

Memorandum

To: PPO Subcommittee

Re: West Papillion Creek Flood Control Interlocal w/Papillion and Sarpy County

Date: March 30, 2010

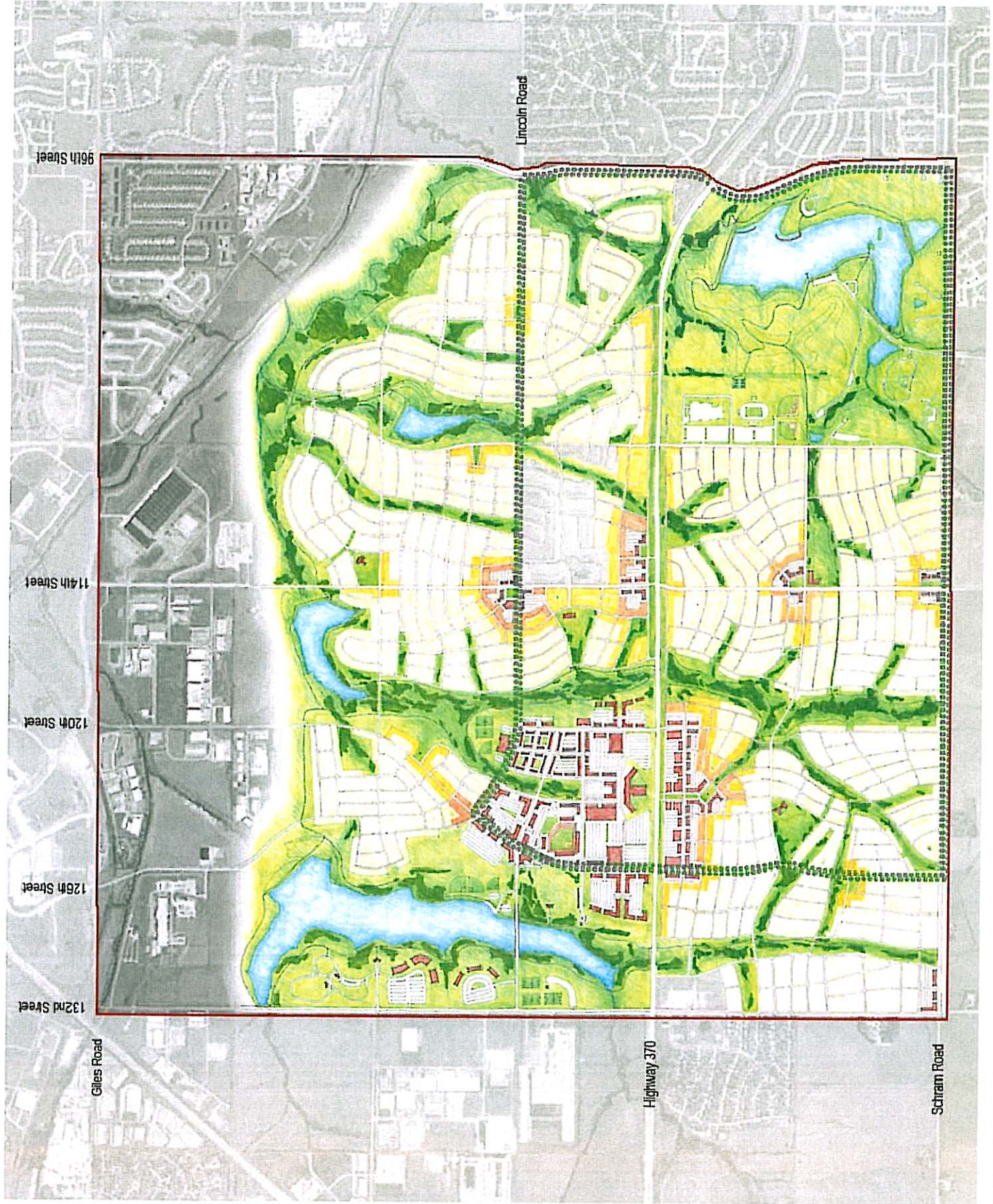
From: Amanda Grint, Water Resources Engineer

District staff and legal counsel have prepared the enclosed agreement, for your review and consideration, between the District, the City of Papillion and Sarpy County, to define each entity's responsibilities regarding the elements necessary to bring the West Papillion levees in to compliance and to provide for 100 year flood protection per recommendations provided in the March 2008 HDR Study titled, West Papillion Levee Restoration. The agreement outlines responsibilities for two bridge raises, levee raises, and operation and maintenance of public facilities for the regional detention basin WP5, located at approximately 126th and Cornhusker Road (see attached map). In addition, the agreement outlines responsibilities for supplemental projects associated with the WP5 project and easements on City, County and NRD property necessary for the reservoir project and recreational facilities.

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

- Three of the Cooperative Projects along the West Papio Creek between 96th Street and 42nd Street will be cost shared equally (one-third each) and must be completed within 10 years. The lead entity and maximum cost share for each party are:
 - Raise 66th Street bridge – Sarpy County - \$1,500,000
 - Raise 84th Street bridge – Papillion - \$1,500,000
 - Raise Levees – NRD - \$500,000
- The fourth Cooperative Project, the WP5 regional detention reservoir, will be designed, constructed and paid for by the NRD. Ownership and maintenance of the facility, except the flood control and water quality dams, will be transferred to the City of Papillion when adjacent land is annexed or on June 1, 2025, whichever occurs first.
- The Supplemental Projects of the WP5 project are outlined in the agreement and are as follows:
 - The East Sanitary Sewer is to be constructed and paid by the City of Papillion and the NRD will grant an easement on the WP5 property.
 - The West Sanitary Sewer is to be relocated at the expense of the NRD as part of the WP5 project.
 - Cornhusker Road will be vacated by the County.
 - The Lincoln Road Extension will be constructed by the NRD and costs shared by the City and County.

- The NRD Recreational Improvements will include basic recreation features such as roads, trails, parking lots, boat ramp, restrooms and picnic shelters. These items will be constructed and funded by the NRD.
 - The City Recreational Improvements which include any additional features requested by the City such as playgrounds, sports fields, etc., will be constructed by the NRD and funded by the City.
 - Future Infrastructure Projects by the City or County located on WP5 project property will be granted right of way by the NRD subject to plan approval.
- **Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed West Papillion Creek Flood Control Interlocal Agreement subject to changes deemed necessary by the General Manager and approval as to form by District Legal Council.**



INTERLOCAL COOPERATION ACT AGREEMENT

Among

COUNTY OF SARPY, NEBRASKA,

CITY OF PAPILLION, NEBRASKA

And

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

For

WEST PAPILLION CREEK FLOOD CONTROL

THIS AGREEMENT ("**THIS AGREEMENT**") is entered into by and among the **CITY OF PAPILLION, NEBRASKA ("the CITY")**, the **COUNTY OF SARPY, NEBRASKA ("the COUNTY")** and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("the NRD")**.

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

RECITALS:

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

WHEREAS, pursuant to authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.); the PARTIES desire to provide for the

design, development, construction, operation and maintenance of a series of interrelated projects (“the **FLOOD CONTROL PROJECTS**”) intended to improve flood control on the West Papillion Creek, in general accordance with Scenario 3 contained in the report (“the **WORK PLAN**”) entitled “West Papillion Creek Levee Restoration Evaluation – Sarpy County, Nebraska – March 2008,” prepared for the NRD by HDR Engineering, Inc. (“the **NRD’S ENGINEERS**”).

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

WHEREAS, the FLOOD CONTROL PROJECTS consist of

A. A project (“**the 66th ST. PROJECT**”) to design, construct, operate, maintain, repair, replace, manage and regulate a bridge spanning the West Papillion Creek at 66th Street; and

B. A project (“**the 84th ST. PROJECT**”) to design, construct, operate, maintain, repair, replace, manage and regulate a bridge spanning the West Papillion Creek at 84th Street; and,

C. A project (“**the LEVEE PROJECT** ”) to design, construct, operate, maintain, repair, replace, manage and regulate flood control levees and channels along the West Papillion Creek, between 96th Street and 42ND Street (“**the LEVEE PROJECT REACH**”); and,

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

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

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

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

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

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

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

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

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

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

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

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

A. 66TH ST. PROJECT

3. **66TH ST. PROJECT PRIMARY RESPONSIBILITIES.** The COUNTY agrees to assume primary responsibility for design, construction, operation, maintenance, repair, replacement, management and regulation of the 66TH ST. PROJECT.

4. **66TH ST. PROJECT DESIGN.** The COUNTY shall retain and compensate engineers ("**the COUNTY'S ENGINEERS**") to design and administer the 66TH ST. PROJECT.

5. **66TH ST. PROJECT PLANS.** The plans and specifications for the 66TH ST. PROJECT shall be drawn by the COUNTY'S ENGINEERS in accordance with the WORK PLAN and other written design criteria provided by the COUNTY, and the preliminary and final plans and specifications for the portions of the 66TH ST. PROJECT, funded with the assistance of the NRD ("the **COOPERATIVELY-FUNDED PORTIONS OF THE 66TH ST. PROJECT**") shall be subject to the written approval by the other PARTIES, which approvals shall not be withheld or delayed unreasonably.

6. **COOPERATIVELY-FUNDED PORTIONS OF THE 66TH ST. PROJECT.** The COOPERATIVELY-FUNDED PORTIONS OF THE 66TH ST. PROJECT shall consist of the following elements thereof, to-wit:

a) Design and construction of a new 66th St. bridge and roadway, with corresponding levee realignments, all being elevated so that the low chord of such bridge is at least one foot above the future 100-year flood elevation at 66th St. as established by FEMA; and,

b) Such other features of the 66TH ST. PROJECT as the PARTIES from time to time may in writing agree should be cooperatively funded by the PARTIES.

7. **RIGHTS-OF-WAY ACQUISITION.** Lands, easements and rights-of-way that the COUNTY'S ENGINEERS or the COUNTY determine are necessary for the 66TH ST. PROJECT ("**66TH ST. PROJECT RIGHTS-OF-WAY**") shall not be COOPERATIVELY-FUNDED PORTIONS OF THE 66TH ST. PROJECT and shall be obtained by the COUNTY, without cost or expense to the other PARTIES, to which 66TH ST. PROJECT RIGHTS-OF-WAY the COUNTY shall hold title.

8. PERMITS. All necessary local, state and federal permits that the COUNTY'S ENGINEERS or the COUNTY determine are necessary for the 66TH ST. PROJECT shall not be COOPERATIVELY-FUNDED PORTIONS OF THE 66TH ST. PROJECT and shall be obtained by the COUNTY without cost or expense to the other PARTIES.

9. CONTRACT FOR 66TH ST. PROJECT CONSTRUCTION. Following the COUNTY'S ENGINEER'S preparation of final plans and specifications for construction of the 66TH ST. PROJECT, and approval of the same by the COUNTY and the other PARTIES, such approvals to not be withheld or delayed unreasonably, the COUNTY shall solicit competitive sealed bids for construction thereof. Within a reasonable time after COUNTY receipt and opening of such bids, the COUNTY shall deliver a summary thereof to the other PARTIES, together with the identification by the COUNTY of the bidder which the COUNTY determines is the lowest and best bidder for construction of the 66TH ST. PROJECT. In the absence of good cause to the contrary being shown by the NRD, the COUNTY shall accept such lowest and best bidder's bid and let to such bidder the contract for construction of the 66TH ST. PROJECT.

10. 66TH ST. PROJECT CONSTRUCTION. The COUNTY, through its contractor, shall construct the 66TH ST. PROJECT in accordance with the plans and specifications approved by the COUNTY and the other PARTIES.

11. OPERATION AND MAINTENANCE OF 66TH ST. PROJECT. After completion of construction of the 66TH ST. PROJECT and COUNTY acceptance of the same from the COUNTY'S contractor, the COUNTY, at its own cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the 66TH ST.

PROJECT, as the COUNTY in its discretion determines necessary and in accordance with applicable and generally-accepted engineering practices.

12. CONTRIBUTIONS BY THE OTHER PARTIES. As the sole contributions to the COUNTY by the other PARTIES towards costs of the COOPERATIVELY-FUNDED PORTIONS OF THE 66TH ST. PROJECT, the NRD shall pay to the COUNTY the lesser of:

a) One third (33.33%) of the costs incurred by the COUNTY for the design and construction of the 66TH ST. PROJECT, after the deduction of grants by third persons towards such costs, or

b) ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000).

The COUNTY shall be solely responsible to pay all remaining costs of design, construction, operation, maintenance, repair, replacement, management and regulation of the 66TH ST. PROJECT without any reimbursement by the other PARTIES.

13. PAYMENT OF CONTRIBUTIONS. The contributions by the the NRD to the COUNTY towards the costs of design and construction of the 66TH ST. PROJECT shall be paid in installments without interest, and shall be due and payable by the NRD to the COUNTY 45 days after the COUNTY shall have submitted to the NRD the COUNTY'S ENGINEERS' certificate of substantial completion by the COUNTY of the 66TH ST. PROJECT; and paid invoices showing the cumulative costs incurred by the COUNTY for design and construction thereof.

14. 66TH ST. PROJECT COSTS INDEMNIFICATION. Except as otherwise specifically provided in THIS AGREEMENT, the COUNTY shall defend and indemnify the other PARTIES and hold the other PARTIES harmless from and against

any and all costs of design, construction, operation, maintenance, repair, replacement, management and regulation of the 66TH ST. PROJECT.

15. 66TH ST. PROJECT RISK OF LOSS. The COUNTY shall have and permanently bear the sole risk of loss of or damage to the 66TH ST. PROJECT or any and all 66TH ST. PROJECT elements, whether such loss or damage results from flood or other casualty whatsoever; provided, however, the NRD shall retain the sole risk of loss of or damage to any of its levees modified by the 66TH ST. PROJECT.

B. 84TH ST. PROJECT

16. 84TH ST. PROJECT PRIMARY RESPONSIBILITIES. The CITY agrees to assume primary responsibility for design, construction, operation, maintenance, repair, replacement, management and regulation of the 84TH ST. PROJECT.

17. 84TH ST. PROJECT DESIGN. The CITY shall retain and compensate engineers ("the CITY'S ENGINEERS") to design and administer the 84TH ST. PROJECT.

18. 84TH ST. PROJECT PLANS. The plans and specifications for the 84TH ST. PROJECT shall be drawn by the CITY'S ENGINEERS in accordance with the WORK PLAN and other written design criteria provided by the CITY, and the preliminary and final plans and specifications for the portions of the 84TH ST. PROJECT, funded with the assistance of the NRD ("the **COOPERATIVELY-FUNDED PORTIONS OF THE 84TH ST. PROJECT**") shall be subject to the written approval by the other PARTIES, which approvals shall not be withheld or delayed unreasonably.

19. COOPERATIVELY-FUNDED PORTIONS OF THE 84TH ST. PROJECT. The COOPERATIVELY-FUNDED PORTIONS OF THE 84TH ST. PROJECT shall consist of the following elements thereof, to-wit:

a) Design and construction of a new 84th St. bridge and roadway, with corresponding levee realignments, elevated so that the low chord of such bridge is at least one foot above the future 100-year flood elevation at 84th St. established by FEMA; and,

b) Such other features of the 84TH ST. PROJECT as the PARTIES from time to time may in writing agree should be cooperatively-funded by the PARTIES.

20. RIGHTS-OF-WAY ACQUISITION. Lands, easements and rights-of-way that the CITY'S ENGINEERS or the CITY determine are necessary for the 84TH ST. PROJECT ("84TH ST. PROJECT RIGHTS-OF-WAY") shall not be COOPERATIVELY-FUNDED PORTIONS OF THE 84TH ST. PROJECT and shall be obtained by the CITY, without cost or expense to the other PARTIES, to which 84TH ST. PROJECT RIGHTS-OF-WAY the CITY shall hold title.

21. PERMITS. All necessary local, state and federal permits that the CITY'S ENGINEERS or the CITY determine are necessary for the 84TH ST. PROJECT shall not be COOPERATIVELY-FUNDED PORTIONS OF THE 84TH ST. PROJECT and shall be obtained by the CITY without cost or expense to the other PARTIES.

22. CONTRACT FOR 84TH ST. PROJECT CONSTRUCTIONS. Following the CITY'S ENGINEER'S preparation of final plans and specifications for construction of the 84TH ST. PROJECT, and approval of the same by the CITY and the other PARTIES, such approvals to not be withheld or delayed unreasonably, the CITY shall solicit competitive sealed bids for construction thereof. Within a reasonable time

after CITY receipt and opening of such bids, the CITY shall deliver a summary thereof to the other PARTIES, together with the identification by the CITY of the bidder which the CITY determines is the lowest and best bidder for construction of the 84TH ST. PROJECT. In the absence of good cause to the contrary being shown by the NRD, the CITY shall accept such lowest and best bidder's bid and let to such bidder the contract for construction of the 84TH ST. PROJECT.

23. 84TH ST. PROJECT CONSTRUCTION. The CITY, through its contractor, shall construct the 84TH ST. PROJECT in accordance with the plans and specifications approved by the CITY and the other PARTIES.

24. OPERATION AND MAINTENANCE OF 84TH ST. PROJECT. After completion of construction of the 84TH ST. PROJECT and CITY acceptance of the same from the CITY'S contractor, the CITY, at its own cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the 84TH ST. PROJECT, as the CITY in its discretion determines necessary and in accordance with applicable and generally-accepted engineering practices.

25. CONTRIBUTIONS BY THE OTHER PARTIES. As the sole contribution to the CITY by the other PARTIES towards costs of the COOPERATIVELY-FUNDED PORTIONS OF THE 84TH ST. PROJECT, the NRD shall pay to the CITY the lesser of:

- a) One third (33.33%) of the costs incurred by the CITY for the design and construction of the 84TH ST. PROJECT, after the deduction of grants by third persons towards such costs, or
- b) ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000).

The CITY shall be solely responsible to pay all remaining costs of design, construction, operation, maintenance, repair, replacement, management and regulation of the 84TH ST. PROJECT without any reimbursement by the other PARTIES.

26. PAYMENT OF CONTRIBUTIONS. The contributions by the NRD to the CITY towards the costs of design and construction of the 84TH ST. PROJECT shall be paid in installments without interest, and shall be due and payable by the NRD to the CITY 45 days after the CITY shall have submitted to the NRD the CITY'S ENGINEERS' certificate of substantial completion by the CITY of the 84TH ST. PROJECT, and paid invoices showing the cumulative costs incurred by the CITY for design and construction thereof.

27. 84TH ST. PROJECT COSTS INDEMNIFICATION. Except as otherwise specifically provided in THIS AGREEMENT, the CITY shall defend and indemnify the other PARTIES and hold the other PARTIES harmless from and against any and all costs of design, construction, operation, maintenance, repair, replacement, management and regulation of the 84TH ST. PROJECT.

28. 84TH ST. PROJECT RISK OF LOSS. The CITY shall have and permanently bear the sole risk of loss of or damage to the 84TH ST. PROJECT or any and all 84TH ST. PROJECT elements, whether such loss or damage results from flood or other casualty whatsoever; provided, however, the NRD shall retain the sole risk of loss of or damage to any of its levees modified by the 84TH ST. PROJECT.

C. LEVEE PROJECT

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

30. LEVEE PROJECT DESIGN. The NRD shall retain and compensate engineers ("**the NRD'S ENGINEERS**") to design and administer the LEVEE PROJECT.

31. LEVEE PROJECT PLANS. The plans and specifications for the LEVEE PROJECT shall be drawn by the NRD'S ENGINEERS in accordance with the WORK PLAN and other written design criteria provided by the NRD, and the preliminary and final plans and specifications for the portions of the LEVEE PROJECT, funded with the assistance of the other PARTIES ("**the COOPERATIVELY-FUNDED PORTIONS OF THE LEVEE PROJECT**") shall be subject to the written approval by the other PARTIES, which approvals shall not be withheld or delayed unreasonably.

32. COOPERATIVELY-FUNDED PORTIONS OF THE LEVEE PROJECT. The COOPERATIVELY-FUNDED PORTIONS OF THE LEVEE PROJECT shall consist of the following elements thereof, to-wit:

- a) Raise and improve West Papillion Creek levees in the LEVEE PROJECT reach so that they conform with FEMA freeboard and other criteria stated in CFR 44.65.10; and,
- b) Such other features of the LEVEE PROJECT as the PARTIES from time to time may in writing agree should be cooperatively-funded with the funding assistance of the PARTIES .

33. RIGHTS-OF-WAY ACQUISITION. Lands, easements and rights-of-way that the NRD'S ENGINEERS or the NRD determine are necessary for the LEVEE PROJECT ("LEVEE PROJECT RIGHTS-OF-WAY") shall not be COOPERATIVELY-FUNDED PORTIONS OF THE LEVEE PROJECT and shall be obtained by the NRD, without cost or expense to the other PARTIES, to which LEVEE PROJECT RIGHTS-OF-WAY the NRD shall hold title.

34. PERMITS. All necessary local, state and federal permits that the NRD'S ENGINEERS or the NRD determine are necessary for the LEVEE PROJECT shall not be COOPERATIVELY-FUNDED PORTIONS OF THE LEVEE PROJECT and shall be obtained by the NRD without cost or expense to the other PARTIES.

35. CONTRACT FOR LEVEE PROJECT CONSTRUCTIONS. Following the NRD'S ENGINEER'S preparation of final plans and specifications for construction of the LEVEE PROJECT, and approval of the same by the NRD and the other PARTIES, such approvals to not be withheld or delayed unreasonably, the NRD shall solicit competitive sealed bids for construction thereof. Within a reasonable time after NRD receipt and opening of such bids, the NRD shall deliver a summary thereof to the other PARTIES, together with the identification by the NRD of the bidder which the NRD determines is the lowest and best bidder for construction of the LEVEE PROJECT. In the absence of good cause to the contrary being shown by either or both of the other PARTIES, the NRD shall accept such lowest and best bidder's bid and let to such bidder the contract for construction of the LEVEE PROJECT.

36. LEVEE PROJECT CONSTRUCTION. The NRD, through its contractor, shall construct the LEVEE PROJECT in accordance with the plans and specifications approved by the NRD and the other PARTIES.

37. OPERATION AND MAINTENANCE OF LEVEE PROJECT. After completion of construction of the LEVEE PROJECT and NRD acceptance of the same from the NRD'S contractor, the NRD, at its own cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the LEVEE PROJECT, as the NRD in its discretion determines necessary and in accordance with applicable and generally-accepted engineering practices.

38. CONTRIBUTIONS BY THE OTHER PARTIES. As the sole contribution to the NRD by the other PARTIES towards costs of the COOPERATIVELY-FUNDED PORTIONS OF THE LEVEE PROJECT, each of the other PARTIES (i.e., the CITY and the NRD) shall pay to the NRD the lesser of:

a) One third (33.33%) of the costs incurred by the NRD for the design and construction of the LEVEE PROJECT, after the deduction of grants by third persons towards such costs, or

b) ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000).

The NRD shall be solely responsible to pay all remaining costs of design, construction, operation, maintenance, repair, replacement, management and regulation of the LEVEE PROJECT without any reimbursement by the other PARTIES.

39. PAYMENT OF CONTRIBUTIONS. The contributions by the other PARTIES to the NRD towards the costs of design and construction of the LEVEE

PROJECT shall be paid in installments without interest, and shall be due and payable by the other PARTIES to the NRD 45 days after the NRD shall have submitted to the other PARTIES the NRD'S ENGINEERS' certificate of substantial completion by the NRD of the LEVEE PROJECT, and paid invoices showing the cumulative costs incurred by the NRD for design and construction thereof.

40. LEVEE PROJECT COSTS INDEMNIFICATION. Except as otherwise specifically provided in THIS AGREEMENT, the NRD shall defend and indemnify the other PARTIES and hold the other PARTIES harmless from and against any and all costs of design, construction, operation, maintenance, repair, replacement, management and regulation of the LEVEE PROJECT.

41. LEVEE PROJECT RISK OF LOSS. The NRD shall have and permanently bear the sole risk of loss of or damage to the LEVEE PROJECT or any and all LEVEE PROJECT elements, whether such loss or damage results from flood or other casualty whatsoever.

D. WP-5 PROJECT

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

43. WP-5 PROJECT PRIMARY RESPONSIBILITIES.

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

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

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

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

45. WP-5 PROJECT PLANS. The plans and specifications for the WP-5 PROJECT shall be drawn by the NRD'S ENGINEERS in accordance with the WORK PLAN and other written design criteria provided by the NRD, and the preliminary and final plans and specifications for the WP-5 PROJECT shall be subject to the written approval by the other PARTIES, which approvals shall not be withheld or delayed unreasonably.

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

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

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

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

50. WP-5 PROJECT CONSTRUCTION. The NRD, through its contractor, shall construct the WP-5 PROJECT in accordance with the plans and specifications approved by the NRD and the other PARTIES.

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

52. TRANSFER DATE. Upon the date of the CITY's annexation of land adjacent to the WP5 PROJECT, or on June 1, 2030, whichever date shall be earlier (hereinafter referred to as "**the TRANSFER DATE**") the NRD shall convey and transfer

to the CITY by full warranty deed (hereinafter referred to as "**the TRANSFER DEED**") title to the mutually agreed upon real estate comprising WP-5 PROJECT RIGHTS-OF-WAY, subject to easements of record.

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

a) Reserve and grant to the NRD the permanent right to enter WP-5 PROJECT RIGHTS-OF-WAY during flood emergencies and during all other reasonable times; the permanent right to use the roads in the WP-5 PROJECT RIGHTS-OF-WAY as the NRD deems necessary; the permanent and exclusive right to operate, maintain, repair, replace, manage and regulate the DAM (including the two water quality basin dams) and the non-recreational appurtenances thereof, together with such future flood control improvements as the NRD deems necessary and the CITY may approve in writing (such approval to not be unreasonably withheld or delayed); and, to include the NRD'S right to use any and all unimproved portions of WP-5 PROJECT RIGHTS-OF-WAY for the borrow of earthen material for use in operation, maintenance, repair, replacement of the DAM and/or the non-recreational appurtenances thereto. The CITY shall have the right to construct, operate and maintain a public pedestrian and bicycle trail and other recreational improvements, approved in writing by the General Manager of the NRD, in, on, over and across the DAM, with the provision that the CITY shall be required from time-to-time to re-locate any of such improvements as to the NRD may be deemed interfere with the NRD'S operation, maintenance, repair, replacement, management or regulation of the DAM and/or the non-recreational appurtenances thereto, and,

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

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

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

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

c) Reserve and grant to the NRD the permanent power, privilege, right and authority to periodically flow and overflow waters, sediment, and flood debris detained by the DAM, upon those areas of WP-5 PROJECT RIGHTS-OF-WAY which, at once, are

located within the watershed of the DAM and have a ground surface elevation lower than 1,092.0 feet above mean sea level, NAVD (such areas hereinafter being collectively referred to as "the **MAXIMUM POOL**"). Such permanent easement and restrictive covenant also shall prohibit the CITY from placing any earthen fill or other fill in any area of the MAXIMUM POOL except limited filling in the REGULATED FLOOD POOL permitted by the prior sub-paragraph.

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

54. OPERATION AND MAINTENANCE OF WP-5 PROJECT.

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

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

c) After the TRANSFER DATE the NRD, at its own cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the DAM (including the two water quality basin dams) and the other facilities of the WP-5 PROJECT that

exist strictly for flood control purposes, all as the NRD in its sole discretion determines necessary, in accordance with any applicable and generally-accepted engineering practices.

55. WP-5 PROJECT RISK OF LOSS.

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

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

E. SUPPLEMENTAL PROJECTS

56. EAST SANITARY SEWER. Contemporaneously with construction of the WP-5 PROJECT, the CITY, without cost and expense to the other PARTIES, shall procure the design and construction of a new regional sanitary sewer line running along the East side of the DAM and permanent pool of the RESERVOIR in an permanent easement corridor located within one or more parcels of land that shall be acquired in fee simple by the NRD for the WP-5 PROJECT prior to May 17, 2010. Such permanent easement shall be granted to the CITY, which shall permanently operate and maintain such sewer line without cost or expense to the other PARTIES. Plans and specifications for such project shall be subject to the prior written approvals of the NRD and the COUNTY, such approvals to not be unreasonable withheld or delayed.

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

58. CORNHUSKER ROAD CLOSING. Contemporaneously with construction of the WP-5 PROJECT, the portion of present Cornhusker Road that now bisects the WP-5 PROJECT site, and is bounded by WP-5 Project ROW on both sides, will be abandoned and vacated by the COUNTY and ownership of such portion shall revert to the NRD. Such abandonment and vacation shall be accomplished effective no sooner than February 1, 2011, and no later than April 1, 2011, whereupon the County shall barricade, and restrict public access to, the abandoned and vacated road. The current bridge located on such road shall become the property of the NRD and be removed by the NRD at the NRD'S sole and unreimbursed cost and expense.

59. LINCOLN ROAD EXTENSION. Contemporaneously with construction of the WP-5 PROJECT, Lincoln Road will be extended from 132nd Street to the Sarpy Ballpark site, such extension will be designed and constructed by the NRD as one of the SUPPLEMENTAL PROJECTS OF THE WP-5 PROJECT, in a permanent easement

corridor located within one or more parcels of land that shall be acquired by easement or in fee simple by the NRD for the WP-5 PROJECT. Such permanent easement shall be granted to the COUNTY which shall permanently operate and maintain such road and roadway without cost or expense to the other PARTIES. The NRD shall pay the costs of design and construction of the embankment and, bridge and shall pay one-third of the cost of paving the LINCOLN ROAD EXTENSION, all as a part of the WP-5 PROJECT. The remaining costs of design and construction of the LINCOLN ROAD EXTENSION (including, without limitation, paving, storm sewers, lighting, etc.) shall be shared equally among the other PARTIES. The plans and specifications for such projects shall be subject to the prior written approval of the NRD, such approval to not be unreasonable withheld or delayed.

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

61. CITY'S RECREATIONAL IMPROVEMENTS. Contemporaneously with construction of the WP-5 PROJECT the NRD will carry out a SUPPLEMENTAL PROJECT to design and construct, at the CITY'S sole cost and expense, any additional in-park public recreational facilities requested by the CITY, the plans and specifications

for such project to be subject to the prior written approval of the CITY, such approval to not be unreasonable withheld or delayed.

62. FUTURE INFRASTRUCTURE PROJECTS. The NRD will donate WP-5 PROJECT rights-of-way to the CITY and/or COUNTY necessary for future CITY and/or COUNTY road, sewer or other infrastructure projects, the plans and specifications for such projects to be subject to the prior written approval of the NRD, such approval to not be unreasonable withheld or delayed.

F. GENERAL CONDITIONS

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

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

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

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

a) The CITY shall defend and indemnify the NRD and hold the NRD harmless (1) from and against any and all costs of operation, maintenance, repair, replacement, management and regulation of the WP-5 PROJECT, except the features of the WP-5 PROJECT that exist strictly for flood control purposes; (2) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of (i) the operation, maintenance, repair, replacement, management and regulation of the WP-5 PROJECT, except the DAM and the other features of the WP-5 PROJECT that exist strictly for flood control purposes; (ii) the use of the WP-5 PROJECT by members of the public; or, (iii) negligence or other actions or inactions of the CITY, its employees, officers, contractors and agents in the operation, maintenance, repair, replacement, management or regulation of the WP-5 PROJECT, except the DAM and the other features of the WP-5 PROJECT that exist strictly for flood control purposes (except as may be caused solely by the negligence of the NRD or its employees, officers, contractors or agents); and, (3) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising from the post-TRANSFER DATE introduction in WP-5 PROJECT RIGHTS-OF-WAY of asbestos or any form thereof, or any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act

("CERCLA"), 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances introduced in WP-5 PROJECT RIGHTS-OF-WAY after the TRANSFER DATE, including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination introduced in WP-5 PROJECT RIGHTS-OF-WAY after the TRANSFER DATE (except costs and expenses relating to any such substances or materials introduced by the NRD or its employees, officers, contractors or agents); and, The NRD shall defend and indemnify the CITY and hold the CITY harmless (1) from and against any and all costs of operation, maintenance, repair, replacement, management and regulation of the DAM and the non-recreational appurtenances thereof; and (2) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of (i) the operation, maintenance, repair, replacement, management and regulation of the DAM and the non-recreational appurtenances thereof; or (ii) caused by the negligence or other actions or inactions of the NRD, its employees, officers, contractors and agents in the operation, maintenance, repair, replacement, management or regulation of the DAM and the non-recreational appurtenances thereof (except as may be caused solely by the negligence of the CITY or its employees, officers, contractors or agents).

67. OTHER INDEMNIFICATIONS. Except as otherwise specifically provided in THIS AGREEMENT with respect to the WP-5 PROJECT, each of the

PARTIES shall defend and indemnify the other PARTIES, and hold the other PARTIES harmless from and against,

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

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

c) all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising out of the introduction or presence in or on any rights-of-way which, under this AGREEMENT, such party has responsibility, of asbestos or any form thereof, or any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any PROJECT RIGHTS-OF-WAY, including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination in or on the

PROJECT RIGHTS-OF-WAY (except costs and expenses relating to any such substances or materials introduced by the CITY or its employees, officers, contractors or agents).

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

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

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

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

70. AUTHORITY FOR APPROVALS.

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

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

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

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

72. NON-DISCRIMINATION. The PARTIES shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, disability, color, sex, age, political or religious opinions, affiliations or national origin.

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

74. SEVERABILITY. In the event any portion of THIS AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any such invalidity or unenforceability shall not affect the remainder of THIS AGREEMENT and the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of THIS AGREEMENT so as to render it valid, reasonable, and enforceable.

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

IN WITNESS WHEREOF

The CITY has executed THIS AGREEMENT on _____, 2010, pursuant to resolution duly adopted by the Papillion City Council.

THE CITY OF PAPILLION, NEBRASKA

By _____
Mayor

Attest:

City Clerk

The COUNTY has executed THIS AGREEMENT on _____, 2010, pursuant to resolution duly adopted by its Board of Commissioners.

THE COUNTY OF SARPY, NEBRASKA

By _____
Chairperson, Board of County
Commissioners

Attest:

County Clerk

The NRD has executed THIS AGREEMENT on _____, 2010, pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager