

Agenda Item: 8.a-b.

## MEMORANDUM

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

**FROM:** Martin P. Cleveland

**SUBJECT:** Elk Creek Emergency Watershed Protection Project--  
NRCS Cooperative Agreement  
Dakota County Interlocal Agreement

**DATE:** May 4, 2012

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The Elk Creek Channel Project is part of the District's Elk/Pigeon Creek Improvement Project Area, which includes a 2 ¼ mile leveed 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 never funded.

In 2011, the District made a renewed 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 2011 EWP Application and funds are currently available for a portion of the project. The EWP provides for 75% Federal/25% Local cost share and the sponsor must acquire land rights, necessary permits and operate/maintain the improvements.

The Elk Creek EWP Project, which spans approximately 2 ¼ miles from Hwy. 20 to 137<sup>th</sup> Street, has been divided by NRCS into **3 Segments** as described below. A Damage Survey Report (DSR) was completed for each segment.

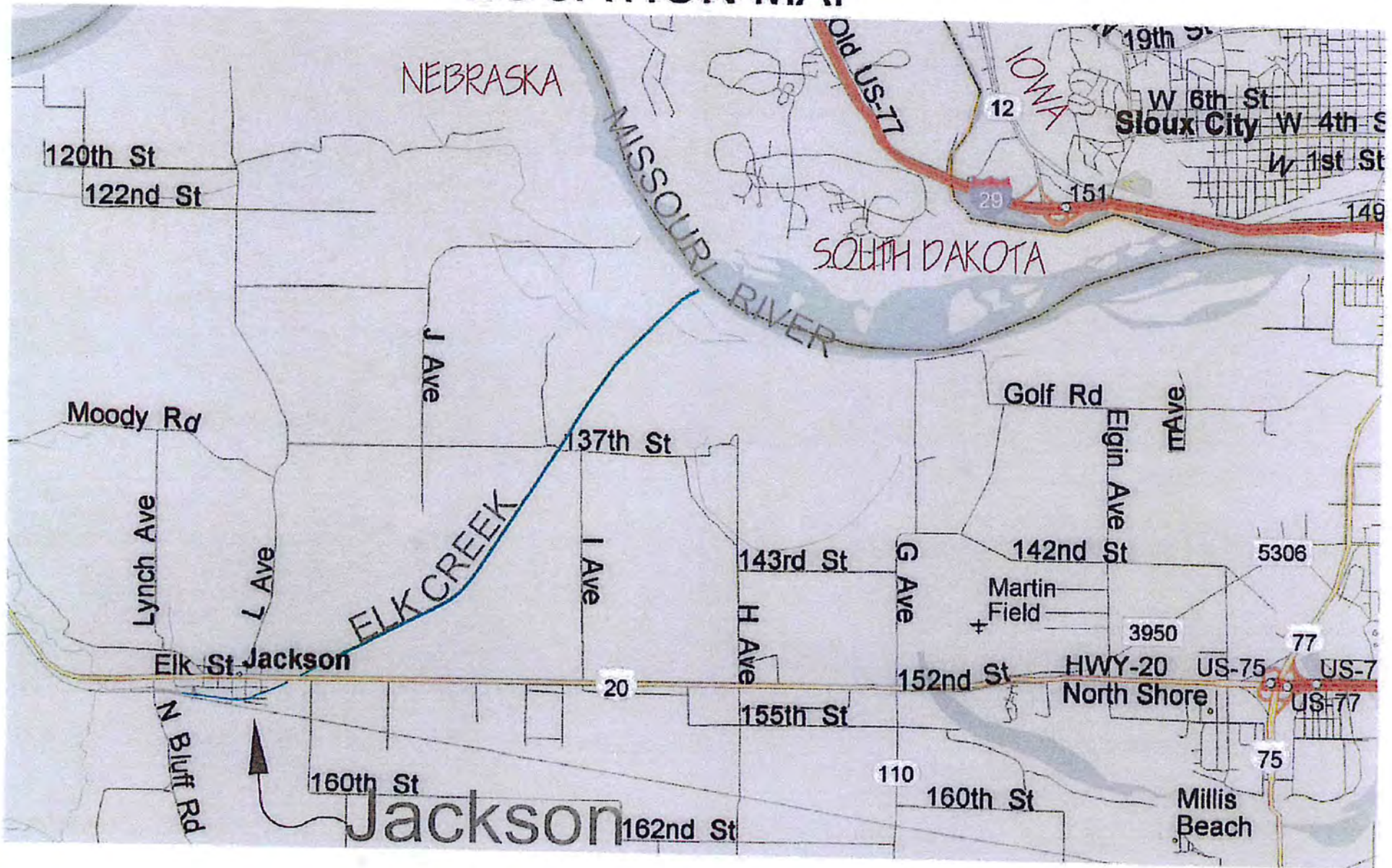
1. DSR 1 A: This is the lower reach from Station 100+00 to 186+00, which extends upstream from 137<sup>th</sup> Street. **The estimated Segment 1 cost is \$860,000 with 75% cost share by NRCS (\$645,000) and 25% cost share by District (\$215,000).**
2. DSR 1 B: This site at Station 99+00 to 100+00 is immediately adjacent to 137<sup>th</sup> Street and is intended to protect the 137<sup>th</sup> Street Bridge from erosion. **The estimated Segment 2 cost is \$140,000 with 75% cost share by NRCS (\$105,000) and 25% cost share by Dakota County (\$35,000).** The District will serve as a pass-through agency for cost share funding through a proposed Interlocal Agreement with Dakota County (attached).
3. DSR 1 C: This is the upper reach from Station 186+00 to 221+30, which extends upstream to Hwy 20. **The estimated Segment 3 cost is \$1,200,000 with 75% cost share by NRCS (\$900,000) and 25% cost share by District (\$300,000).**
4. **Total Project Cost: \$2,200,000, Federal share(75%) = \$1,650,000, Local share (25%) = \$550,000.**

Enclosed is the EWP project cost share agreement with NRCS for Phase I (Segments 1 and 2) for your consideration. Due to current funding limitations, the NRCS only has \$750,000 available for the project at this time and can only do Phase I of the Elk Creek EWP Project, at this time. The Nebraska NRCS office searched nationwide for additional EWP funds and determined that all EWP funds have been committed. There is a possibility that due to some project cost under runs nationwide that more funds might become available later in 2012.

The proposed Cooperative Agreements with NRCS are set up in two Phases. Phase I, which includes Segments 1 and 2 as outlined above, is estimated to cost \$1.0 million and will be done first with the \$750,000 in EWP funds currently available. The District's share of Phase I would be \$215,000 and Dakota County would contribute \$35,000. When additional EWP funding becomes available, a Cooperative Agreement for Phase II of the Elk Creek EWP Project will be brought to the Board for review. Phase II (Segment 3 as outlined above) would be constructed at an estimated cost of \$1.2 million. NRCS would cover \$900,000 of those costs and the District would be responsible for the remaining \$300,000 non-federal share. In total the District's cost is \$515,000 of the \$2.2 million EWP project.

**Management recommends that the Programs, Projects and Operation Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Agreement with Dakota County and proposed Cooperative Agreement for Phase I with the Natural Resources Conservation Service for the Elk Creek Emergency Watershed Protection 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







**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES  
DISTRICT**  
www.papionrd.org

8901 S. 154TH STREET  
OMAHA NE. 68138-3621  
OFFICE: 402-444-6222  
FAX: 402-895-6543

## ELK CREEK LOCATION MAP

PROJECT: ELK CREEK

DATE: 5 / 2 / 2012

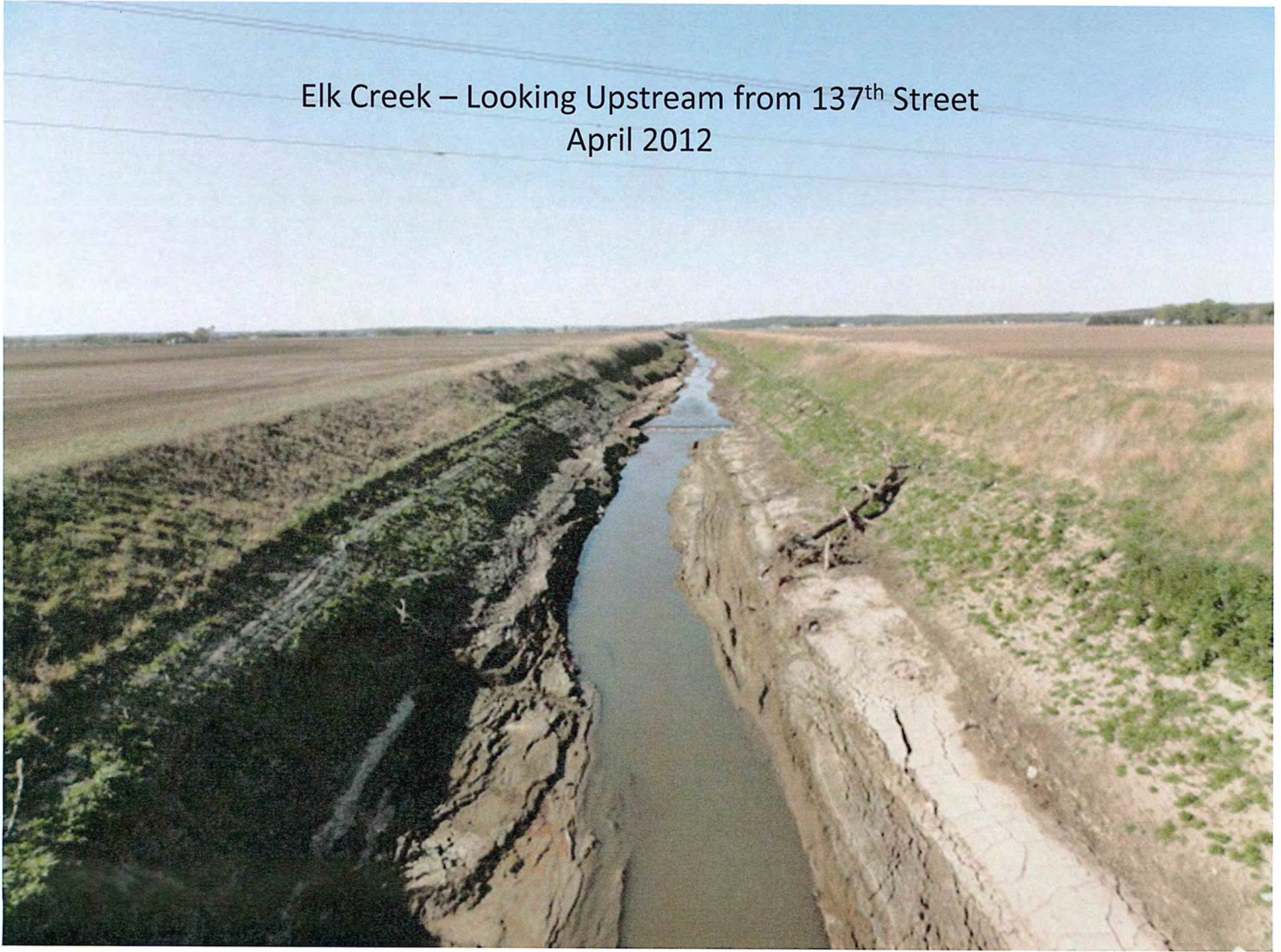
DRAWN BY: SMM

SCALE:

SHEET 1 OF 1



Elk Creek – Looking Upstream from 137<sup>th</sup> Street  
April 2012



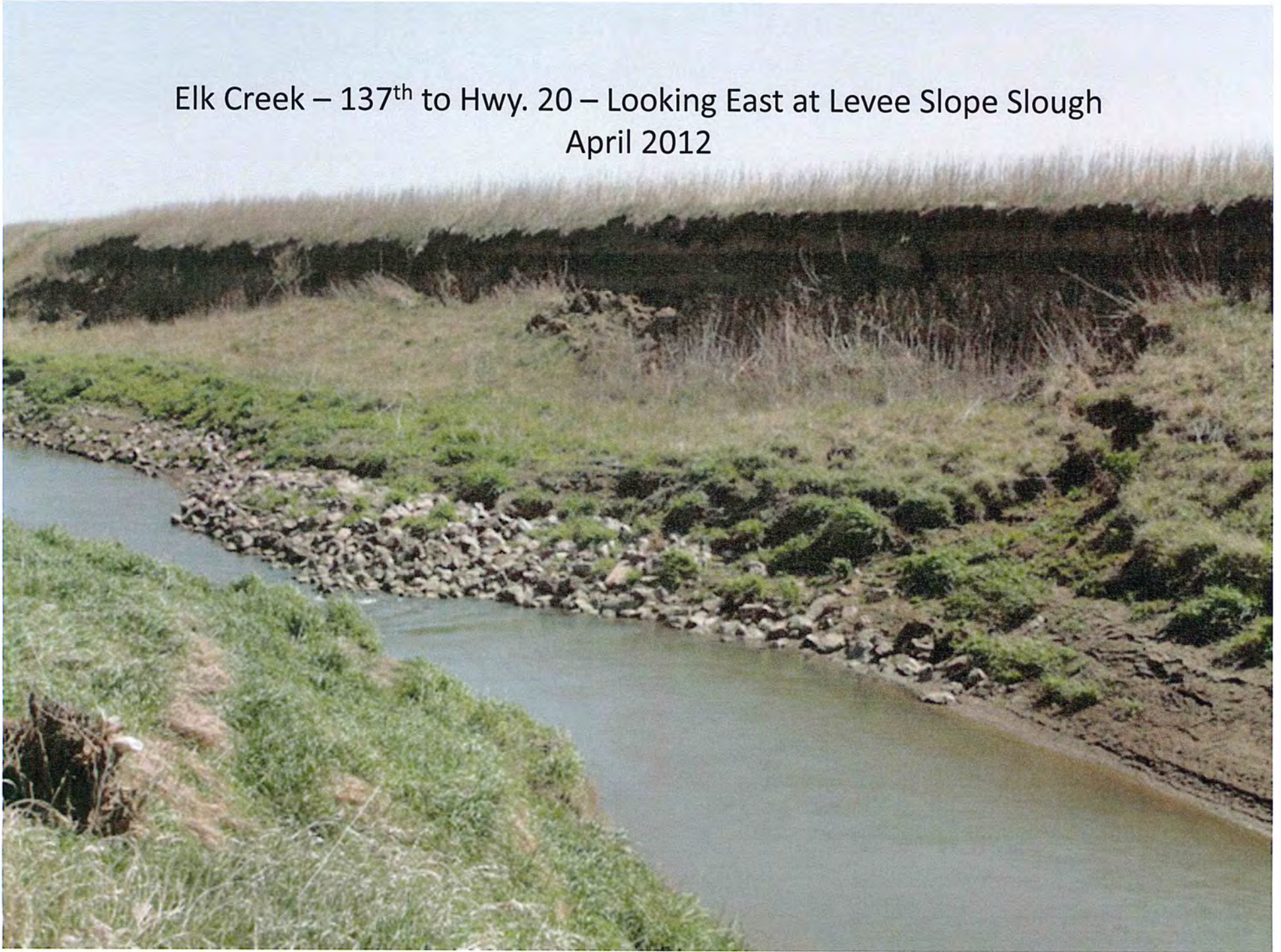


Elk Creek – 137<sup>th</sup> to Hwy. 20 – Looking east at Rt. Bank Levee Slough  
April 2012





Elk Creek – 137<sup>th</sup> to Hwy. 20 – Looking East at Levee Slope Slough  
April 2012





Elk Creek – 137<sup>th</sup> Street to Hwy. 20 – Looking East at Right Bank Levee Slough  
April 2012





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 \$1,000,000.00.

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)



**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 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.

3. 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)

4. The construction plans shall be reviewed and approved by the Sponsor.
5. 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.
6. 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.
7. 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.



8. Issue an invitation for bids, which is to contain NRCS requirements drawings and specifications, and Sponsor requirements.
9. Receive, protect and open bids. Determine the lowest qualified bidder, and with written concurrence of the NRCS State Administrative Officer, make award.
10. 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.
11. Ensure that all contracts for construction of emergency watershed protection measures include the provisions contained in Attachment B to this agreement.
12. 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.
13. Ensure that requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
14. 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.
15. 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.
16. 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, protects 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.



17. 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.
18. 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.
19. 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.
20. Upon acceptance of the work from the contractor(s), assume responsibility for operation and maintenance (in accordance with the Operation and Maintenance Agreement).
21. 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.
22. 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.
23. 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.



24. 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 representative 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 DericksonTitle: State Conservationist

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

Attachment A - Special Provisions

Attachment B - Special Provisions, Construction

**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 \$2,200,000; 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 \$2,200,000 and that the cost of repairing the erosion that now endangers the COUNTY'S 137<sup>th</sup> Street Bridge is \$140,000; 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 AGREEMENT"), 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 AGREEMENT, 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: \$515,000; 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 \$35,000; and,

WHEREAS, the NRD and the COUNTY desire to cooperate with each other in carrying out the PROJECT, in accordance with the NRCS AGREEMENT 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 contractors as necessary to construct the PROJECT using the NRD's normal bidding procedures for such construction.

c. The NRD shall compensate contractors as necessary to construct the PROJECT.

d. The NRD shall obtain any land rights needed for construction, operation and maintenance of the PROJECT.

e. The NRD shall obtain all permits needed for the PROJECT.

f. 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.

g. 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 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 \$35,000.

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.

e. 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. \_\_\_\_\_  
JOHN WINKLER, General Manager