the COUNTY; and,

c) Approvals by SID 290, and other SID 290 discretionary actions contemplated by THIS AGREEMENT, are authorized to be provided by the Chairperson of the Board of Trustees of SID 290; and,

d) Approvals by the NRD, and other NRD discretionary actions contemplated by THIS AGREEMENT, are authorized to be provided by the General Manager of the NRD.

32. TERM AND DURATION. THIS AGREEMENT shall be in force and effect from and after its execution by all PARTIES and shall have permanent duration.

33. NON-DISCRIMINATION. The PARTIES shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination 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.

34. APPLICABLE LAW. The PARTIES shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance and terms of THIS AGREEMENT. Each of the PARTIES shall, whenever applicable, require performance under the Fair Labor- Standards Act.

35. 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.

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

37. Prior Agreements. This Agreement shall not be construed to modify other prior agreements between any of the Parties to this Agreement.

IN WITNESS WHEREOF

The CITY has executed THIS AGREEMENT on _____, 2012, pursuant to resolution duly adopted by the Papillion City Council.

THE CITY OF PAPILLION, NEBRASKA

By _____
Mayor

Attest:

City Clerk

The COUNTY has executed THIS AGREEMENT on _____, 2012,
pursuant to resolution duly adopted by its Board of Commissioners.

THE COUNTY OF SARPY, NEBRASKA

By _____
**Chairperson, Board of County
Commissioners**

Attest:

County Clerk

SID 290 has executed THIS AGREEMENT on _____, 2012, pursuant to
resolution duly adopted by its Board of Trustees.

**SANITARY AND IMPROVEMENT
DISTRICT NO. 290 OF SARPY COUNTY,
NEBRASKA**

By _____
Chairperson, Board of Trustees

Attest:

District Clerk

The NRD has executed THIS AGREEMENT on _____, 2012, pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager