

Memorandum

To: Programs, Projects and Operations Subcommittee

Re: Interlocal Cooperation Act Agreement Lower Platte River Phragmites Management Program

Date: August 8, 2009

From: John Winkler, General Manager

The attached Interlocal Cooperation Act is an agreement made by and among the Lower Platte North Natural Resources District, Lower Platte South Natural Resources District and the Papio Missouri River Natural Resources District.

The three cooperating NRD's, in cooperation with the affected counties, conducted a very successful aerial spraying project along the Lower Platte River in August and September of last fiscal year. Currently, the three cooperating NRD's have moved into the mechanical removal stage of the program which has shown very promising results as well.

The purpose of this agreement is to proactively maintain the control of phragmites and other noxious vegetation on the Lower Platte River system. It is much more effective to maintain the gains we have made by establishing a control/maintenance program than to wait until a full blown infestation has taken hold again. Each cooperating NRD will contribute \$20,000 this fiscal year to be utilized as a 50/50 cost share with the affected counties and landowners in controlling phragmites infestations. In conducting research, communicating with other agencies and personal experience during last years effort it is quite evident that aerial application is the most efficient and cost effective means to control phragmites. Therefore, the purpose of this program is to provide a cost share arrangement with the counties and the landowner to maximize the financial resources to effectively contain the spread of this invasive vegetation by aerial application. Furthermore, it would be quite difficult and ineffective for any of the parties to this agreement to go it alone and conduct a control and eradicate program solo.

Management recommends that the subcommittee recommend to the Board of Directors that the Interelocal Cooperation Act Agreement Lower Platte River Phragmites Management Program be adopted and that the General Manager be authorized to execute the agreement as to form agreeable to legal counsel.

INTERLOCAL COOPERATION ACT AGREEMENT
LOWER PLATTE RIVER PHRAGMITES MANAGEMENT PROGRAM

LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT
LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

THIS AGREEMENT (“**THIS AGREEMENT**”) is made by and among the LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT, the LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (“**P-MRNRD**”), (collectively referred to hereinafter as “the **CONTRACTING NRDS**”); and,

WHEREAS, the lower Platte River and its tributaries in the Counties of Butler, Cass, Dodge, Douglas, Lancaster, Platte, Sarpy, Saunders and Seward (hereinafter referred to collectively as “the **AFFECTED COUNTIES**” and individually as an “**AFFECTED COUNTY**”) have become infested by *Phragmites australis* (hereinafter referred to as “**PHRAGMITES**”), a noxious weed that seriously depletes water in a channel, and, after growing copiously in the streambeds and banks of rivers, creeks and other channels, tends to bond with winter ice formations and impede the natural discharge of broken ice floes from such channels, aggravating spring flooding; and,

WHEREAS, Neb. Rev. Stat. § 2-3229, authorizes natural resources districts to “develop and execute plans, facilities, works, and programs relating to *** (2) prevention of damages from flood water and sediment, (3) flood prevention and control, *** [and] (6) development, management, utilization, and conservation of ground water and surface water”; and,

WHEREAS, Neb. Rev. Stat. § 2-3235, among other things, authorizes the CONTRACTING NRDS to cooperate with or to enter into agreements with, and within the limits of appropriations available to furnish financial or other aid to, any cooperator, any agency, governmental or otherwise, or any owner or occupier of lands within the district for the carrying out of projects for benefit of the district as authorized by law, subject to such conditions as the board may deem necessary; and,

WHEREAS, the CONTRACTING NRDS hereby determine that it will be to the general benefit of the CONTRACTING NRDS, with only an incidental special benefit, for the CONTRACTING NRDS to institute a program (hereinafter referred to as “the **PROGRAM**”) to provide technical and financial assistance to the AFFECTED COUNTIES for the purpose of assisting the AFFECTED COUNTIES and their noxious weed control authorities to carry out an intensive, efficient and economical program for control of PHRAGMITES; and,

WHEREAS, THIS AGREEMENT is made pursuant to authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.), without any separate legal entity being created, to conduct the joint and cooperative undertaking contemplated herein, and, whenever possible, THIS AGREEMENT shall be construed in conformity therewith.

NOW, THEREFORE, in consideration of their mutual covenant hereinafter expressed, the CONTRACTING NRDS agree as follows:

Program Plan: The CONTRACTING NRDS do hereby adopt the following plan for administering the PROGRAM:

- a) Aerial Survey: With the assistance of contractors employed and compensated for such purpose by the P-MRNRD, using the P-MRNRD’s contracting policies, the P-MRNRD shall prepare written plans and specifications, including a proposed personal service contract, for the performance of aerial surveys for each of the AFFECTED COUNTIES (each

hereinafter referred to respectively as such county's "AERIAL SURVEY") to be performed during the month of July in each calendar year during the term of THIS AGREEMENT. Such AERIAL SURVEY shall determine the areas of serious PHRAGMITES infestation in the AFFECTED COUNTIES. Prior to implementation, the plans and specifications for each AERIAL SURVEY shall be submitted to the CONTRACTING NRDS for their comments. With the assistance of contractors employed and compensated for such purpose by the P-MRNRD, using P-MRNRD purchasing policies and the submitted personal service contract for the AERIAL SURVEY, the P-MRNRD shall retain a contractor to perform an AERIAL SURVEY for each AFFECTED COUNTY and shall submit the report thereof to the CONTRACTING NRDS for their comments. Upon approval by the CONTRACTING NRDS of the report of an AERIAL SURVEY for an AFFECTED COUNTY, such report shall be transmitted by the P-MRNRD to the County Board of such AFFECTED COUNTY, along with notice of the amount budgeted by the CONTRACTING NRDS for cost subsidization for such county.

b) Aerial Applicator: With the assistance of contractors employed and compensated for such purpose by the P-MRNRD, and using P-MRNRD contracting policies, the P-MRNRD shall prepare written plans and specifications, including a proposed contract, for retention of a contractor employed and compensated by the P-MRNRD (the "PROGRAM APPLICATOR") to provide helicopter application (the "AERIAL APPLICATION") of the herbicide designated by the trade name of "Habitat" (or such other herbicide as the CONTRACTING NRDS unanimously agree is an acceptable alternative) upon lands within the AFFECTED COUNTIES approved by the CONTRACTING NRDS for the "AERIAL APPLICATION".

c) Sealed bids. After receipt by P-MRNRD of the approvals of the plans and specifications by the other CONTRACTING PARTIES NRDS, and after receipt by P-MRNRD of the executed ROW RELEASES, P-MRNRD shall advertise for, and provide for the receipt and opening of, sealed bids by contractors interested in performing the AERIAL APPLICATIONS. After receiving sealed bids for performance of the AERIAL APPLICATIONS and with the assistance of consultants, the P-MRNRD shall open and tabulate such bids and determine the lowest responsive bid; and communicate such determination to the other CONTRACTING NRDS for their approvals. After receipt of such approvals by the other CONTRACTING NRDS of its bid determinations, the P-MRNRD shall execute a contract with such lowest responsive bidder for performance of the AERIAL APPLICATIONS in accordance with the PLANS AND SPECIFICATIONS, and shall administer such contract to conclusion and final acceptance.

d) County designation: Each year, after an AFFECTED COUNTY has received from the P-MRNRD the report of the AERIAL SURVEY showing designated areas of serious PHRAGMITES infestation in such county, along with notification to such AFFECTED COUNTY of the amount budgeted by the CONTRACTING NRDS for cost subsidization for such county, an AFFECTED COUNTY shall provide to the P-MRNRD a designation of the lands within such AFFECTED COUNTY that the COUNTY determines should receive an AERIAL APPLICATION by the PROGRAM APPLICATOR.

e) County repayment. Each year, on or before December 31, each AFFECTED COUNTY shall be billed for repayment to the P-MRNRD for AERIAL APPLICATIONS performed by the PROGRAM APPLICATOR as follows, to-wit:

i) Discounted repayment: 50% of the cost to the CONTRACTING NRDS of the PROGRAM APPLICATOR's services

for those AERIAL APPLICATIONS performed on those lands in such AFFECTED COUNTY (1) that had been designated by the P-MRNRD on an AERIAL SURVEY as containing a PHRAGMITES infestation; (2) where the owner of such lands has executed a release in writing consenting to a voluntary AERIAL APPLICATION and (3) where the owner of such lands has deposited with the AFFECTED COUNTY one-half (50%) of the estimated direct costs to the CONTRACTING NRDS of such AERIAL APPLICATION; provided, however, such discount shall be applicable only to the extent of the afore-described budget by the CONTRACTING NRDS for cost subsidization for such county.

ii) Non-subsidized payment: 100% of the fees of the PROGRAM APPLICATOR for AERIAL APPLICATIONS on other lands in such AFFECTED COUNTY.

f) ROW Releases. Each of the AFFECTED COUNTIES shall search the records of such county for the purpose of determining the ownership of the lands designated by such county for AERIAL APPLICATION and, using such ownership information and forms for releases approved by the CONTRACTING PARTIES NRDS, shall obtain releases (the "**ROW RELEASES**") over rights-of-way necessary to authorize the AERIAL APPLICATIONS to be performed under this AGREEMENT (the "**PROJECT ROW**") and shall deliver such executed ROW RELEASES to the P-MRNRD.

g) Contributions: Contributions, fines, assessments, and other payments received by one of the AFFECTED COUNTIES from an owner of PHRAGMITES-infested land within such county, may be applied by such county towards such county's cost repayments computed in accordance with THIS AGREEMENT.

Cost Sharing: The CONTRACTING NRDS do hereby adopt the following plan for paying and reimbursing the costs of the PROGRAM:

a) The total actual costs incurred by the P-MRNRD and its consultants for preparation of PLANS AND SPECIFICATIONS for the PROJECT, for delineating the PROJECT ROW, for preparing forms for ROW RELEASES, for administering the PROGRAM CONTRACT, for compensating the AERIAL APPLICATOR, and such other actual and reasonable costs incurred by the P-MRNRD to advance the PROGRAM (collectively, the “**SHARED PROGRAM COSTS**”), shall be equally shared by the CONTRACTING NRDS and reimbursed to the P-MRNRD from a cash fund (the “**PHRAGMITES FUND**”), to be maintained by the P-MRNRD, and expended in accordance with THIS AGREEMENT.

b) On or before _____ of each year the CONTRACTING NRDS shall make equal contributions to the PHRAGMITES FUND in the following amounts, to-wit:

Lower Platte North Natural Resources District,	\$20,000
Lower Platte South Natural Resources District,	\$20,000
Papio-Missouri River Natural Resources District,	\$20,000
Total	\$60,000

Provided, however, if at any time the uncommitted balance in the PHRAGMITES FUND is less than \$60,000, then, within 30 days after notice thereof from the P-MRNRD, the CONTRACTING NRDS each shall contribute to the PHRAGMITES FUND such equal amounts as may be required to restore the uncommitted balance in the PHRAGMITES FUND to \$60,000. As used in THIS AGREEMENT, the term “actual costs” shall include but shall not be limited to insurance premiums, increases or surcharges, and other ordinary and reasonable costs and expenses, which P-MRNRD is required to pay or assume as a result of duties undertaken by P-MRNRD pursuant to this AGREEMENT.

Indemnifications. Each of the CONTRACTING NRDS agrees to indemnify and hold harmless the other CONTRACTING NRDS from and against any and all claims, demands and causes of action for damages to the person or property of third persons arising out of the comparative negligence of the indemnifying party in its performance of any of the covenants of THIS AGREEMENT.

Effective Date of Agreement: This AGREEMENT shall become effective upon execution by all CONTRACTING NRDS.

Duration of Agreement: This AGREEMENT shall have permanent duration, unless or until terminated by any of the CONTRACTING NRDS.

Termination. Upon accomplishment of the aforesaid purposes of the PROJECT, THIS AGREEMENT may be terminated by any of the CONTRACTING NRDS upon 90 days notice to the other CONTRACTING NRDS. Such termination shall not affect any rights of reimbursement under this AGREEMENT for actions taken or responsibilities assumed by another of the CONTRACTING NRDS pursuant to this AGREEMENT.

Disposal of Property: Upon termination of THIS AGREEMENT, any marketable property remaining in the hands of any of the CONTRACTING NRDS, that was acquired by the application of shared funds contributed by the CONTRACTING NRDS, shall be sold at public sale and the proceeds thereof distributed to the CONTRACTING NRDS in the proportions provided by THIS AGREEMENT for their contributions towards the SHARED PROGRAM COSTS.

Administrator: Except as may be otherwise provided herein, the General Manager of the P-MRNRD shall be the administrator of the PROGRAM, on behalf and subject to the direction of the Board of Directors of the P-MRNRD.

IN WITNESS WHEREOF,

THIS AGREEMENT is executed by the Lower Platte North Natural Resources District on this ____ day of _____, 2009 pursuant to resolution duly adopted by its Board of Directors.

LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT

By _____
General Manager

THIS AGREEMENT is executed by the Lower Platte South Natural Resources District on this ____ day of _____, 2009 pursuant to resolution duly adopted by its Board of Directors.

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT

By _____
General Manager

THIS AGREEMENT is executed by the Papio-Missouri River Natural Resources District on this ____ day of _____, 2009 pursuant to resolution duly adopted by its Board of Directors.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By _____
General Manager