

Updated: April 9, 2004

**Finance, Expenditure & Legal
Subcommittee Meeting
April 13, 2004
7:00 p.m.
Agenda**

Finance, Expenditure & Legal Subcommittee Members:

Melissa Gardner, Chairperson
Dick Connealy, Vice-Chairperson
John Conley
Barb Nichols
Jim Thompson

Alternate Members: Joe Neary
Pete Rubin

Staff Liaison: Jim Becic
Martin Cleveland
Jack Lawless
Dick Sklenar
Trent Heiser *

1. Meeting Called to Order – Chairperson Gardner
2. Quorum Call
3. Adoption of Agenda
4. Proof of Publication of Meeting Notice
5. Review and Recommendation on Request for Payment from SID 425 (Newport Landing) – Steve Oltmans and Paul Woodward
6. Review and Recommendation on Water Tower Property Acquisition for Washington County Rural Water Project #2 [*Executive Session Recommended*]– Dick Sklenar
7. Other Items of Interest
8. Adjourn

Memorandum

To: PPO Subcommittee
From: Paul Woodward, Water Resources Engineer
Date: April 5, 2004
Re: Final Payment to Horgan Development Company

On June 12, 2003, the Board approved the enclosed Third Amendment to the Amended Agreement with Horgan Development Company (HDC) and Sanitary and Improvement District No. 425 (SID 425). According to this agreement, the District is to pay HDC their final payment of \$345,600 within 60 days after letting a contract to construct the Trail System and Fishing Facilities at Newport Landing/Bennington Lake (Dam Site 6). Funds for this payment were not included in the District's FY 04 budget because it was not anticipated that construction for these public facilities would begin until 2005.

However, the District received the enclosed request for final payment from HDC on March 11, 2004 stating that contracts had been let for both the trail and fishing pier construction. District staff has considered this request with respect to our current budget. Upon investigation, sufficient funds for this payment previously set aside for a new public/private partnership at another Papio Dam site would be available.

In summary, HDC has requested the final payment of \$345,600 from the District for public improvements made at Newport Landing/Bennington Lake in accordance with the amended agreement. This final payment would raise the total NRD dollars spent on Dam Site 6 to \$2,845,600.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to release the final payment of \$345,600 to Horgan Development Company for the completion of public improvements at Dam Site 6 previously agreed upon.



March 10, 2004

Mr. Steve Oltmans, General Manager
Papio-Missouri River NRD
8901 So 154th Street
Omaha, Nebraska 68138

Dear Steve:

I am pleased to inform you that the contracts for the fishing pier and trail system at Newport Landing have been let. The fishing pier is being built by Hawkins Construction Company and should be completed within 60 days. The trail system will be built as soon as weather permits.

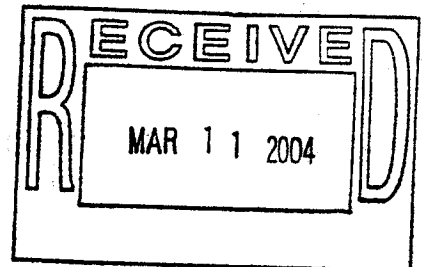
Since we have moved forward on our time frame for these two facilities, I would like to request payment from the NRD to SID 425 in the amount of \$345,600.00 as soon as the board is able to approve this payment.

Thank you for your consideration in this matter. If you need any additional information, please feel free to give me a call.

Sincerely,

Horgan Development Company
Robert P. Horgan, President

RPH/dmn



**THIRD AMENDMENT TO AMENDED AGREEMENT
DAM SITE 6 - BENNINGTON LAKE PROJECT**

This Third Amendment to Amended Agreement (this "Third Amendment") is made and entered into this 2nd day of July, 2003, by and among PAPIO-MISSOURI NATURAL RESOURCES DISTRICT ("the NRD"); HORGAN DEVELOPMENT COMPANY, a Nebraska corporation ("HDC"); and SANITARY AND IMPROVEMENT DISTRICT NO. 425 OF DOUGLAS COUNTY, NEBRASKA ("the SID").

Preliminary Statement

The NRD, HDC and the SID have entered into an Agreement Dam Site 6 - Bennington Lakes Project being executed by the NRD and HDC on August 28, 1997, and by the SID on March 30, 1998, which Agreement was modified, amended and superceded in its entirety by an Amended Agreement Dam Site 6 - Bennington Lakes Project executed by the NRD on April 16, 1998, and by HDC and the SID on April 29, 1998, as amended by an Amendment to Amended Agreement Dam Site 6 - Bennington Lakes Project executed by the NRD on August 26, 1998, and by HDC and the SID on August 13, 1998, and by a Second Amendment to Amended Agreement Dam Site 6 - Bennington Lake Project executed by the NRD on October 17, 2000, and by HDC and the SID on October 13, 2003 (as amended, the "Agreement").

The Agreement sets forth the cooperative arrangements between the NRD, HDC, and the SID in the design, construction, operation and maintenance of certain improvements relating to the so-called Bennington Lakes Project, including, without limitation, the following (the "Cooperative Project Improvements"): the Dam, the Dam Complex, the Reservoir, Sediment Retention Structure, the Wetlands, the Wetlands Complex, the Trails System, the Channel Improvements, the Improved Channel, the Treatment Facility, the Treatment Facility Complex, the SID Open Space Improvements, the Spillway Complex, the NRD Open Space Improvements, and the Fishing Facilities, all of which Cooperative Project Improvements are described in the Agreement. The Agreement further specifies the NRD's agreements to make financial contributions towards the cost of certain of the Cooperative Project Improvements.

HDC and the SID have completed all of their obligations under the Agreement for construction of the Cooperative Project Improvements, except for the Trails System and Fishing Facilities. HDC and the SID have requested an extension for the time to construct the Trail System and Fishing Facilities, and the parties desire to memorialize their agreements with respect to such extension.

NOW, THEREFORE, in consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Any terms used in this Third Amendment with an initial capitalized letter which are not otherwise defined herein, shall have the meaning ascribed to them by the Agreement.

2. Section 10 of the Agreement is hereby amended by changing the date in said Section 10 from June 30, 2003, to June 30, 2005.

3. Section 12(g) is hereby amended in its entirety to provide as follows :

(g) For the NRD's fiscal year 2004 to 2006 (July 1, 2003 - June 30, 2006), a payment in the amount of \$345,600, such payment to be due and payable by the NRD to HDC on the later of the following dates:

(1) October 15, 2003

(2) 60 days after HDC or SID let the contract(s) for construction of the Trail System and the Fishing Facilities.

4. The NRD, HDC, and the SID have approved preliminary plans for the construction of the Trails System and a concept plan for the construction of the Fishing Facilities as identified on Exhibits "A" and "B" attached hereto and incorporated herein by this reference. Final plans and specifications for the Trail System and Fishing Facilities shall be submitted to the NRD on or before September 30, 2004, which plans and specifications will substantially conform with the preliminary plans. The NRD's approval of the final plans and specifications will not be unreasonably withheld or delayed.

5. This Third Amendment shall amend and supplement the Agreement which, except as amended and supplemented herein, shall remain in full force and effect in accordance with its terms. In the event of any conflict between the terms of this Third Amendment and the terms of the Agreement, the terms of this Third Amendment shall control.

This Third Amendment is executed by the NRD on this 11th day of July, 2003.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By: 
Steven G. Oltmans, General Manager

This Third Amendment is executed by HDC on this 2nd day of July, 2003.

HORGAN DEVELOPMENT COMPANY, a
Nebraska corporation

By: [Signature]
Robert P. Horgan, President

This Third Amendment is executed by the SID on this 2nd day of July, 2003.

SANITARY AND IMPROVEMENT DISTRICT
NO. 425 OF DOUGLAS COUNTY, NEBRASKA

By: [Signature]
Robert P. Horgan, Chairperson

ATTEST:

[Signature]
Clerk

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 11 day of July, 2003, before me, a Notary Public, personally came Steven G. Oltmans, General Manager of the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said district.

WITNESS my hand and Notarial Seal the date last aforesaid.

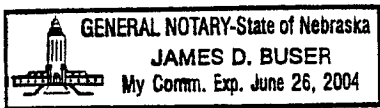


[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 2nd day of July, 2003, Robert P. Horgan, President of HORGAN DEVELOPMENT COMPANY, a Nebraska corporation, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said corporation.

WITNESS my hand and Notarial Seal the date last aforesaid.

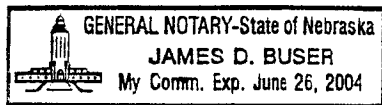


James D. Buser
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 2nd day of July, 2003, before me, a Notary Public, personally came Robert P. Horgan, Chairperson of the Board of Trustees of SANITARY AND IMPROVEMENT DISTRICT NO. 425 OF DOUGLAS COUNTY, NEBRASKA, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said district.

WITNESS my hand and Notarial Seal the date last aforesaid.



James D. Buser
Notary Public

EXHIBIT "A"

Trails System Preliminary Plans

Trails Vicinity Map prepared by Lamp, Rynearson & Associates, Inc., dated July 1, 2003, identified as job number 96009.11-057.

EXHIBIT "B"

Fishing Facilities Concept Plan

Concept Plan prepared by Lamp Rynearson & Associates, Inc.,
dated 05-30-03.

Memo regarding Water Tower Property Acquisition for Washington County Rural Water Project #2 will be posted as soon as it is available.