

## Agenda Item: 10.

### MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Martin P. Cleveland

SUBJECT: Missouri River Levee System Units R613 and R616  
Cooperation Agreements with US Army Corps of Engineers  
Rehabilitation of Project

DATE: January 25, 2012

---

Enclosed are two cooperation agreements (one for R613 Levee and one for R616 Levee) between United States of America (USA) Corps of Engineers and the District for the rehabilitation of the referenced project. The District requested rehabilitation assistance of the US Army Corps of Engineers on October 20, 2011 to repair 2011 Missouri River flood damage to District levees.

The District will not incur any expenses, other than staff time and potential right-of-way acquisition costs later in 2012. The Corps deadline for fast track construction and funding necessitated management execution of agreements prior to February Board of Directors review.

**It is the Management recommendation that the Programs, Projects and Operation Subcommittee recommend to the Board that the Cooperation Agreements with US Army Corps of Engineers for the rehabilitation of the Missouri River Levee System Units R613 and R616 be ratified.**

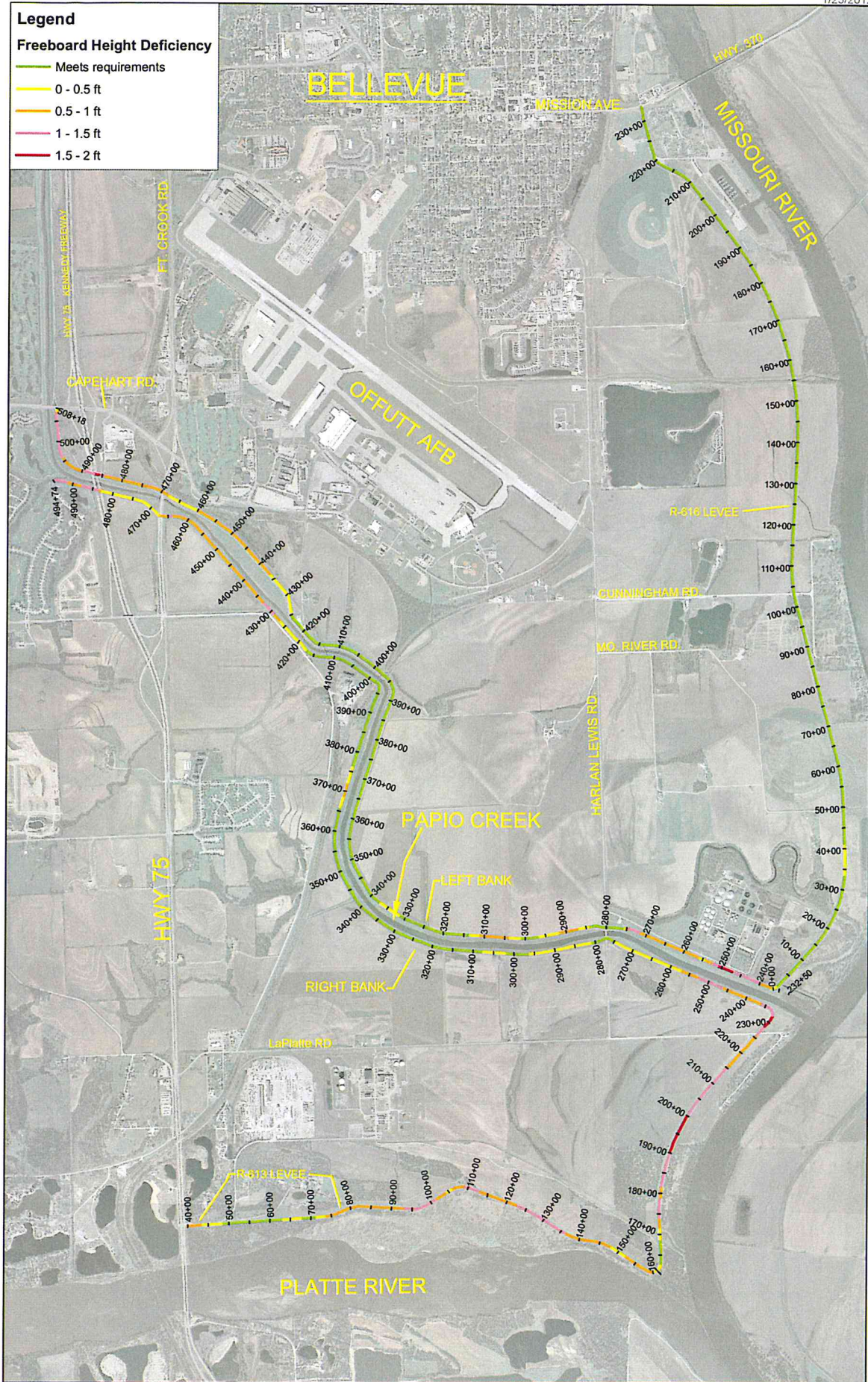
# MISSOURI RIVER LEVEE R-616 & R-613 PROJECT LOCATION MAP

1/23/2012

## Legend

### Freeboard Height Deficiency

- Meets requirements
- 0 - 0.5 ft
- 0.5 - 1 ft
- 1 - 1.5 ft
- 1.5 - 2 ft



Freeboard Map

R-613-616 Levees  
Papio-Missouri River NRD

**COOPERATION AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
and  
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT  
for  
REHABILITATION OF A FEDERAL FLOOD CONTROL WORK**

**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") acting by and through the District Commander, Omaha District, U.S. Army Corps of Engineers, and the Papio-Missouri River Natural Resources District (hereinafter referred to as the "Public Sponsor").

**WITNESSETH THAT:**

**WHEREAS**, pursuant to 33 U.S.C. 701n, the Government is authorized to assist in the repair or restoration of flood control improvements threatened or destroyed by flood;

**WHEREAS**, via written correspondence, the Public Sponsor has requested the Government to repair or restore a certain flood control work damaged by recent flooding or coastal storms in accordance with 33 U.S.C. 701n and established policies of the U.S. Army Corps of Engineers; and,

**WHEREAS**, the Public Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the rehabilitation effort in accordance with the terms of this Agreement;

**NOW, THEREFORE**, the Government and the Public Sponsor agree as follows:

**ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS**

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean the restoration of the levee to the original design grade and cross sections that existed prior to the flood event as generally described in a report entitled, "Project Information Report, Rehabilitation of Damaged Flood Control Works, Missouri River Levee System Unit R-616 Sarpy County, Nebraska" prepared by the District Commander, U.S. Army Engineer District Omaha, dated 28 December 2011, and approved by the Division Commander on January 19, 2012. See attached Exhibit "A" for a complete listing of damages to be repaired.

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Public Sponsor and the Government, in accordance with the terms of this Agreement, directly related to implementation of the Rehabilitation Effort. The term shall include,



but is not necessarily limited to, actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XIA. The term shall not include any costs for operation and maintenance; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Public Sponsor preferred alternatives; or the costs of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas required for the Rehabilitation Effort.

C. The term "betterment" shall mean the design and construction of a Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Public Sponsor in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

## **ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSOR**

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using those funds and funds provided by the Public Sponsor, shall expeditiously implement the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Public Sponsor shall be afforded the opportunity to review and comment on solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The Contracting Officer will, in good faith, consider the comments of the Public Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Public Sponsor shall provide all lands, easements, and rights-of-way and suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Rehabilitation Effort and the Project.

C. The Public Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

D. The Public Sponsor agrees to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program.

E. The Public Sponsor may request the Government to accomplish betterments. The Public Sponsor shall be solely responsible for any increase in costs resulting from

the betterments and all such increased costs will be paid in advance by the Public Sponsor in accordance with Article IV.

### **ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE**

A. The Government shall provide the Public Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Public Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Rehabilitation Effort. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the solicitation of that construction contract.

B. The Public Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, and performing relocations for construction, operation, and maintenance of the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged and excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

### **ARTICLE IV - OPERATION AND MAINTENANCE**

A. After the Contracting Officer has determined that construction of the Rehabilitation Effort is complete and provided the Public Sponsor with written notice of such determination, the Public Sponsor shall operate and maintain the Project, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto.

B. The Public Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsor owns or controls for access to the Project for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the Project. If an inspection shows the Public Sponsor for any reason is failing to fulfill the Public Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsor. If, after 30 calendar days from receipt of such notice, the Public Sponsor continues to fail to

perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsor owns or controls for access to the Project for the purposes of completing, operating, and maintaining the Project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Public Sponsor of responsibility to meet the Public Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

#### **ARTICLE V - FEDERAL AND STATE LAWS**

In the exercise of the Public Sponsor's rights and obligations hereunder, the Public Sponsor agrees to comply with all applicable Federal and state laws and regulations.

#### **ARTICLE VI - RELATIONSHIP OF PARTIES**

The Government and the Public Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

#### **ARTICLE VII - OFFICIALS NOT TO BENEFIT**

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

#### **ARTICLE VIII - COVENANT AGAINST CONTINGENT FEES**

The Public Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Public Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE IX - TERMINATION OR SUSPENSION**

If at any time the Public Sponsor fails to carry out its obligations under this Agreement, the District Commander shall terminate or suspend work on the Rehabilitation Effort, unless the District Commander determines that continuation of

work on the Rehabilitation Effort is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Rehabilitation Effort and Project. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Public Sponsor elects to proceed with further construction or terminates this Agreement.

## **ARTICLE X - HAZARDOUS SUBSTANCES**

A. After execution of this Agreement and upon direction by the Contracting Officer, the Public Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the Public Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands necessary to Rehabilitation Effort construction, operation, and maintenance. All actual costs incurred by the Public Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total Rehabilitation Effort costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Public Sponsor and the Government shall provide prompt notice to each other, and the Public Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Public Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort. Should the Government and the Public Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Public Sponsor shall be responsible, as between the Government and the Public Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Public

Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Public Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article XI of this Agreement.

D. The Public Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsor, the Public Sponsor shall be considered the operator of the Project (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsor shall operate and maintain the Project in a manner that will not cause liability to arise under CERCLA.

#### **ARTICLE XI - NOTICES**

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Public Sponsor:  
Papio-Missouri River Natural Resources District  
Attn: Mr. John Winkler  
8901 South 154<sup>th</sup> Street  
Omaha, NE 68138

If to the Government:  
District Commander  
Omaha District, Corps of Engineers  
1616 Capitol Avenue  
Omaha, NE 68102-4901

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

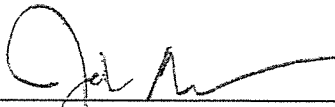


**IN WITNESS HEREOF**, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

THE DEPARTMENT OF THE ARMY

PUBLIC SPONSOR

BY: \_\_\_\_\_  
Robert J. Ruch  
Colonel, Corps of Engineers  
District Commander

BY:  \_\_\_\_\_  
Mr. John Winkler  
Papio-Missouri River Natural Resources District  
General Manager

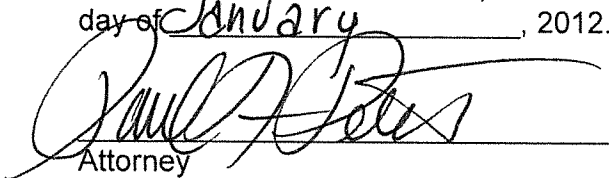
DATE: \_\_\_\_\_

DATE: 1-24-12 \_\_\_\_\_

# CERTIFICATE OF AUTHORITY

I, PAUL F. PETERS, do hereby certify that I am the principal legal officer of the Papio-Missouri River Natural Resources District and it is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Papio-Missouri River Natural Resources District in connection with the Rehabilitation Effort, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Agreement on behalf of the Papio-Missouri River Natural Resources District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 26<sup>th</sup> day of January, 2012.

  
Attorney

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 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 undersigned 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 under grants, loans, and cooperative agreements) and that all subrecipients 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.

DATED this 24<sup>th</sup> day of January, 2012.


  
Papio-Missouri River Natural Resources District  
General Manager

Exhibit "A"

Begin Stationing (Sta.)	End Stationing (Sta.)	R616 Right Bank
242+40	240+40	BNSF Closure Structure Right of Way (ROW) seeding.
241+40	234+00	Highway 370 Embankment/Levee Sideslope/ROW seeding.
234+00	225+00	Lower Landside Levee Sideslope/ROW seeding.
234+00	000+00	Lower Riverward Levee Sideslope/ROW seeding.
233+60		Sta. 233+60 drainage structure outlet structure silt removal. Excavate drainage ditch channel to ROW. Topsoil and seed drainage structure outlet channel to ROW limits.
218+50	183+00	Upper Riverside Levee Sideslope/Crest seeding.
210+00	183+00	Upper Levee Landside Sideslope/Crest topsoil and seeding.
182+75	182+25	Sta. 182+50 Riverside scour hole.
156+55	155+55	Upper Levee Landside Sideslope/Crest seeding.
156+05		Sta. 156+05R drainage structure outlet structure silt removal. Seed drainage structure outlet channel sideslopes and area within outlet channel ROW limits.
141+20	135+25	Upper Levee Landside Sideslope/Crest compacted cohesive fill, topsoil and seeding.
135+25	130+00	Upper Levee Landside Sideslope/Crest topsoil and seeding.
130+00	125+00	Upper Levee Landside Sideslope/Crest compacted cohesive fill, topsoil and seeding.
130+00	125+00	Upper Riverside Levee Sideslope/Crest seeding.
127+85		Sta. 127+85R drainage structure. Seed drainage structure outlet channel, channel sideslopes and area within outlet channel ROW limits.
125+00	117+00	Upper Levee Landside Sideslope/Crest topsoil and seeding.
70+95.2		Sta. 70+95.2R drainage structure. Seed drainage structure outlet channel, channel sideslopes and area within outlet channel ROW limits.
64+00		Sta. 64+00R drainage structure. Seed drainage structure outlet channel, channel sideslopes and area within outlet channel ROW limits.
50+82.5		Sta. 50+82.5R drainage structure. Seed drainage structure outlet channel, channel sideslopes and area within outlet channel ROW limits.
3+10		Sta. 3+10R drainage structure. Seed drainage structure outlet channel sideslopes and area within outlet channel ROW limits.

## Exhibit "A"

Begin Stationing (Sta.)	End Stationing (Sta.)	R613 Left (L) Bank
229+50	413+57	Lower Riverside Levee Sideslope/Papillion Creek Overbank seeding.
232+50	244+75	Upper Levee Landside Sideslope/Crest topsoil and seeding.
277+70	278+72	Lower Levee Landside Sideslope and ROW seeding.
278+72		Sta. 278+72L drainage structure. Remove silt from drainage structure outlet structure.
284+40	314+00	Upper Levee Riverside Sideslope/Crest seeding.
292+50	314+00	Upper Levee Landside Sideslope/Crest topsoil and seeding.
323+00		Sta. 323+00L drainage structure. Remove silt in front of drainage structure flap gate.
396+50		Sta. 396+50L drainage structure. Remove silt from drainage structure outlet structure.
413+57		Sta. 413+57L drainage structure. Remove silt in front of drainage structure flap gate.



**COOPERATION AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
and  
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT  
for  
REHABILITATION OF A FEDERAL FLOOD CONTROL WORK**

**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") acting by and through the District Commander, Omaha District, U.S. Army Corps of Engineers, and the Papio-Missouri River Natural Resources District (hereinafter referred to as the "Public Sponsor").

**WITNESSETH THAT:**

**WHEREAS**, pursuant to 33 U.S.C. 701n, the Government is authorized to assist in the repair or restoration of flood control improvements threatened or destroyed by flood;

**WHEREAS**, via written correspondence, the Public Sponsor has requested the Government to repair or restore a certain flood control work damaged by recent flooding or coastal storms in accordance with 33 U.S.C. 701n and established policies of the U.S. Army Corps of Engineers; and,

**WHEREAS**, the Public Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the rehabilitation effort in accordance with the terms of this Agreement;

**NOW, THEREFORE**, the Government and the Public Sponsor agree as follows:

**ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS**

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean the restoration of the levee to the original design grade and cross sections that existed prior to the flood event as generally described in a report entitled, "Project Information Report, Rehabilitation of Damaged Flood Control Works, Missouri River Levee System Unit R-613 Sarpy County, Nebraska" prepared by the District Commander, U.S. Army Engineer District Omaha, dated 16 December 2011, and approved by the Division Commander on 6 January 2012. See attached Exhibit "A" for a complete listing of damages to be repaired.

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Public Sponsor and the Government, in accordance with the terms of this Agreement, directly related to implementation of the Rehabilitation Effort. The term shall include,

but is not necessarily limited to, actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XIA. The term shall not include any costs for operation and maintenance; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Public Sponsor preferred alternatives; or the costs of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas required for the Rehabilitation Effort.

C. The term "betterment" shall mean the design and construction of a Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Public Sponsor in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

## **ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSOR**

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using those funds and funds provided by the Public Sponsor, shall expeditiously implement the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Public Sponsor shall be afforded the opportunity to review and comment on solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The Contracting Officer will, in good faith, consider the comments of the Public Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Public Sponsor shall provide all lands, easements, and rights-of-way and suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Rehabilitation Effort and the Project.

C. The Public Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

D. The Public Sponsor agrees to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program.

E. The Public Sponsor may request the Government to accomplish betterments. The Public Sponsor shall be solely responsible for any increase in costs resulting from

the betterments and all such increased costs will be paid in advance by the Public Sponsor in accordance with Article IV.

### **ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE**

A. The Government shall provide the Public Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Public Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Rehabilitation Effort. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the solicitation of that construction contract.

B. The Public Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, and performing relocations for construction, operation, and maintenance of the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged and excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

### **ARTICLE IV - OPERATION AND MAINTENANCE**

A. After the Contracting Officer has determined that construction of the Rehabilitation Effort is complete and provided the Public Sponsor with written notice of such determination, the Public Sponsor shall operate and maintain the Project, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto.

B. The Public Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsor owns or controls for access to the Project for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the Project. If an inspection shows the Public Sponsor for any reason is failing to fulfill the Public Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsor. If, after 30 calendar days from receipt of such notice, the Public Sponsor continues to fail to

perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsor owns or controls for access to the Project for the purposes of completing, operating, and maintaining the Project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Public Sponsor of responsibility to meet the Public Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

#### **ARTICLE V - FEDERAL AND STATE LAWS**

In the exercise of the Public Sponsor's rights and obligations hereunder, the Public Sponsor agrees to comply with all applicable Federal and state laws and regulations.

#### **ARTICLE VI - RELATIONSHIP OF PARTIES**

The Government and the Public Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

#### **ARTICLE VII - OFFICIALS NOT TO BENEFIT**

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

#### **ARTICLE VIII - COVENANT AGAINST CONTINGENT FEES**

The Public Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Public Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE IX - TERMINATION OR SUSPENSION**

If at any time the Public Sponsor fails to carry out its obligations under this Agreement, the District Commander shall terminate or suspend work on the Rehabilitation Effort, unless the District Commander determines that continuation of

work on the Rehabilitation Effort is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Rehabilitation Effort and Project. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Public Sponsor elects to proceed with further construction or terminates this Agreement.

## **ARTICLE X - HAZARDOUS SUBSTANCES**

A. After execution of this Agreement and upon direction by the Contracting Officer, the Public Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the Public Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands necessary to Rehabilitation Effort construction, operation, and maintenance. All actual costs incurred by the Public Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total Rehabilitation Effort costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Public Sponsor and the Government shall provide prompt notice to each other, and the Public Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Public Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort. Should the Government and the Public Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Public Sponsor shall be responsible, as between the Government and the Public Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Public



Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Public Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article XI of this Agreement.

D. The Public Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsor, the Public Sponsor shall be considered the operator of the Project (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsor shall operate and maintain the Project in a manner that will not cause liability to arise under CERCLA.

## **ARTICLE XI - NOTICES**

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Public Sponsor:  
Papio-Missouri River Natural Resources District  
Attn: Mr. John Winkler  
8901 South 154<sup>th</sup> Street  
Omaha, NE 68138

If to the Government:  
District Commander  
Omaha District, Corps of Engineers  
1616 Capitol Avenue  
Omaha, NE 68102-4901

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

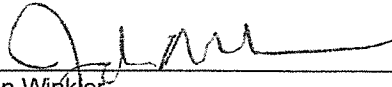
C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

**IN WITNESS HEREOF**, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

THE DEPARTMENT OF THE ARMY

PUBLIC SPONSOR

BY: \_\_\_\_\_  
Robert J. Ruch  
Colonel, Corps of Engineers  
District Commander

BY:  \_\_\_\_\_  
Mr. John Winkler  
Papio-Missouri River Natural Resources District  
General Manager

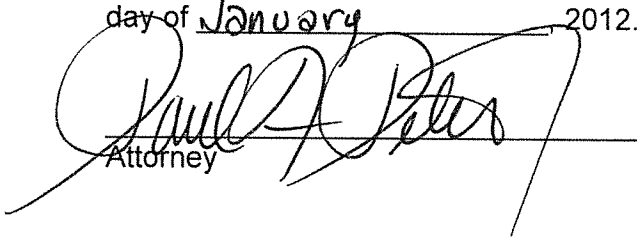
DATE: \_\_\_\_\_

DATE: 1-24-12

### CERTIFICATE OF AUTHORITY

I, PAUL F. PETERS, do hereby certify that I am the principal legal officer of the Papio-Missouri River Natural Resources District and it is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Papio-Missouri River Natural Resources District in connection with the Rehabilitation Effort, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Agreement on behalf of the Papio-Missouri River Natural Resources District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 26<sup>th</sup> day of January, 2012.

  
\_\_\_\_\_  
Attorney

## CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

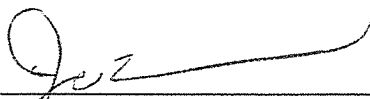
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with 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 undersigned 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 under grants, loans, and cooperative agreements) and that all subrecipients 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.

DATED this 24<sup>th</sup> day of January, 2012.



Papio-Missouri River Natural Resources District  
General Manager

Exhibit "A"

R-613 Levee Repairs by USACE

Area #	Priority	Begin Stationing (Sta.)	End Stationing (Sta.)	R613
1	A	398+18	049+00	Lower Riverside Levee Sideslope/Papio Creek Overbank/ROW Seeding
2	A	293+50	278+25	Lower Landside Levee Sideslope/ROW Seeding
3	A	277+50	113+00	Lower Landside Levee Sideslope/ROW Seeding

Area #	Priority	Begin Stationing (Sta.)	End Stationing (Sta.)	R-613
1	B	194+50	193+50	Longitudinal Crack on Landside sideslope
2	B	412+00		Riverside berm erosion
3	B	435+00		Riverside berm erosion
4	B	361+10		(Tentative) Left Bank: USACE noted Timber Pile Damage: 2@48"
5	B	413+57		(Tentative) Left Bank: USACE noted Timber Pile Damage: 1@48"





US Army Corps  
of Engineers

## 2011 MISSOURI RIVER LEVEE REHAB UPDATE Jan 23, 2012

### Request for Assistance and Project Information Report Status

Readiness Branch

Omaha District

#### **Projects—Funded for Construction**

Project	Received	Required*
L575	\$30,000,000	\$120,000,000
L550	\$29,000,000	\$50,000,000
L624-627	\$17,000,000	\$17,000,000
Omaha FPP	\$15,000,000	\$15,000,000
L536	\$7,000,000	\$7,000,000
R616	\$2,000,000	\$2,000,000
R573	\$10,000,000	\$15,000,000
Lake Wa Con Da	\$2,500,000	\$2,500,000
L611-614	\$14,000,000	\$24,000,000
L601	\$7,000,000	\$11,800,000
Main Ditch 6	\$3,000,000	\$4,000,000
L594	\$4,000,000	\$4,000,000
R613	\$505,000	\$505,000

\*Rough Order Magnitude

#### **Project Information Reports— Completed and Awaiting Construction Funds**

Project	Date Approved at NWD
R548 (2010 Flood)	August 4, 2010
Sidney, NE (2010 Flood)	September 17, 2010
Howells, NE (2010 Flood)	November 22, 2010
L575*	September 18, 2011
L550*	September 18, 2011
L611-614*	November 17, 2011
L601*	November 17, 2011
L594	November 17, 2011
Omaha FPP**	November 17, 2011
L624-627**	December 16, 2011
Lake Wa Con Da**	January 6, 2012
L536**	January 6, 2012
R616**	January 6, 2012
Main Ditch 6*	January 12, 2012
R562	January 19, 2012
R613**	January 19, 2012

\*Partial Funding Received

\*\*Full Funding Received

#### **Project Information Reports—Completed and Awaiting NWD Approval**

Project	Date Sent to NWD
R573	January 17, 2012

#### **Project Information Reports—On-going**

Project	Expected Completion
R520	January 23, 2012
North Sioux City - (Union County, SD)	January 31, 2012

#### **What is a Project Information Report?**

Once the request from a Sponsor within the PL 84-99 is received, the Omaha District requests funding to complete a Project Information Report (PIR). The PIR is a report documenting the damages, proposed repair method, a rough order magnitude cost estimate, and documentation on economics and environmental impacts. Repairs must have been caused by a flood event, cost more than \$15,000, and have a benefit cost ratio greater than 1.0. When the report is complete it is submitted to NWD for approval and recommendation to HQ for funding. After funding is received, the timeline is approximately 40 days to complete a PIR that is ready for submission to HQ.



US Army Corps  
of Engineers

## 2011 MISSOURI RIVER LEVEE REHAB UPDATE Jan. 23, 2012

Missouri River Levee Unit R-616  
Bellevue, Nebraska

Readiness Branch

Omaha District

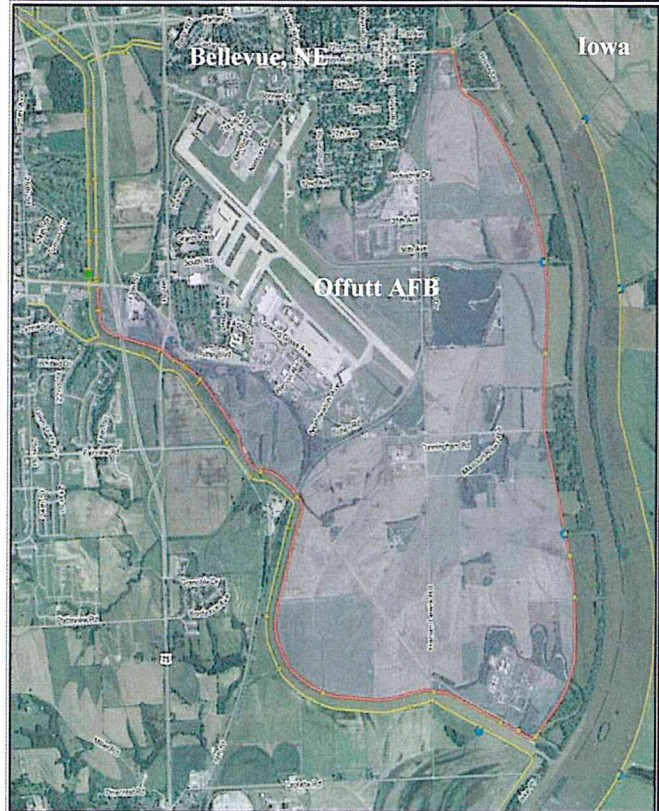
### Schedule

Request for Assistance:	Oct. 24, 2011
Damage Survey Report:	Aug. 20, 2011 and Dec. 01, 2011
Contract Award:	TBD
Authorization to proceed:	TBD
Began construction:	TBD
Original required completion*:	Mar. 1, 2012
Current required completion*:	Mar. 1, 2012
Current scheduled completion*:	Mar. 1, 2012

\*Completion dates are for the construction of the Priority A items to full height protection. Dates do not include full repair of the levee system.

### Progress

Location:	Progress:
-----------	-----------



**Project Overall Map—  
Missouri River Levee Unit R-616—Bellevue, NE**

### Scope of work

A scope of work is currently being prepared for the Missouri River Levee Unit R-616 for Priority A and Priority B repairs. The Priority A repairs scope of work will be complete on 25 January 2012.

Priority A repairs include riverside slope restoration, riverside scour repair, levee crest repair, drainage structure outlet restoration, landside slope restoration, and geotechnical investigations. Restoration work includes placement of topsoil and seeding. These items are scheduled to be completed by 01 March 2012.

Priority B repairs include repair of damaged drainage structures and installation of additional seepage berms based on geotechnical investigations completed in Priority B. These items are scheduled to begin in the fall of 2012 and scheduled to be completed by 01 Dec 2012.



***Current Progress***

The Omaha District received Engineering and Design and Construction funding on 10 January 2012 for all necessary repairs.

Funding will be utilized to repair the areas identified during the damage survey report. Repairs will be made to pre-disaster conditions.

Work is on-going preparing contract documents to award a construction contract for levee repairs.

***Photos***

**Landside Seepage—Emergency Berms**



**Landside Damage near levee crest**



**Outlet Channel Scour**



**Riverside Turf Damage**