

Agenda Item: 7.

## **MEMORANDUM**

**TO:** Programs, Projects and Operations Subcommittee

**FROM:** Martin P. Cleveland and Dick Sklenar

**SUBJECT:** Elk Creek Channel/Levee Emergency Watershed Protection Project  
NRCS Cost Share Agreement and Dakota County Interlocal  
Agreement

**DATE:** April 5, 2012

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The Elk Creek Levee Project includes a 2 mile reach between US Hwy 20 and 137<sup>th</sup> Street in Dakota County, east of Jackson, Nebraska. This creek includes spoil bank levees. The creek banks and levees have experienced significant erosion and sloughing over the past 2 years. Enclosed are location maps and 2011-2012 photographs of levee erosion/sloughing. The levees protect adjacent farmland between Highway 20 and 137<sup>th</sup> Street, downstream of Jackson, Nebraska from Elk Creek flood events and backwater from Missouri River, such as during summer 2011.

It has been estimated by the Natural Resources Conservation Service (NRCS) that these levees protect 3,840 acres and the potential flood damage is \$1,494,300 per year.

In 2010, the the District made an Emergency Watershed Protection (EWP) application to NRCS for repair assistance. The 2010 EWP application was approved by NRCS, but was not funded by NRCS.

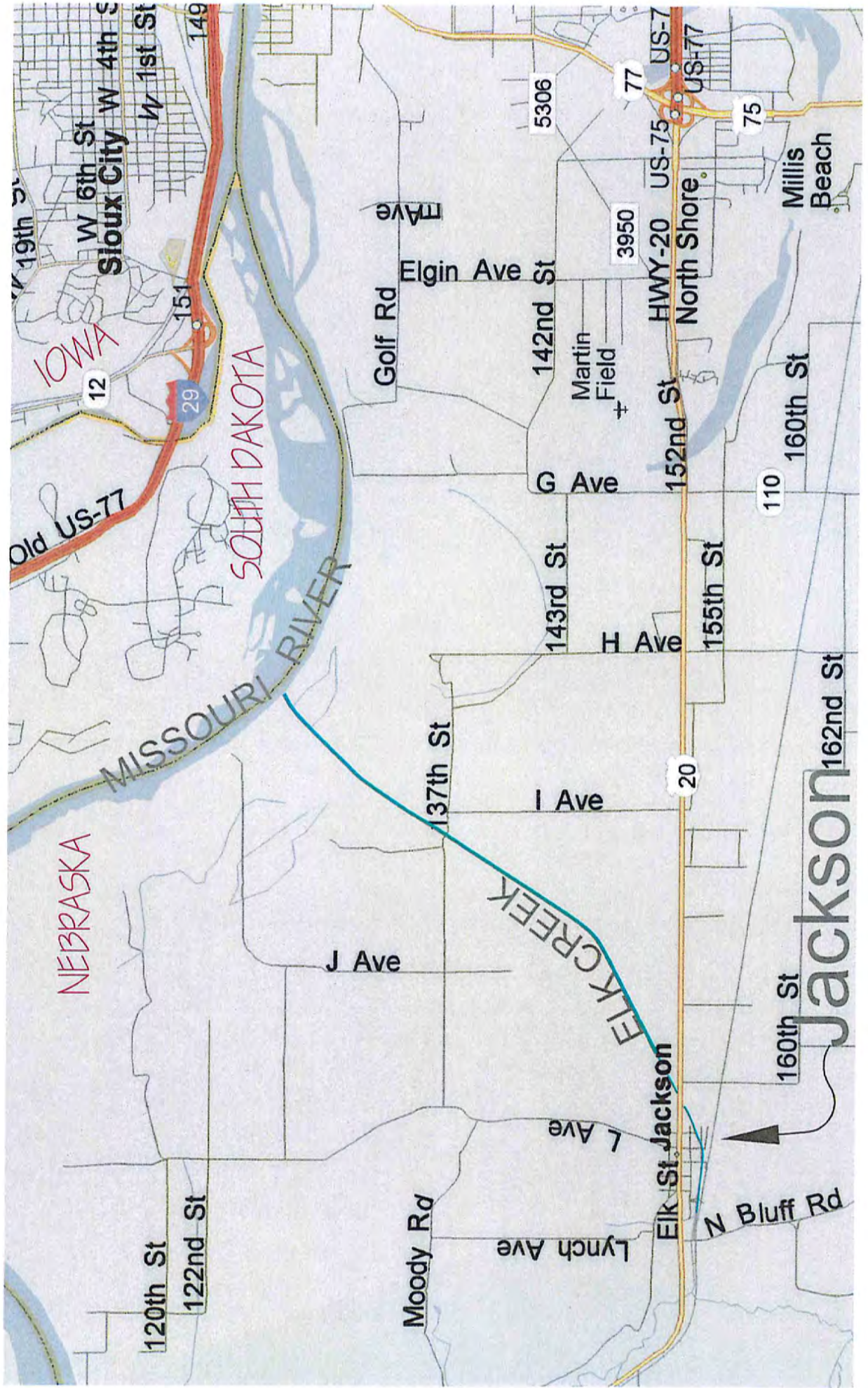
In 2011, the District made a EWP application to NRCS for Elk Creek Levee Project, which experienced additional creek bank and levee damage due to the 4 month period of high stage due to Missouri River flood event. The NRCS accepted the District's Elk Creek Levee Project 2011 EWP Application and funds are available for the work. The EWP provides for 75% Federal/25% Local cost share and the sponsor must acquire land rights, necessary permits and operate/maintain the improvements. Enclosed is a EWP project cost share agreement for your consideration. The current repair cost estimate is \$1,550,000 of which \$1,000,000 of the project will be cost shared by NRCS due to funding limits. The NRCS will cost share in the Station 99+00 to 186+00 reach at 75% of \$1,000,000 and 0% of \$550,000 of the 186+01 to 221+30 reach. Local cost share for the total project cost would be \$800,000.

During the EWP application process, NRCS staff determined that the Elk Creek sloughing has also impacted the Dakota County 137<sup>th</sup> Street Bridge at the downstream end of the District's Elk Creek Levee Project and if not stabilized it would eventually endanger the bridge and road safety. The District staff contacted Dakota County Highway Department staff to see if the County would have an interest in participating via Interlocal Agreement with the District in the Elk Creek EWP Project and paying the local share for the bridge stabilization component. Dakota County staff expressed an interest in the EWP project and will present to their County Board in the near future. The work to protect 137<sup>th</sup> Street is estimated cost \$181,920. Dakota County share would be \$45,480.

It is proposed that the District sponsor the Elk Creek Emergency Watershed Protection Project and provide local matching funds, except for the 137<sup>th</sup> Street Bridge portion, where Dakota County will provide the local matching funds. It is further proposed that the emergency project include extending the repairs upstream to Hwy. 20 at the District's expense, utilizing NRCS technical assistance for design and construction administration.

It is the Management recommendation that the Programs, Projects and Operation Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Agreement with Dakota County and local sponsorship agreement with Natural Resources Conservation Service for Emergency Watershed Protection for the Elk Creek Channel/Levee Project near Jackson, NE, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

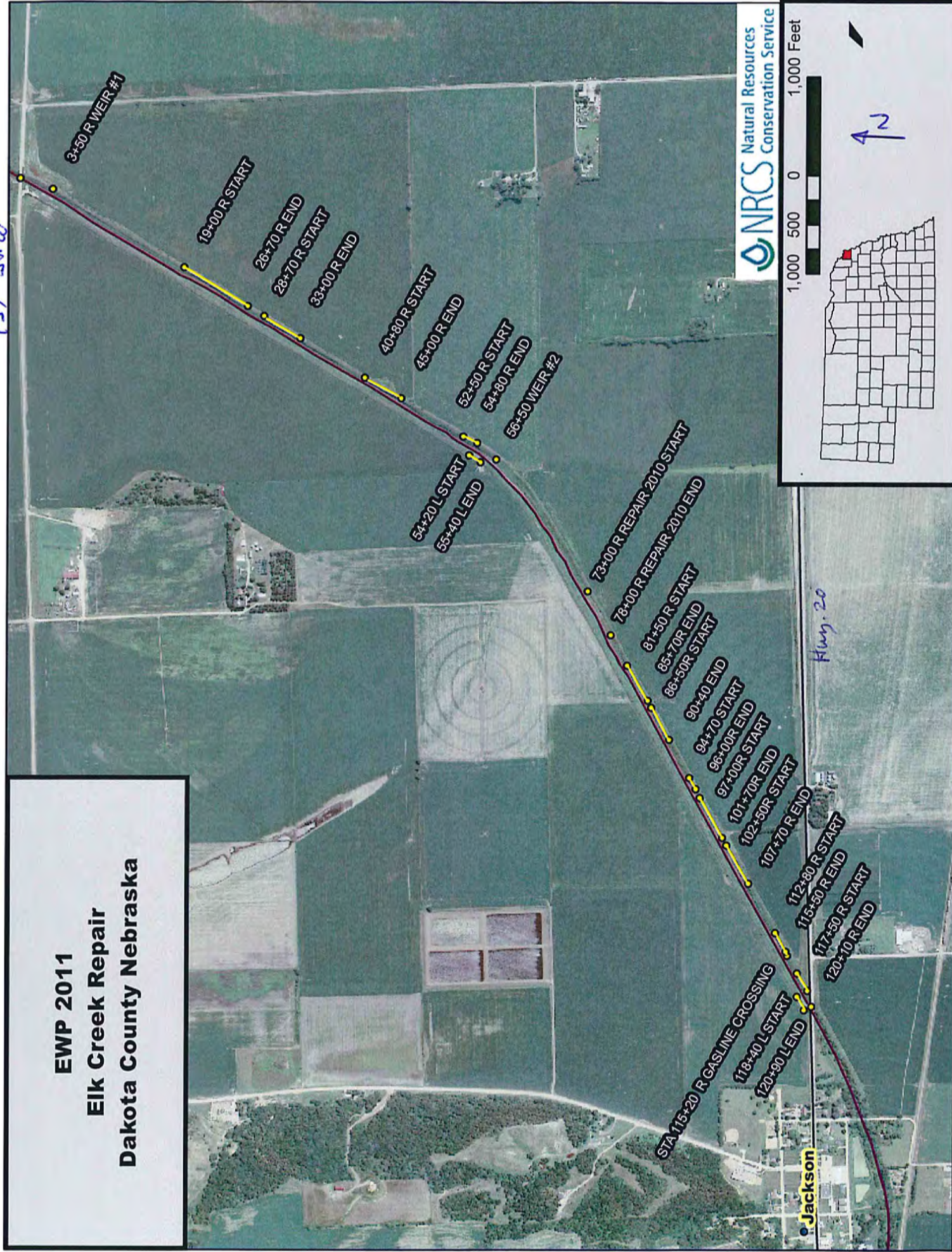
# ELK CREEK LEVEE PROJECT LOCATION MAP





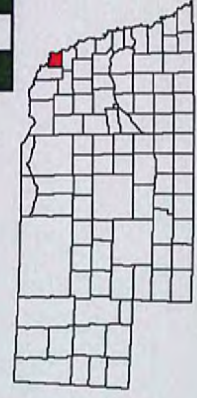
# **EWP 2011** **Elk Creek Repair** **Dakota County Nebraska**

157<sup>th</sup> Street



NRCS Natural Resources Conservation Service

1,000 500 0 1,000 Feet



Aug. 20



**Elk Creek Levee Sloughs - Looking Upstream towards Hwy. 20  
June 2011**





Elk Creek Levee Project (Hwy.  
20 to 137th Street - Looking  
East at Creekside Levee  
Slough



2011 6 9

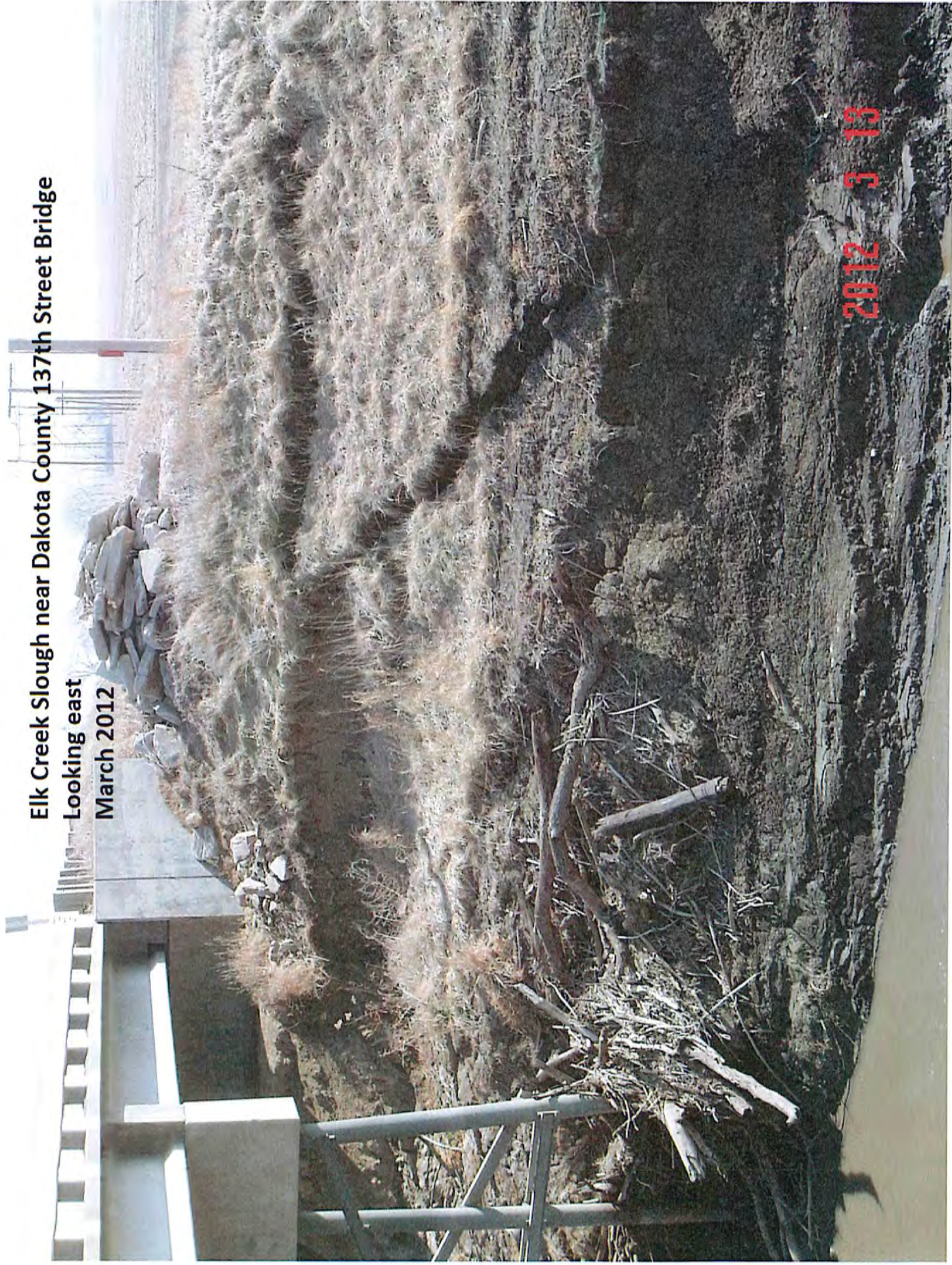


Elk Creek Slough near Dakota County 137th Street Bridge

Looking east

March 2012

2012 3 13





Elk Creek Sloughing near Dakota County Road (137th Street  
Bridge)

Looking northeast from bridge

2012 3 13





STATE: Nebraska  
PROJECT: Elk Creek, Dakota County  
AGREEMENT NO.: 69-6526-2-812

UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE

COOPERATIVE AGREEMENT  
LOCALLY LED CONTRACTING

**THIS AGREEMENT** is entered into by and between the Papio-Missouri River Natural Resources District, called the NRD, hereinafter called the Sponsor and Contracting Local Organization; and the Natural Resources Conservation Service, United States Department of Agriculture, called NRCS.

**WITNESSETH THAT:**

**WHEREAS**, under the provisions of Section 216 of Public Law 81-516, Emergency Watershed Protection Program, and Title IV of the Agriculture Credit Act of 1978, Public Law 95-334, NRCS is authorized to assist the Sponsor in relieving hazards created by natural disasters that caused a sudden impairment due to channel bank erosion and sediment deposition threatening levees and a county bridge.

**WHEREAS**, NRCS and the Sponsor agree to install emergency watershed protection measures to relieve hazards and damages created by excessive rainfall causing flooding on May 24 through August 1, 2011.

**NOW THEREFORE**, in consideration of the premises and of the several promises to be faithfully performed by the parties hereto as set forth, the Sponsors and NRCS do hereby agree as follows:

- A. It is agreed that the following-described work is to be constructed at an estimated cost of \$1,550,000.00.



DSR No.	Description of Work	Estimated Construction Cost
1. Papio001 Station 99+00 to Station 186+00	Reshape banks, install rock riprap, seed and mulch, and rock riffle grade control structures.	\$1,000,000.00 (Cost Shared)
2. Station 186+01 to Station 221+30	Additional Work	\$550,000.00 (100% Sponsor Cost)

**B. The Sponsor will:**

1. Provide 25 percent of the cost of the emergency watershed protection measures described in Section A.1. This cost to the Sponsor is estimated to be \$250,000.00.
2. Provide 100% of the cost of the additional work described in Section A.2, including inspection services. This cost to the Sponsor is estimated to be \$550,000.00.
3. Provide in-kind contribution to let and administer the contract.

The maximum value of in-kind contribution will not exceed \$25,000.00. The Sponsor will retain records to support costs incurred by the Sponsor equal to the amount of the in-kind contribution.

4. Designate the following individual as the liaison between the Sponsor and NRCS, listing the duties, responsibilities and authorities. Furnish this information in writing to the NRCS State Administrative Officer.

Name: Martin Cleveland  
Address: 8901 South 154<sup>th</sup> Street  
Omaha, NE 68138-3621  
Telephone No.: 402-444-6222  
[mcleveland@papionrd.org](mailto:mcleveland@papionrd.org)



5. The construction plans shall be reviewed and approved by the Sponsor.
6. Accept all financial and other responsibility for excess cost resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measures described in A.
7. Provide certification that real property rights have been obtained for installation of planned measures. Certification will be provided on form SCS-ADS-78, Assurances Relating to Real Property Acquisition, as amended. An Attorney's opinion as to the adequacy of landrights is required.
8. Contract(s) for professional services and construction of the measures described in Section A in accordance with 7 CFR 3016.36, applicable state requirements and the Sponsor's procurement regulations. The Sponsor will provide NRCS State Administrative Officer with a copy of each solicitation (Invitation for Bids, Request for Quotations), bid abstract and awarded contract.
9. Issue an invitation for bids, which is to contain NRCS requirements drawings and specifications, and Sponsor requirements.
10. Receive, protect and open bids. Determine the lowest qualified bidder, and with written concurrence of the NRCS State Administrative Officer, make award.
11. Comply with the applicable requirements in Attachment A to this agreement. If applicable, complete the attached "Clean Air and Water Certification" included in Attachment A.
12. Ensure that all contracts for construction of emergency watershed protection measures include the provisions contained in Attachment B to this agreement.
13. Provide copies of site maps to appropriate Federal and State agencies for environmental review, if applicable. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns prior to award of the contract(s) for construction of the emergency watershed protection measures.



14. Ensure that requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
15. Pay the contractor as provided in the contract(s). Submit billings to NRCS for reimbursement of NRCS' share of contract costs and in-kind contributions on Form SF-270, Request for Advance or Reimbursement, with supporting documentation of costs attached to the form.
16. Receive payment under this agreement using electronic funds transfer (EFT) procedures in accordance with 31 CFR 208. EFT procedures will comply with USDA National Finance Center (NFC) requirements.
17. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this agreement. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, and litigation that may result from the project. Such actions will be at the expense of the Sponsor including legal expenses.
18. Arrange for and conduct final inspection of completed emergency watershed protection measures. Provide a certification statement to the NRCS State Administrative Officer that the project was installed in accordance with contractual requirements and the terms of this agreement.
19. Hold and save NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by it under this agreement or resulting from the work provided for in this agreement.
20. Upon completion and acceptance of all work, when provided by the terms of the contract, obtain a written release from the contractor of all claims against the Sponsor arising by virtue of the contract.
21. Upon acceptance of the work from the contractor(s), assume responsibility for operation and maintenance (in accordance with the Operation and Maintenance Agreement).
22. Retain all records dealing with the award and administration of the contract(s) for 3 years from the date of the Sponsor's submission of the FINAL request for reimbursement or until final audit findings have been resolved. If any litigation is started before the expiration of the 3-year period, the



records are to be retained until the litigation is resolved or the end of the 3-year period whichever is longer. Make such records available to the Comptroller General of the United States or his duly authorized representative and accredited representatives of the Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcripts.

23. Be responsible for all administrative expenses necessary to arrange for and carry out the works of improvement described in Section A. These administrative matters include but shall not be limited to facilities, clerical expenses, and legal counsel, including the fees of such attorney or attorneys deemed necessary by NRCS to resolve any legal matters.
24. If needed, upon completion of emergency protection measures and the elimination of the threat, take action to bring the measures up to reasonable standards by other means and/or authority. Unless the measures are brought up to reasonable standards, the sponsor will not be eligible for future funding under the Emergency Watershed Protection Program.
25. Administer action under this agreement in accordance with 7 CFR 3015, 7 CFR 3016, OMB Circulars A-102, A-87, A-133, and other Rules referenced in 7 CFR 3015.

**C. NRCS will:**

1. Provide 75 percent of the cost of construction of the emergency watershed protection measures described in A.1. This cost to NRCS is estimated to be \$750,000.00 (financial assistance funds).

Provide reimbursement of in-kind contributions not exceed \$25,000.00 (technical assistance funds).

2. Prepare the design, construction specifications, and drawings in accordance with standard engineering principles and be in compliance with programmatic requirements.
3. The following individual is designated as the liaison between the NRCS and the Sponsor. The major duties, responsibilities and authorities of the liaison will be to assist in the final inspection; certify along with the Sponsor's Professional Engineer when all work has been completed according to the specifications and drawings. Review and approve SF-270 Request for Advance or



Reimbursement and supporting documentation for reimbursement to the Sponsor.

Chuck Leinen, Civil Engineer  
8901 South 154<sup>th</sup> Street  
Omaha, NE 68138-3621  
Telephone No. 402-896-0121 Ext 237

4. Not be substantially involved with the contractual administration of this agreement. However, NRCS will provide inspection services for the work described in Section A.1. and provide advice and counsel as needed.
5. Make payment to the Sponsor covering NRCS's share of the cost upon receipt and approval of Form SF-270, Request for Advance or Reimbursement.

**D. It is mutually agreed that:**

1. This agreement is effective the date it is fully executed by all parties to this agreement. It shall become null and void 30 calendar days after the date NRCS has executed this agreement in the event the work has not been commenced. All work must be completed by August 25, 2012.
2. The furnishing of financial and other assistance by NRCS is contingent on the availability of funds appropriated by Congress from which payment may be made and shall not obligate NRCS upon failure of the Congress to appropriate funds.



3. In the event of contractor default, any additional funds properly allocable as construction costs required to ensure completion of the project described in Section A, are to be contributed by the parties under the terms of this agreement. Any excess costs including interest resulting from a judgment collected for the defaulting contractor, or his or her surety, will be prorated between the Sponsor and NRCS in the same ratio as construction funds are contributed under the terms of the agreement.
4. NRCS may terminate this agreement in whole or in part if it is determined by NRCS that the Sponsors have failed to comply with any of the conditions of this agreement. NRCS shall promptly notify the Sponsors in writing of the determination and reasons for the termination, together with the effective date. Payments made by or recoveries made by NRCS under this termination shall be in accord with the legal rights and liabilities of NRCS and the Sponsors.
5. This agreement may be temporarily suspended by NRCS if it determines that corrective action by the Sponsors is needed to meet the provisions of this agreement. Further, NRCS may suspend this agreement when it is evident that a termination is pending.
6. This agreement may be amended as mutually agreed by a written amendment duly executed by authorized officials of the signatory parties to this agreement.
7. By signing this agreement the recipient assures the Department of Agriculture that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.
8. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

By: \_\_\_\_\_

Title: General Manager

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

This action authorized at an official meeting of the Papio-Missouri  
River NRD on the \_\_\_\_\_ day of \_\_\_\_\_ 2012, at \_\_\_\_\_  
\_\_\_\_\_ State of Nebraska.

Signature \_\_\_\_\_ Title \_\_\_\_\_

**UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE**

By: \_\_\_\_\_

Craig Derickson

Title: State Conservationist

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

Attachment A - Special Provisions

Attachment B - Special Provisions, Construction



**ATTACHMENT A - SPECIAL PROVISIONS**

- I. DRUG-FREE WORKPLACE CERTIFICATION**
- II. CERTIFICATION REGARDING LOBBYING**
- III. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND  
OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED  
TRANSACTIONS**
- IV. CLEAN AIR AND WATER CERTIFICATION**
- V. ASSURANCES AND COMPLIANCE**
- VI. EXAMINATION OF RECORDS**

## **ATTACHMENT A - SPECIAL PROVISIONS**

The signatories agree to comply with the following special provisions, which are hereby attached to this agreement.

### **I. Drug-Free Workplace**

By signing this agreement, sponsors are providing the certification set out below. If it is later determined that the sponsors knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the Service, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on-the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirements; consultants or independent contractors not on the grantees' payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification:

A. The sponsors certify that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about--



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- (1) The danger of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

- (1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction;

(e) Notifying the Service in writing, within ten calendar days after receiving notice under paragraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted--

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

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(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f)

(h) Agencies shall keep the original of all disclosure reports in the official files of the agency.

B. The sponsors may provide a list of the site(s) for the performance of work done in connection with a specific project or other agreement.

**II. Certification Regarding Lobbying (7 CFR 3018)** (Applicable if this agreement exceeds \$100,000) - The sponsors certify to the best of their knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the sponsors, to any person for influencing or attempting to influence an officer or employee of an agency, Member of Congress, an officer or employee of Congress, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure form to Report Lobbying," in accordance with its instructions.

(3) The sponsors shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts undergrants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



**III. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions, (7 CFR 3017).**

(1) The sponsors certify to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the primary sponsor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

**IV. Clean Air And Water Certification**

(Applicable if this agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42U.S.C. 1857c-B(c)(1)) or the Federal Water Pollution Control Act (33U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)

The project sponsoring organizations) signatory to this agreement certifies as follows:

(a) Any facility to be utilized in the performance of this proposed agreement is [ ], is not [ ], listed on the Environmental Protection Agency List of Violating Facilities.

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(b) They will promptly notify the Administrative Team Leader prior to the signing of this agreement by the Service, of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency List of Violating Facilities.

(c) They will include substantially this certification, including this subparagraph (c), in every nonexempt subagreement.

CLEAN AIR AND WATER CLAUSE

(Applicable only if the agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act(42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act(33 U.S.C. 1319(c)) and is listed by EPA or the agreement is not otherwise exempt.)

A. The project sponsoring organizations) signatory to this agreement agrees as follows:

- (1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of this agreement by the Service.
- (2) That no portion of the work required by this agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this agreement was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- (3) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.
- (4) To insert the substance of the provisions of this clause in any nonexempt subagreement including this subparagraph(4).



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B. The terms used in this clause have the following meanings:

- (1) The term "Air Act" means the Clean Air Act, (42 U.S.C. 1857et seq., as amended by Public Law 91-604).
- (2) The term "Water Act" means Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).
- (3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act, or an approved Implementation procedure under section 112(d) of the Air Act(42 U.S.C 1857c-7(d)).
- (4) The term "clean water standards: means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).
- (5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court or water pollution control agency in accordance with the Air Act or Water Act and regulations issued pursuant thereto.
- (6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned, leased, or supervised by a sponsor, to be utilized in the performance of an agreement or subagreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office Of Federal Activities, Environmental Protection Agency, determines that independent facilities are colocated in one geographical area.

**V. Assurances and Compliance**

As a condition of the grant or cooperative agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CF 3015, 3016, 3017, 3018 and 3051 which hereby are incorporated in this agreement by reference, and such other statutory provisions as are specifically set forth herein.

**VI. Examination of Records**

Give the Service or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this agreement. Retain all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable OMB Circular.

**ATTACHMENT B – SPECIAL PROVISIONS, CONSTRUCTION**

- I. EQUAL OPPORTUNITY**
- II. EQUAL OPPORTUNITY (FEDERAL ASSISTED CONSTRUCTION)**
- III. NOTICE TO CONTRACTING LOCAL ORGANIZATION OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**
- IV. NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS**
- V. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**
- VI. CERTIFICATION OF NONSEGREGATED FACILITIES (NRCS-ADS-818)**
- VII. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**



## **ATTACHMENT B - SPECIAL PROVISIONS**

### **CONSTRUCTION**

#### **I - EQUAL OPPORTUNITY**

The Contracting Local Organization agrees to incorporate, or cause to be incorporated, into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is paid for, in whole or in part, with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following Equal Opportunity (Federally Assisted Construction) clause:

#### **II - EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION)**

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff determination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity (Federally Assisted Construction) clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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6. In the event of the Contractor's noncompliance with the Equal Opportunity (Federally Assisted Construction) clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

7. The Contractor will include this Equal Opportunity (Federally Assisted Construction) clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contracting Local Organization further agrees that it will be bound by the above Equal Opportunity (Federally Assisted Construction) clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, however, that if the Contracting Local Organization so participating is a State or local government, the above Equal Opportunity (Federally Assisted Construction) clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Contracting Local Organization agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the Equal Opportunity (Federally Assisted Construction) clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

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The Contracting Local Organization further agrees that it will refrain from entering into any contractor contract modification subject to Executive Order No. 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity (Federally Assisted Construction) clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contracting Local Organization agrees that if it fails or refuses to comply with these undertakings the administering agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant; refrain from extending any further assistance to the Contracting Local Organization under the program with respect to which its failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contracting Local Organization; and refer the case to the Department of Justice for appropriate legal proceedings.

**III - NOTICE TO CONTRACTING LOCAL ORGANIZATIONS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**

(a) A Certification of Nonsegregated Facilities must be submitted by the Contracting Local Organization prior to any agreement for Federal financial assistance where the Contracting Local Organization will itself perform a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

(b) The Contracting Local Organization shall notify prospective federally assisted construction contractors of the Certification of Nonsegregated Facilities required, as follows:

**IV - NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS**

(a) A Certification of Nonsegregated Facilities must be submitted prior to the award of a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

(b) Contractors receiving federally assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.



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**V - NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
CERTIFICATIONS OF NONSEGREGATED FACILITIES**

(a) A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

(b) Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

**VI - CERTIFICATION OF NONSEGREGATED FACILITIES**

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity Clause.)

The federally assisted construction contractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this section is a violation of the Equal Opportunity Clause in this contract. As used in this caption, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, dg fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national of because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain such certifications in his/her files.

NOTE-. The penalty for making false statements - offers is prescribed in 18 U. S. C. 1 00 1.

Contractor Signature\_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

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**VII - STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS**

(EXECUTIVE ORDER 11246)

- I. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract act Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 94 1.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cub Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all groups having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which the contract resulted.

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3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO Clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7. a. through 7. p. of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female tuition that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the *Federal Register* in notice of and such notices may be obtained from any Office of Federal Contract Compliance Programs or from Federal procurement Contracting Officers. The Contractor is expected to make substantially uniform progress toward meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:



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- a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all at which the Contractors employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractors obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority and female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process had impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities, and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractors employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Paragraph 7.b. above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc. - specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

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- g. Review, at least annually, the company's EEO policy and the action obligations under these specifications with all employees having any responsibility for hiring, assessment, layoff, termination, or their employment decisions, including specific review of these items with on-site supervisory personnel such as Superintendents, General Fore etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contract's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipate doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minorities and female students and to minority and female recruitment and training organizations- , serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of the applications for apprenticeship or other, training by any recruitment sources, the Contractor shall send written notification, to organizations such as the above, describing the openings, screening procedure, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classification work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to promote privacy between the sexes.

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- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8. Contractors are encouraged to participate in voluntary associations which assist in one or more of the affirmative action obligations (Paragraphs 7.a- through 7.p.). The efforts of a contractor association, joint contractor-union, contractor-community, or other share group of which the Contractor is a member and participant, may be asserted as any one or more of its obligations under Paragraphs 7.a. through 7.p. of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to an obligation shall not be a defense for the Contractor's noncompliance.
- 9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10. The Contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- 12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.



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13. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easy understandable and retrievable form however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
14. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7. of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 604.8.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**INTERLOCAL COOPERATION ACT AGREEMENT**  
**BETWEEN**  
**DAKOTA COUNTY, NEBRASKA,**  
**AND**  
**THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**  
**FOR**  
**ELK CREEK EMERGENCY WATERSHED PROTECTION PROJECT**

This Agreement ("this AGREEMENT") is entered into by and between the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("the NRD") and the COUNTY OF DAKOTA in the State of Nebraska ("the COUNTY").

WHEREAS, a four month period of backwater flooding of the Missouri River Missouri in the Summer of 2011 was the principal cause of extensive streambank erosion and levee damage in and along the two mile reach of Elk Creek between U.S. Highway 20 and 137<sup>th</sup> Street in Dakota County, east of Jackson, Nebraska; and, such stream bank erosion has resulted in bank sloughing that also endangers the COUNTY'S 137<sup>th</sup> Street Bridge; and,

WHEREAS, the United States Department of Agriculture's Natural Resources Conservation Service ("the NRCS") has estimated that such Elk Creek levees protect 3,840 acres and prevent potential flood damage of \$1,494,300 annually; and,

WHEREAS the NRCS has estimated that that the cost of correcting such streambank erosion and repairing such levee damage is \$1,425,120; and,

WHEREAS, the NRD has applied to the NRCS under the Emergency Watershed Protection Program for a grant towards the cost of a project ("the PROJECT") to accomplish such repairs and the NRCS has estimated that that the cost of correcting such streambank erosion and repairing such streambank and levee damage is \$1,425,120 and that the cost of repairing the erosion that now endangers the COUNTY'S 137<sup>th</sup> Street Bridge is \$181,920; and,

WHEREAS, in response to the NRD'S grant application, NRCS has proposed a "Cooperative Agreement for Locally Led Contracting", by and between the NRD and NRCS ("the NRCS PACT"), a copy of which, together with its attachments, is attached hereto as EXHIBIT "1" and incorporated herein by reference; and,

WHEREAS, pursuant to the NRCS PACT, the NRD would be responsible to pay twenty-five percent of the cost of the repairing such Elk Creek streambank and levee damage, to-wit: \$356,280; and the COUNTY would be responsible to pay twenty-five percent of the cost of repairing the bank sloughing that now endangers the COUNTY'S 137<sup>th</sup> Street Bridge , to-wit \$45,480; and,

WHEREAS, the NRD and the COUNTY desire to cooperate with each other in carrying out the PROJECT, in accordance with the NRCS PACT and in accordance with this AGREEMENT,

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

1. ESTABLISHMENT OF PROJECT. The parties hereby agree to establish the PROJECT, which the parties hereby find, determine and agree will be of general benefit to the NRD, with only incidental special benefit.
2. RESPONSIBILITIES OF THE NRD.
  - a. The NRD shall administer the PROJECT, which shall include repairing the sloughing that now endangers the COUNTY'S 137<sup>th</sup> Street Bridge.
  - b. The NRD shall retain such consultants as necessary to engineer the PROJECT.
  - c. The NRD shall retain such contractors as necessary to construct the PROJECT using the NRD's normal bidding procedures for such construction.
  - d. The NRD shall compensate consultants and/or contractors as necessary to construct the PROJECT.
  - e. The NRD shall obtain any land rights needed for construction, operation and maintenance of the PROJECT.
  - f. The NRD shall obtain all permits needed for the PROJECT.
  - g. The NRD agrees to indemnify the COUNTY and hold the COUNTY harmless from and against any and all liability, causes of action and/or claims for personal injury or property damages arising out of the NRD'S performance or failure to perform one or more of the above and foregoing responsibilities assigned to the NRD in this AGREEMENT.
  - h. The NRD'S plans and specifications for the COUNTY'S 137<sup>th</sup> Street Bridge shall be subject to the review and approval of the COUNTY.
3. RESPONSIBILITIES OF THE COUNTY.
  - a. The COUNTY shall review all plans and specifications for repairing the bank erosion that that now endangers the COUNTY'S 137<sup>th</sup> Street Bridge; and the COUNTY'S approval thereof shall not be unreasonably delayed or withheld.
  - b. The COUNTY shall reimburse the NRD for the local share of the engineering and construction costs for repairing the bank erosion that that now endangers the COUNTY'S 137<sup>th</sup> Street Bridge, such reimbursement however to not exceed the sum of \$\_\_\_\_\_.
  - c. The COUNTY shall grant to the NRD assignable easement rights in, on, over and across any and all COUNTY property that the NRD deems necessary, for the purposes of constructing, operating and maintaining temporary and permanent portions of the PROJECT.

- d. After the completion of construction of the PROJECT, the COUNTY at its sole cost and expense shall permanently operate and maintain COUNTY'S 137<sup>th</sup> Street Bridge, as repaired; and, the NRD its sole cost and expense shall permanently operate and maintain the remaining PROJECT works and improvements.
- i. The COUNTY agrees to indemnify the NRD and hold the NRD harmless from and against any and all liability, causes of action and/or claims for personal injury or property damages arising out of the COUNTY'S performance or failure to perform one or more of the above and foregoing responsibilities assigned to the COUNTY in this AGREEMENT.

IN WITNESS WHEREOF,

The COUNTY executed this agreement on \_\_\_\_\_,  
2012.

THE COUNTY OF DAKOTA, NEBRASKA

By. \_\_\_\_\_

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

Attest:

\_\_\_\_\_  
County Clerk

The NRD executed this agreement on \_\_\_\_\_, 2012.

PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT

By. \_\_\_\_\_  
General Manager

The COHA executed this agreement on \_\_\_\_\_, 2012.

CAMBRIDGE OAKS HOMEOWNERS  
ASSOCIATION

By. \_\_\_\_\_



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