

# MEMORANDUM

**TO:** Programs Projects and Operations Subcommittee

**FROM:** Dick Sklenar

**SUBJECT:** Inter-local Cooperation Act Agreement between the NRD/Washington County/City of Blair for the Washington Rural Water Project No. 2

**DATE:** December 2, 2003

Over the past several weeks the District Staff has been negotiating with the City of Blair and Washington County officials regarding a three party agreement on the development of the Washington County Rural Water Project No. 2. The Agreement entails the purchase of water from the City of Blair to provide rural water service to approximately 230 rural residences. The estimated cost of the rural water distribution network is \$1.6 million with an additional \$1.2 million for the construction of a water tower.

Language within the Agreement indicates that the City of Blair will jointly provide funding for the construction of the one million gallon reservoir which will provide water pressure and storage capacity for both the City of Blair and the District's rural water system. Eighty Percent of the cost of constructing the water tower will be paid by the City of Blair over a ten year period. The remaining twenty percent will be paid by the District. In addition the City of Blair will be contributing approximately \$355,000.00 to oversize the principal main in the hopes of getting emergency water supplies from the Metropolitan Utilities District. An interconnection between the proposed rural water system and the existing Washington County Rural Water System No. 1 will be necessary to provide the emergency supply. It will be necessary to make modifications to the District's existing pump station at a future point in time.

Washington County will be providing \$200,000.00 in regards to oversizing the arterial mains. In order to provide rural water service for future customers, and to expand the system, the oversizing of the arterial mains are considered very important for future growth in the rural area. The county's contribution of \$200,000.00 will be provided to the District over a ten year period.

Furthermore, the Agreement indicates that \$1,500.00 of each future hookup fee would be proportionately rebated to both the City of Blair and Washington County. The rebates would continue until the principal of Washington County's \$200,000.00 is repaid and the City of Blair's financial contribution of the \$355,000.00 for oversizing the principal water main is repaid.

**It is recommended that the Subcommittee recommend to the Board of Directors that the attached Agreement be approved and that the General Manager be authorized to execute said Agreement subject as to form approved by the District's legal counsel.**

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**INTERLOCAL COOPERATION ACT AGREEMENT**

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,  
THE CITY OF BLAIR, NEBRASKA  
AND  
THE COUNTY OF WASHINGTON, NEBRASKA**

**WASHINGTON COUNTY RURAL WATER PROJECT NO. 2**

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**THIS AGREEMENT** (hereinafter referred to as “**THIS AGREEMENT**”) is made pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 to 13-827 R.R.S. 1997, *et seq.*, by and among the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a subdivision of the State of Nebraska (hereinafter referred to as “the **NRD**”); the **CITY OF BLAIR**, a municipal corporation of the State of Nebraska (hereinafter referred to as “the **CITY**”); and, the **COUNTY OF WASHINGTON**, a subdivision of the State of Nebraska (hereinafter referred to as “the **COUNTY**”). The **NRD**, the **COUNTY** and the **CITY** are hereinafter referred to individually as a “**PARTY**” and collectively as “the **PARTIES**.”

**WHEREAS**, the **PARTIES** are governmental bodies organized under the laws of the State of Nebraska; and,

**WHEREAS**, to provide quality drinking water for orderly growth and development of the area bounded as described in Exhibit “A” attached hereto and incorporated herein by reference (hereinafter referred to as “the **PROJECT AREA**”), a project (hereinafter referred to as “the **PROJECT**”) to provide for distribution of such water to the **PROJECT AREA** for domestic and other purposes has been studied, has been and is hereby determined to be feasible, and should be undertaken; and,

**WHEREAS**, the NRD has authority and is willing to undertake the PROJECT as a special improvement project, under Sections 2-3229, 2-3233, 2-3234, 2-3238, and 2-3252 et seq., R.R.S. 1997, to supply water for any beneficial use; and,

**WHEREAS**, the NRD desires to purchase from the CITY the water to be distributed by the PROJECT; and,

**WHEREAS**, the CITY is willing to supply water to the NRD for distribution by the PROJECT provided the NRD pays certain costs and fulfills certain other conditions hereinafter described; and,

**WHEREAS**, in addition to the PROJECT'S water distribution system, the PROJECT facilities shall include an elevated water reservoir with the capacity of up to one million gallons, and appurtenances thereto, including, without limitation, associated telemetry equipment (hereinafter referred to collectively as "the **WATER TOWER**"), to be used both to pressurize the PROJECT water distribution system and to pressurize portions of the CITY'S water distribution system (hereinafter referred to as the "**CITY SYSTEM**"), and also shall include a nominal twelve inch (12") diameter PVC main connecting the WATER TOWER to the CITY SYSTEM (hereinafter referred to as "the **WATER TOWER SUPPLY MAIN**"); and,

**WHEREAS**, the CITY has requested that the PROJECT'S principal main (hereinafter referred to as "the **PRINCIPAL MAIN**"), intended to run between State Highway 133 and the intersection of County Roads P-34 and P-39, be oversized to provide capacity for possible emergency use by the CITY to convey Metropolitan Utilities District (hereinafter referred to as "**MUD**") water to the CITY SYSTEM; and,

**WHEREAS**, the CITY has requested that the PRINCIPAL MAIN and appurtenances thereto be extended from the intersection of County Roads P-34 and P-39 to a terminus at the intersection of County Roads 38 and P-43 (hereinafter referred to as "the **PRINCIPAL MAIN EXTENSION**"), to provide capacity for possible emergency use by the CITY to convey MUD water to the CITY SYSTEM; and,

**WHEREAS**, the CITY has offered to reimburse to the NRD all the cost of oversizing the PRINCIPAL MAIN, and reimburse one-half of the cost of the PRINCIPAL MAIN EXTENSION if the NRD would pay the other one half; and, the CITY has offered to reimburse the NRD for all costs and expenses incurred by the NRD for modifications to the NRD'S existing Washington County Rural Water Project No. 1 system (hereinafter referred to as the "**PROJECT NO. 1 MODIFICATIONS**") that are determined to be necessary for the CITY to convey Metropolitan Utilities District water to the CITY SYSTEM for possible emergency use.

**WHEREAS**, The COUNTY has requested that certain of the mains branching from the PRINCIPAL MAIN (hereinafter referred to as "the **ARTERIAL MAINS**"), be oversized in order to facilitate future expansions of the water distribution system that will be needed to assist in future growth and development of adjacent portions of the COUNTY; and,

**WHEREAS**, the PARTIES desire to set forth the terms of their agreement with respect to the PROJECT,

**NOW, THEREFORE, IN CONSIDERATION** of the foregoing recitals and their mutual covenants, the PARTIES hereby agree as follows:

1. **PURPOSE OF AGREEMENT.** The purpose of THIS AGREEMENT is to set forth the terms under which the PROJECT and its components will be designed, constructed, operated, maintained, repaired, replaced and regulated, and to specify the rights, duties and obligations of the PARTIES in connection therewith. The PROJECT will be undertaken without any separate legal entity being created.

2. **TERM AND TERMINATION.** The initial term of THIS AGREEMENT shall be twenty-five (25) years from and after the date of commencement of service under THIS AGREEMENT. It is the intention of the parties that the water supply hereby contracted for shall be supplied continuously as long as the consumers served by the PROJECT are dependent thereon. This contract may be terminated by mutual agreement

of the CITY and the NRD, or by the giving of two years written notice by one such PARTY to the other; provided, however, the CITY shall not terminate the water supply unless there is available to the NRD or its consumers an adequate alternate source of water which can be developed or purchased feasibly; and provided, further, that no termination shall be effective without the written consent of the COUNTY.

3. **THE ENGINEERS.** Within ninety (90) days after the effective date of THIS AGREEMENT, the NRD, as the lead PARTY for the PROJECT, shall retain one or more engineering consultants (hereinafter referred to collectively as “the **ENGINEERS**”) approved in writing by the other PARTIES (such approval to not be withheld or delayed unreasonably) to design the PROJECT or portions thereof, to prepare plans and specifications and contract documents for the PROJECT or portions thereof, and to administer construction of the PROJECT or portions thereof. Failure of any PARTY to approve the NRD’S selection of the ENGINEERS may be cause for termination of THIS AGREEMENT, at the election of one of the remaining PARTIES, upon written notice to the other PARTIES.

4. **PRELIMINARY PLANS AND SPECIFICATIONS.** The ENGINEERING CONTRACT shall require that the ENGINEERS complete the preparation of preliminary plans and specifications (hereinafter referred to as “the **PRELIMINARY PLANS**”) for the PROJECT, in accordance with the following:

- a) Except as hereinafter specified, the PRELIMINARY PLANS shall be drawn in accordance with design criteria provided by the NRD after consultation with the CITY and the COUNTY;
- b) The PRELIMINARY PLANS shall be drawn in accordance with applicable Nebraska state and federal statutes, rules and regulations;
- c) The PRELIMINARY PLANS for the WATER TOWER shall be based on proposed tower working elevations and the general scheme of tower operations provided by the CITY, which shall include CITY specifications for

telemetry equipment that shall be installed and calibrated with coordination provided by the CITY;

d) The PRELIMINARY PLANS shall include, without limitation, provisions for over-sizing, to a nominal twelve inches (12”), the entire PRINCIPAL MAIN;

e) The PRELIMINARY PLANS shall include, without limitation, provisions for a nominal twelve inch (12”) diameter PRINCIPAL MAIN EXTENSION;

f) The PRELIMINARY PLANS shall include, without limitation, provisions for the PROJECT NO. 1 MODIFICATIONS;

g) The PRELIMINARY PLANS shall include, without limitation, provisions for over-sizing the ARTERIAL MAINS; and,

h) The PRELIMINARY PLANS shall include, without limitation, the ENGINEERS’ itemized estimates of the costs of the separable portions of the PROJECT and oversizings, including the costs of engineering, design, construction and construction administration, but excluding rights-of-way costs.

Notwithstanding any other provisions of THIS AGREEMENT, the plans for the oversizing of the PRINCIPAL MAIN, for the PRINCIPAL MAIN EXTENSION and for the PROJECT NO. 1 MODIFICATIONS shall be conditional upon MUD’S prior written agreement to provide emergency water to the CITY SYSTEM, and also shall be subject to subsequent written determination by the CITY that such oversizing, extension and modifications will result in a feasible system for conveying emergency water from MUD to the CITY SYSTEM.

5. **APPROVAL OF PRELIMINARY PLANS.** Upon the ENGINEERS’ completion of the PRELIMINARY PLANS, and after approval of the same by the NRD, the PRELIMINARY PLANS shall be submitted to the other PARTIES for their written

approvals. Each of the other PARTIES shall have 15 days to review the PRELIMINARY PLANS and to approve or disapprove the same in writing or suggest amendments thereto.

6. **PREPARATION OF FINAL PLANS FOR PROJECT.** Upon receipt by the NRD of the other PARTIES' written approvals of the PRELIMINARY PLANS, the NRD shall direct the ENGINEERS to prepare final plans and specifications for the PROJECT (hereinafter referred to collectively as "the FINAL PLANS").

7. **APPROVAL OF FINAL PLANS.** Upon the ENGINEERS' completion of the FINAL PLANS, and after approval of the same by the NRD, the FINAL PLANS shall be submitted to the other PARTIES. Each of the other PARTIES shall have 15 days to review the FINAL PLANS and to approve or disapprove the same in writing or suggest amendments thereto.

8. **PROJECT RIGHTS-OF-WAY.** Within a reasonable time after approval of the FINAL PLANS by all PARTIES, and without further consideration, each PARTY shall grant to the NRD a permanent easement or permit over all of such PARTY'S lands and rights-of-way that shall be designated in the FINAL PLANS as necessary PROJECT rights-of-way. Each such permanent easement or permit shall run with the land and grant to the NRD the permanent right to design, construct, operate, maintain, repair, replace and regulate water transmission and distribution mains, and appurtenances thereto, in, on, over and across such designated land of the granting PARTY, or contain a grant in such other form as may be determined by agreement of the granting PARTY and the NRD. The NRD shall acquire all other ENGINEER-designated lands, easements and rights-of-way, including without limitation the site for the WATER TOWER, and such other approvals, licenses, easements, water rights, permits and consents as the NRD determines are required or convenient for construction and for permanent operation, maintenance repair, replacement and regulation of the PROJECT.

9. **PROJECT CONTRACTORS.** In its sole discretion, the NRD may determine to retain separate contractors (hereinafter referred to collectively as “the **PROJECT CONTRACTORS**”) to construct separable portions of the PROJECT, and/or may determine to construct the PROJECT in increments or stages. Within a reasonable time after approval of the FINAL PLANS by all PARTIES, the NRD shall conduct one or more public lettings, in accordance with the appropriate policies of the NRD, and thereby retain PROJECT CONTRACTORS who the NRD determines are the lowest and best bidders, to construct the PROJECT or separable portions thereof; provided, however, the bids for the contract involving construction of the WATER TOWER shall state the cost of construction of the WATER TOWER as a separate item; and, within a reasonable time after NRD’S receipt and opening of such bids, the NRD shall deliver a summary of all such bids to the CITY, together with the identification by the NRD of the bidder who the NRD determines is the lowest and best bidder, whereupon, in the absence of good cause to the contrary being shown by the CITY, the NRD shall accept such bidder’s bid and shall award to such bidder the contract to construct the WATER TOWER.

10. **CONSTRUCTION CONTRACT DOCUMENTS.** The proposed contract(s) between the NRD, on the one hand, and the PROJECT CONTRACTORS, on the other hand, for construction of the PROJECT (all such contract(s), together with the FINAL PLANS, hereinafter being referred to collectively as “the **CONSTRUCTION CONTRACT DOCUMENTS**”), including, without limitation, the contract prices that the NRD proposes to pay to the PROJECT CONTRACTORS for construction of the PROJECT, shall be submitted to the other PARTIES, who shall have a period of 30 days to review the same and to suggest amendments thereto.

11. **PROJECT FINANCING.** The NRD shall be solely responsible for temporary and permanent financing for the PROJECT and shall be solely responsible for applying for state and federal grants for which the PROJECT may be eligible. In the event that the NRD is not able to arrange financing upon such terms as the Board of Directors of



the NRD, in its sole discretion, determines reasonable, the NRD may terminate THIS AGREEMENT upon written notice to the other PARTIES.

12. **CONSTRUCTION OF PROJECT.** After arranging PROJECT financing and determining the lowest and best bidder for construction of the PROJECT, the NRD shall execute the CONSTRUCTION CONTRACT DOCUMENTS and authorize the PROJECT CONTRACTORS to proceed to construct the PROJECT, in substantial conformance with the CONSTRUCTION CONTRACT DOCUMENTS.

13. **CONSTRUCTION OBSERVATION.** The NRD will provide for engineering observation and administration of construction of the PROJECT. Representatives of the other PARTIES shall be given the opportunity to observe such construction at all reasonable hours and the right to request and receive from the NRD contemporaneous copies of all written communications between or among, or issued by, the NRD and/or the ENGINEERS and/or the PROJECT CONTRACTORS pertaining to PROJECT construction, including but not limited to statements by the ENGINEERS as to percentage of completion and substantial completion.

14. **AS-BUILT PLANS AND FINAL COST STATEMENT.** Upon completion of construction of the PROJECT or separable portions thereof, the NRD shall direct the ENGINEERS to prepare and deliver to the NRD and the CITY (a) as-built plans and specifications relating thereto (hereinafter referred to collectively as “the **AS-BUILT PLANS**”); and (b) itemized statements of the final costs of design and construction of the separable portions of the project, including, without limitation, (i) the WATER TOWER and the WATER TOWER SUPPLY MAIN, (ii) the PRINCIPAL MAIN, (iii) the PRINCIPAL MAIN EXTENSION and (iv) the PROJECT NO. 1 MODIFICATIONS.

15. **CONTRACTOR'S WARRANTIES.** The NRD shall enforce all bonds and warranties given by the PROJECT CONTRACTORS in the CONSTRUCTION CONTRACT DOCUMENTS.

16. **POINT OF DELIVERY.** After substantial completion of construction of the PROJECT, or as soon thereafter as PROJECT facilities are available to receive and distribute water, the CITY shall furnish water to the NRD through a pipe connection to the PROJECT pipeline situated in a vault located at or near the intersection of Highway 133 and the COUNTY'S Road P-26 (such point of connection hereinafter being referred to as "the **POINT-OF-DELIVERY**"). The NRD also shall have the right to install one or more connections to the WATER TOWER SUPPLY MAIN between the POINT OF DELIVERY and the WATER TOWER, without any charge being made by the CITY.

17. **CITY'S PROJECT REIMBURSEMENTS.** The CITY shall reimburse and pay to the NRD:

a) All of the costs and expenses (excepting twenty per-cent 20% or Two Hundred Fifty Thousand Dollars (\$250,000) thereof, whichever is less) incurred by the NRD for: (i) design, construction and installation of the WATER TOWER, the WATER TOWER SUPPLY MAIN and the POINT OF DELIVERY, as such costs and expenses are reasonably determined by the ENGINEERS; (ii) acquisition of the WATER TOWER site, the WATER TOWER SUPPLY MAIN right-of-way and the POINT OF DELIVERY site, as such costs and expenses are reasonably determined by the NRD; and, (iii) the costs of interim financing of the WATER TOWER and the WATER TOWER SUPPLY MAIN and the sites and rights-of-way therefor. Such reimbursement shall be paid to the NRD in ten (10) equal annual installments, the first such installment to be due and payable to the NRD fifteen (15) days prior to the closing of the NRD'S issuance of revenue bonds for PROJECT costs and expenses, with the remaining equal annual installments respectively to be due and payable in the nine succeeding years

thereafter on the same day of the year as the day such first installment was due and with simple interest on the unpaid balance at the rate of four per cent (4.0%) per annum, payable with each installment of principal.

b) One-half of all the costs and expenses incurred by the NRD for the design and construction of the PRINCIPAL MAIN EXTENSION and all of the costs and expenses incurred by the NRD for the design and construction of the PROJECT NO. 1 MODIFICATIONS, as such costs and expenses are reasonably determined by the ENGINEERS, including the costs of interim financing of such portions of the PROJECT'S design and construction costs and expenses. Such reimbursement shall be paid to the NRD in ten (10) equal installments, on the same payment schedule as provided in the above subparagraph, all with simple interest on the unpaid balance at the rate of four per cent (4.0%) per annum, payable with each installment of principal.

18. **PAYMENT OF PROJECT COSTS.** Except for the above-specified reimbursements by the CITY, and except for the below-specified (a) contributions of the CITY towards the costs of oversizing the PRINCIPAL MAIN and (b) contributions of the COUNTY towards the costs of oversizing the ARTERIAL MAINS, the NRD shall finance and pay all costs of design and construction of the PROJECT without reimbursement by the other PARTIES.

19. **CITY'S PROJECT CONTRIBUTION.** As the CITY'S contribution towards the NRD'S costs of oversizing the PRINCIPAL MAIN (hereinafter referred to as "the CITY'S PROJECT CONTRIBUTION"), the CITY shall reimburse and pay to the NRD all costs and expenses incurred by the NRD in oversizing the PRINCIPAL MAIN to a nominal twelve inches (12"), as such costs and expenses are reasonably determined by the ENGINEERS, together with the costs of interim financing such oversizing of the PRINCIPAL MAIN. Such PROJECT CONTRIBUTION shall be paid to the NRD in ten (10) equal annual installments on the same payment schedule as provided in paragraph

17, above, for CITY reimbursements, all with simple interest on the unpaid balance at the rate of four per cent (4.0%) per annum, payable with each installment of principal.

20. **COUNTY'S PROJECT CONTRIBUTION.** As the **COUNTY'S** contribution towards the NRD'S costs of oversizing the ARTERIAL MAINS (hereinafter referred to as "the **COUNTY'S PROJECT CONTRIBUTION**"), the COUNTY shall advance to the NRD the sum of Two Hundred Thousand Dollars (\$200,000.00), such advance to be paid to the NRD in ten equal annual installments on the same payment schedule as provided in paragraph 17, above, for CITY reimbursements, all with simple interest on the unpaid balance at the rate of four per cent (4.0%) per annum, payable with each installment of principal.

21. **REBATE OF PROJECT CONTRIBUTIONS.** Commencing on December 31, 2006, and on December 31<sup>st</sup> of each succeeding year thereafter, the NRD shall rebate to the CITY and COUNTY proportionate shares of the first Fifteen Hundred Dollars (\$1,500) of each PROJECT hook-up fee paid during the prior NRD fiscal year by water users enabled to be served by the PROJECT, the CITY'S and COUNTY'S shares of each such rebated amounts to be proportionate to the relative amounts of their PROJECT CONTRIBUTIONS. Such rebates shall be made annually until the principal of the CITY'S PROJECT CONTRIBUTION and of the COUNTY'S PROJECT CONTRIBUTION have been fully repaid, without interest.

22. **EFFECT OF PROJECT CONTRIBUTION.** Except as otherwise specifically provided in THIS AGREEMENT, a PROJECT CONTRIBUTION paid by a PARTY to the NRD shall constitute the sole contribution of such PARTY towards, and sole liability for, the costs of PROJECT design, construction and rights-of-way.

23. **RECORDS AVAILABILITY.** The NRD'S records of PROJECT receipts and expenditures shall be made available to the other PARTIES for their inspection and copying at all reasonable hours for a period of ten years after final completion of PROJECT construction.

24. **QUANTITIES.** The CITY agrees to deliver water in the quantities as required by the NRD at the POINT-OF-DELIVERY at pressures of not less than 60 pounds per square inch and not more than 78 pounds per square inch, at 1,360 feet above mean sea level, according to the National Geodetic Vertical Datum of 1929. The NRD will operate its system so that water may be received at the POINT-OF-DELIVERY at any pressure within such range of pressures. Water meters will be installed by the NRD at the POINT-OF-DELIVERY to calculate and record the amount of NRD water consumed by the PROJECT, after deduction of any flows back to the CITY SYSTEM through the POINT-OF-DELIVERY. The NRD shall at all times operate its system and controls so as to avoid pressure surges on the CITY SYSTEM; and, the CITY shall at all times operate its system and controls so as to avoid pressure surges on the NRD'S system. The operation of valves and equipment at the POINT-OF-DELIVERY shall be by the CITY'S personnel only. The CITY shall not be held liable to the NRD for damages resulting from its failure to deliver water at the POINT-OF-DELIVERY because of accident, vandalism or other cause beyond the reasonable control of the CITY.

25. **EMERGENCY REDUCTIONS.** The NRD agrees to accept reduced deliveries at the POINT-OF-DELIVERY when, due to unusual system demands during extreme climatic conditions, fire flows or emergency situations, to continue such deliveries would seriously impair the CITY'S service to its other customers, it being understood that all users dependent upon the CITY for water supply will share the shortages as proportionately as possible given the limits of the CITY'S controls.

26. **WATER QUALITY.** Water delivered by the CITY to the NRD will be of quality and chemical content equivalent to that provided to the other customers of the CITY. No change in water quality will be made to satisfy any special requirements of the NRD. The CITY will be responsible to insure that the quality of its water delivered to the NRD satisfies all CITY, State and Federal rules and regulations. The NRD shall take whatever steps are necessary, and bear any expense required, to insure that there are

sufficient flows of water in its system to maintain the palatability of water within its system. The CITY shall reimburse the NRD for the reasonable expenses incurred by the NRD in purging the PROJECT'S mains and lines of any water delivered to the NRD by the CITY that fails to meet the standards provided by THIS AGREEMENT.

**27. APPROVAL FROM STATE DEPARTMENT OF HEALTH & HUMAN SERVICES.** The NRD shall have the responsibility for obtaining from the Department of Health & Human Services of the State of Nebraska any approvals for the delivery of water under this agreement that may be required, prior to delivery of any water hereunder, and shall perform at its own expense any testing or monitoring of water quality which may be required beyond the POINT-OF-DELIVERY.

**28. WATER RATES.** The NRD shall pay to the CITY Eighty-Four Cents (\$0.84) for each thousand gallons (i.e., \$0.63 for each 100 cubic feet) of water received by the NRD from the CITY at any time during the first 5 years after commencement of actual use of water by the NRD pursuant to THIS AGREEMENT; and, the NRD shall pay to the CITY Ninety-Five Cents (\$0.95) for each thousand gallons (i.e., \$0.71 for each 100 cubic feet) of water received by the NRD from the CITY at any time during the second 5 years after commencement of actual use of water by the NRD pursuant to THIS AGREEMENT. In the event of a general rate increase to all users of water services from the CITY SYSTEM, and after at least 60 days written notice to the NRD, the rate for water received by the NRD from the CITY shall be increased by the same percentage as such general rate increase. Monthly billings to the NRD shall begin upon actual use of water by the NRD and the NRD shall pay each of such bills within 45 days after its receipt thereof.

**29. CONSENT OF CITY.** The CITY consents to the NRD'S sale and delivery of water, furnished hereunder, to the NRD'S customers within the PROJECT AREA boundaries set out in Exhibit "A" attached hereto, and to such other persons

outside the current boundaries of the PROJECT AREA, and outside the CITY'S boundaries, as are able to be served via the ARTERIAL MAINS.

**30. PROJECT OWNERSHIP, OPERATION AND MAINTENANCE.**

After final completion of construction of the PROJECT or respective separable portions thereof, and acceptance of the same from the PROJECT CONTRACTORS:

a) The NRD shall own all the portions of the PROJECT except the WATER TOWER, the WATER TOWER SUPPLY MAIN, and the POINT-OF-DELIVERY vault and the equipment therein; and the NRD, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate such owned portions, all in accordance with generally-accepted engineering practices and Nebraska statutes, identified above, governing natural resources district special improvement water supply projects.

b) The NRD shall grant and convey to the CITY the POINT-OF-DELIVERY vault and the equipment therein, as built, and its site, and the CITY, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the same as a part of the CITY'S water system, in such manner as to provide all necessary water and water pressure for the PROJECT'S water system, all in accordance with THIS AGREEMENT, the AS-BUILT PLANS and generally accepted engineering practices. The NRD shall have a key and the right to access such equipment at all times and shall report to the CITY any malfunction noted.

c) The NRD shall grant and convey to the CITY the WATER TOWER, including its telemetry equipment and other appurtenances, and its site, and assign to the CITY the WATER TOWER SUPPLY MAIN and all of the NRD's rights-of-way therefor, and the CITY at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the WATER TOWER and the WATER TOWER SUPPLY MAIN, as-built, as a part of the CITY SYSTEM, in

such manner as to provide all necessary water and water pressure for the PROJECT water system, all in accordance with THIS AGREEMENT, the AS-BUILT PLANS and generally-accepted engineering practices. The NRD shall have a key and the right to access the WATER TOWER at all times and shall report to the CITY any malfunction noted.

31. **CITY TAKEOVER OF PROJECT.** The CITY shall not take over any portion of the PROJECT from the NRD if to do so would sever the PROJECT and leave any portion of the PROJECT as an uneconomic remnant. If the CITY is required by law or regulation to compensate the NRD for the value of any such portion taken over by the CITY, such value shall not be deemed to be less than the greater of (a) its depreciated capital cost, as reasonably determined by the NRD in its sole discretion, depreciated in equal annual installments over a useful life of 50 years; or (b) the unpaid balance of any bonds or other indebtedness incurred or refunded by the NRD for the PROJECT.

32. **INDEMNIFICATIONS.** (a) The NRD shall defend, indemnify, and hold each of the other PARTIES harmless from and against all costs and expenses, including attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the design and construction of the PROJECT or from the operation, maintenance, repair, replacement, or regulation of all the portion(s) of the PROJECT owned by the NRD, except such personal injuries or property damages as may be caused by the sole negligence of such other PARTY; and (b) The CITY shall defend, indemnify, and hold the other PARTIES harmless from and against all costs and expenses, including attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the operation, maintenance, repair, replacement, or regulation of the CITY SYSTEM and all the portion(s) of the PROJECT owned by the CITY, except such personal injuries or property damages as may be caused by the sole negligence of such other PARTY.



33. **PROJECT RISK OF LOSS.** After substantial completion of construction of the PROJECT, the sole risk of loss of or damage to any portion of the PROJECT shall be borne by the PARTY which, under THIS AGREEMENT, has the duty to provide operation, maintenance, repair, replacement or regulation of such portion of the PROJECT, whether such loss or damage results from accident or other casualty whatsoever.

34. **NONDISCRIMINATION.** 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, color, sex, age, political or religious opinions, affiliations or national origin.

35. **CAPTIONS.** Captions used in THIS AGREEMENT are for convenience and are not used in the construction of THIS AGREEMENT.

36. **APPLICABLE LAW.** In performing THIS AGREEMENT the PARTIES shall conform to all applicable state and federal laws, rules and regulations.

37. **MODIFICATION.** THIS AGREEMENT contains the entire agreement of the PARTIES. No representations were made or relied upon by any of the PARTIES other than those expressly set forth herein. No agent, employee or other representative of any PARTY is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of such PARTY.

38. **INVALID PROVISIONS.** In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of THIS AGREEMENT which shall in all respects remain a legally binding agreement with the invalid portion being deleted; provided that the validity of any such covenant, condition, or provision does not materially prejudice any of the PARTIES in its respective rights

and obligations contained in the valid covenants, conditions, or provisions of THIS AGREEMENT.

39. **NON-WAIVER.** No delay or failure by any of the PARTIES to exercise any right under THIS AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by any of the PARTIES shall not be deemed to extend the amount of time available to perform any other act required under THIS AGREEMENT.

40. **FURTHER AGREEMENTS.** Each of the PARTIES will, whenever and as often as the other may request, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all such further conveyances, assignments or other instruments and documents as the requesting party may determine to be necessary, expedient or proper in order to complete any and all conveyances, transfers, and assignments herein provided, and do any and all other acts and to execute, acknowledge and deliver any other documents so requested in order to carry out the intent and purposes of THIS AGREEMENT.

41. **TIME IS OF THE ESSENCE.** Time is expressly declared to be of the essence of THIS AGREEMENT.

42. **DEFAULT.** If the any of the PARTIES fails to comply with any provision of THIS AGREEMENT after reasonable request for performance has been served on such party, the remaining PARTIES may seek specific performance of THIS AGREEMENT upon written notice to the other PARTIES.

43. **EFFECTIVE DATE AND TERM.** THIS AGREEMENT shall become effective upon its execution by all PARTIES, and shall be perpetual in duration.

44. **NOTICES.** Notices to the respective parties provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid, addressed as follows:

To the NRD:

Steven G. Oltmans, General Manager  
Papio-Missouri River NRD  
8901 South 154th Street  
Omaha, Nebraska 68138-3621

To the COUNTY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the CITY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other respective representative(s) or address(s) as the respective PARTY may designate to the other PARTIES from time to time in writing.

**IN WITNESS WHEREOF**

THIS AGREEMENT is executed by the NRD on \_\_\_\_\_, 2003

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_  
**General Manager**

THIS AGREEMENT is executed by the COUNTY on \_\_\_\_\_, 2003

**COUNTY OF WASHINGTON, NEBRASKA**

**Attest:** By \_\_\_\_\_  
Chairperson, Board of Commissioners

\_\_\_\_\_  
**County Clerk**

THIS AGREEMENT is executed by the CITY on \_\_\_\_\_, 2003

**CITY OF BLAIR, NEBRASKA**

**Attest:** By \_\_\_\_\_  
Mayor

\_\_\_\_\_  
**City Clerk**

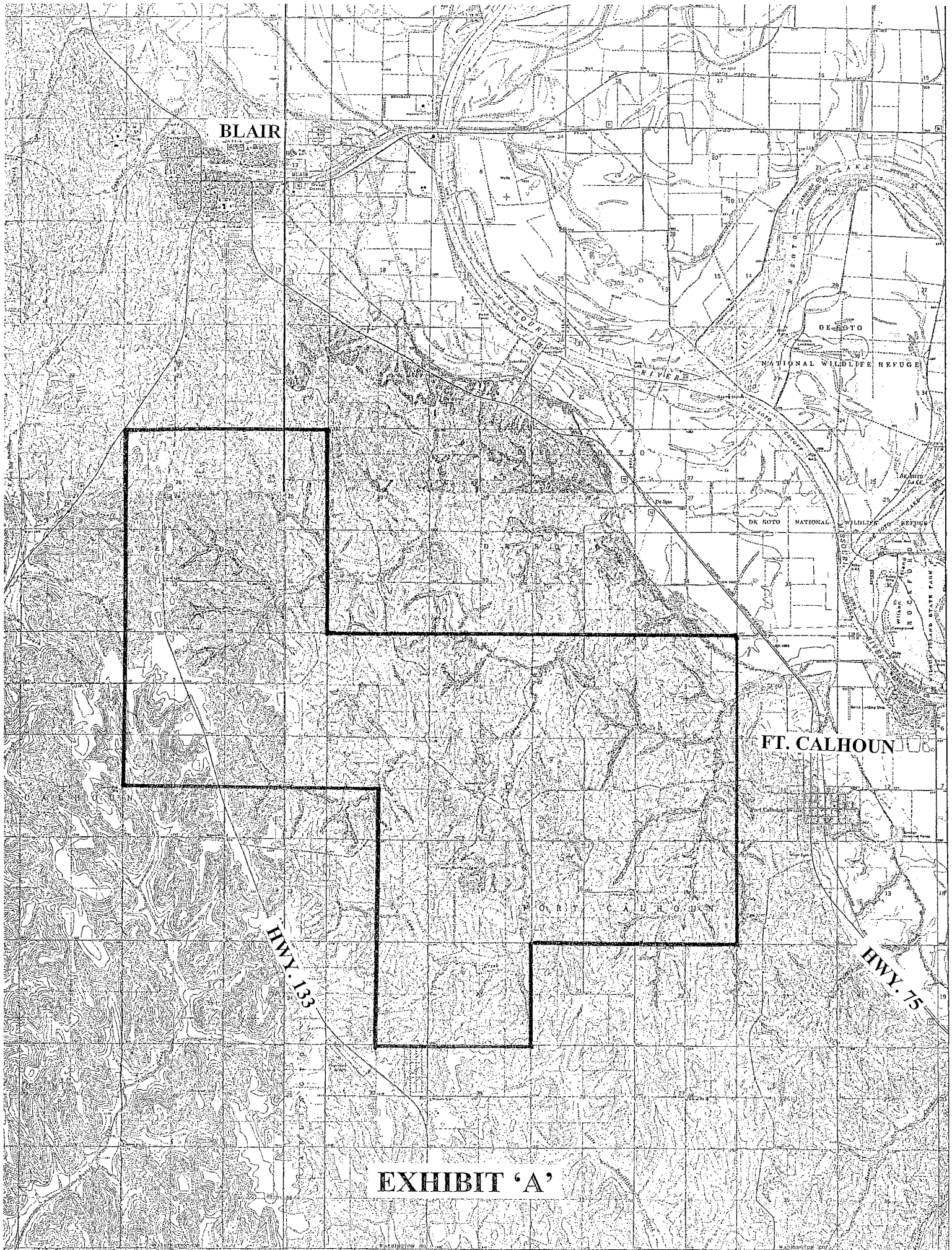


EXHIBIT 'A'

# Memorandum

TO: Programs, Projects and Operations Subcommittee

SUBJECT: Papillion Area Concert Band

DATE: December 1, 2003

FROM: Randy Lee, Assistant Park Superintendent

On August 12<sup>th</sup>, 1999 the Papio-Missouri River Natural Resources District Board of Directors approved a contract with the Papillion Area Concert Band to design, construct and fund a parking lot on the east side of the Recreation Area. At that time the estimated costs for the parking lot would have been approximately \$100,000.00 or \$1000.00 a stall.

Since that contract was entered into the location has changed and staff concurs that this change is an ideal location and fits better into the master plan for Walnut Creek. The new location also allows for foot traffic access from the new Papillion LaVista South High School and the Walnut Creek Campground which is a tremendous benefit.

With this contract amendment the Districts obligation would be to simply cost-share with the PACB. The cost-share would be a \$100,000.00 that would be paid after substantial completion of the parking lot and written certificate of a Nebraska-licensed architect certifying that the PACB Parking Areas are substantially complete in accordance with the NRD-approved plans and specifications.

This contract amendment would relieve the district from hiring an engineer to design, inspect, and administer the contracts to construct the parking areas, while still having veto power over the design. This updated agreement continues with the NRD philosophy of partnering with private enterprise.

**Management recommends that the subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Amended and Restated Development Agreement with the Papillion Area Concert Band providing for District cost-share of \$100,000.00 towards completion of the Amphitheater Parking Area at Walnut Creek Recreation Area, subject to changes deemed necessary by the General Manager and approval as to form by the District Legal Counsel.**

**AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT  
BETWEEN  
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT  
AND  
PAPILLION AREA CONCERT BAND**

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**THIS AMENDED AND RESTATED AGREEMENT** (hereinafter referred to as “this Agreement”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “the **NRD**”), a governmental subdivision of the State of Nebraska, for itself and for its successors and assigns, and **PAPILLION AREA CONCERT BAND** (hereinafter referred to as “**PACB**”), a non-profit corporation organized and existing under the laws of the State of Nebraska, for itself and for its successors and assigns.

**WHEREAS**, the parties to this Agreement previously entered into a Development Agreement having an effective date on August 12, 1999 (hereinafter referred to as “the Original Agreement”) and subsequently there has occurred a change in the physical location of the area to be developed which necessitates the execution of this Agreement, which is intended to supercede the Original Agreement; and,

**WHEREAS**, the NRD is the owner of a tract of land (hereinafter referred to as “the Recreation Area”) located southwest of the intersection of 96th Street and State Highway 370, near Papillion, in Sarpy County, Nebraska, which was acquired by the NRD for the NRD’s Dam Site 21 Project, now known as the Walnut Creek Recreation Area; and,

**WHEREAS**, PACB has proposed that the NRD grant to PACD a lease permitting PACD to construct, operate, maintain and use outdoor amphitheater facilities on a parcel of land consisting of approximately three (3) acres (such parcel hereinafter being referred to as “the Amphitheater Complex”) within the Recreation Area, west of Walnut Creek Lake and bordering

108<sup>th</sup> Street, such facilities to consist of an outdoor performing arts amphitheater, public restrooms, a concession area and other facilities (all hereinafter collectively referred to as “the PACB Facilities”), including vehicular parking facilities (hereinafter referred to collectively as “the PACB Parking Areas”) consisting of one parking area with at least 201 regular vehicle spaces and a separate 14-vehicle parking area having 7 handicapped accessible spaces and 7 staff parking spaces, the proposed lease of the PACB Facilities (hereinafter referred to as “the PACB Lease”) to be in the form as attached hereto as Exhibit “A” and incorporated herein by reference; and,

**WHEREAS**, a diagram showing the approximate boundaries of the Amphitheater Complex, and showing the expected location and configuration of the PACB Facilities therein, is attached hereto as Exhibit “B” and incorporated herein by reference; and,

**WHEREAS**, the NRD is willing to accept PACB’s proposals and willing to grant the PACB Lease, subject to the approval of this Agreement by the Mayor and Council of the City of Papillion, Nebraska (which expects to assume responsibility for the Recreation Area in the future), and subject to compliance by PACB with the terms and conditions hereinafter provided.

**NOW, THEREFORE**, in consideration of the mutual covenants of the parties, contained herein, it is hereby agreed between the parties as follows:

1. **SCHEMATIC DESIGN OF THE PACB FACILITIES.** - Within one year after the date of this Agreement, with the aid of such architects and engineers as PACB deems necessary and at PACB’s sole cost and expense, PACB shall prepare written schematic plans and preliminary cost estimates for the PACB Facilities in the Amphitheater Complex, including the PACB Parking Areas, and shall submit such schematic plans and cost estimates to the NRD for its approval, which approval shall not be withheld unreasonably.

2. **PRELIMINARY DESIGN OF THE PACB FACILITIES.** - Within 90 days after the NRD’s approval of PACB’s written schematic plan for the PACB Facilities and with the aid of such architects and engineers as PACB deems necessary, and at PACB’s sole cost and expense, PACB shall prepare design development drawings and cost estimates for the PACB



Facilities, including the PACB Parking Areas, and shall submit such drawings and cost estimates to the NRD for written its approval. It shall be the responsibility of the NRD to prepare a proposed metes and bounds legal description of the Amphitheater Complex for inclusion in the PACB Lease.

3. **FINAL DESIGN OF THE PACB FACILITIES.** - Within 90 days after the NRD's approval of the design development drawings for the PACB Facilities, including the PACB Parking Areas, and with the aid of such architects and engineers as PACB deems necessary, PACB, at its sole cost and expense, shall prepare final plans, specifications and cost estimates for the PACB Facilities and shall submit such final plans, specifications and cost estimates to the NRD for its written approval.

4. **NRD CONTRIBUTION.** - The NRD shall contribute to PACB the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) towards PACB's costs of constructing the PACB Parking Areas, such contribution to be made to PACB in a lump sum, without interest, within forty-five (45) days after the receipt by the NRD of the written certificate of a Nebraska-licensed architect certifying that the PACB Parking Areas are substantially complete in accordance with the NRD-approved final plans and specifications.

5. **PACB FACILITIES FINANCING.** - Within ten (10) years after the effective date of the Original Agreement, PACB shall submit to the NRD for its written approval a written verification from a bank authorized to do business in the State of Nebraska that, considering the NRD's contribution referred to in the preceding paragraph, PACB has unencumbered funds on deposit in such bank in an amount equal to or greater than PACB's architect's estimate of the costs of construction of all the PACB Facilities shown in the NRD-approved final plans, specifications and cost estimates for the PACB Facilities. If such submission to the NRD occurs more than one year after the date of the NRD's written approval of PACB's final plans, specifications and cost estimates for the PACB Facilities, such submission shall be accompanied by an architect's up-dated estimate of the cost of constructing the PACB Facilities. The NRD, as a condition to its approval of such verification, may require that PACB give sufficient additional security that the PACB Facilities to be constructed will be completed free and clear of liens and in a manner satisfactory to the NRD.

6. **EXECUTION OF PACB LEASE.** - After PACB's submission of the aforesaid bank verification, if within ten (10) years after the effective commencement date of the Original Agreement, the NRD and PACB shall execute the PACB Lease in the form as attached hereto as Exhibit "A," the PACB Lease to relate to the tract of land described in the legal description of the Amphitheater Complex prepared by the NRD. The PACB Lease and this Agreement shall be construed together. If such bank verification has not been submitted to the NRD within ten (10) years after the effective commencement date of the Original Agreement, then the NRD, without demand of any kind or notice to PACB or any other person, may declare this Agreement terminated.

7. **PACB FACILITIES CONSTRUCTION.** - Within 6 months after the execution of the PACB Lease, and, with the aid of such contractors and other assistants as PACB deems necessary, PACB, at its cost and expense, shall commence construction of the PACB Facilities in the Amphitheater Complex; and, within eighteen (18) months after the commencement of such construction, PACB shall finish construction of the PACB Facilities, such construction to be performed in a good and workmanlike manner, at PACB's sole cost and expense, and in accordance with the final plans and specifications approved in writing by the NRD. The NRD may approve granting of an extension if the majority of the construction is finished within 18 months, which approval shall not be withheld unreasonably.

8. **CONSTRUCTION OF ADDITIONAL PACB FACILITIES.** - During or after construction of the PACB Facilities, and with the aid of such contractors and other assistants as PACB deems necessary, PACB, at its cost and expense, may construct additional PACB Facilities in the Amphitheater Complex in accordance with plans and specifications submitted by PACB and approved in writing by the NRD. Such construction shall be performed in a good and workmanlike manner and at PACB's sole cost and expense.

9. **ENTRANCE SIGN.** - After PACB's construction of the PACB Facilities, PACB, at its own cost and expense, may construct and maintain a sign at the 108th Street entrance to the Recreation Areas identifying the PACB Facilities, in accordance with plans and specifications for such sign prepared by PACB and approved in writing by the NRD, which approval shall not be withheld unreasonably.

10. **EFFECTIVE DATE OF AGREEMENT.** - This Agreement shall be effective after execution hereof by both parties and upon approval hereof being endorsed at the foot of this Agreement by the Mayor of the City of Papillion, Nebraska, such approval to be made pursuant to an authorizing resolution adopted by the City Council of the City of Papillion, Nebraska.

11. **APPLICABLE LAW.** - Each party to this Agreement shall follow all statutes, both federal and state, together with existing ordinances as may be applicable, in carrying out the faithful performance and terms of this Agreement. Each party hereto shall, whenever applicable, require performance under the Fair Labor Standards Act.

12. **AUTHORIZED OFFICIALS.** - The President of PACB and the General Manager of the NRD are authorized to take such actions and make such determinations on behalf of their respective parties as are required or permitted for the respective parties by this Agreement and as such officers in their discretion determine necessary.

13. **DURATION.** - This Agreement shall have permanent duration, shall supercede the Original Agreement, and shall become effective upon the execution hereof by both parties.

14. **USE COVENANTS.** - Except as otherwise provided herein or otherwise authorized in writing by the NRD, PACB shall use the Amphitheater Complex solely for musical and/or theatrical performances and/or educational functions, and or community activities related thereto, including without limitation the sale of refreshments and food in connection with such performances, and may charge reasonable attendance fees for such performances, functions or activities.

15. **CONSTRUCTION OF IMPROVEMENTS** - Except as otherwise provided herein or otherwise authorized in writing by the NRD, PACB shall not make any improvement to or alteration or modification of the Amphitheater Complex or other portion of the Recreation Area without written plans and specifications for such improvement, alteration or modification being first submitted to and approved in writing by the NRD. Any improvements, alterations or modifications made by PACB to the Amphitheater Complex shall become part of the Recreation Area and the property of the NRD.

16. **RISK OF LOSS** – At all times during the term of the PACB Lease, PACB shall have and bear the sole risk of loss of the PACB Facilities. All personal property of PACB or any of its members in the Recreation Area shall be at the sole risk of PACB.

17. **HOLD HARMLESS** - PACB agrees to defend, indemnify and hold the NRD harmless from and against any and all claims and causes of action for personal injury, property damage, or property loss arising out of, in the course of, or as a result of the use or occupancy of the Recreation Area by PACB or any of its officers, agents, employees, contractors, permittees, patrons or invitees, except as may be solely and proximately caused by the negligence of the NRD, its officers, agents or employees.

18. **DEFAULT.** - Should PACB default in the performing, fulfilling, keeping or observing of any of PACB's covenants, conditions, provisions or agreements herein contained, or should a petition in bankruptcy be filed by PACB, or should PACB be dissolved or be adjudged bankrupt or insolvent by any court, or should a trustee or receiver in bankruptcy or a receiver of any property of PACB be appointed in any suit or proceeding by or against PACB, or should this Agreement by operation of law pass to any person other than PACB, then and in any of such events the NRD may, without demand of any kind or notice to PACB or any other person, at once declare this Agreement terminated.

19. **AMENDMENT** - The terms and conditions of this Agreement may be amended only in writing by the mutual agreement of the parties.

20. **ASSIGNMENT** - PACB may not transfer, assign or hypothecate this Agreement or transfer, assign or hypothecate any of the rights granted thereby without written approval of the NRD, excepting only transfer, assignment or hypothecation to the City of Papillion for which this document shall constitute written approval.

Executed by **PACB** on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**PAPILLION AREA CONCERT BAND, a Nebraska  
non-profit corporation**

By \_\_\_\_\_  
**President**

**Attest:**

\_\_\_\_\_  
**Secretary**

Executed by the **NRD** on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**PAPIO-MISSOURI RIVER NATURAL RESOURCES  
DISTRICT**

By \_\_\_\_\_  
**General Manager**

Approved by the **CITY OF PAPILLION, NEBRASKA**, on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**CITY OF PAPILLION, NEBRASKA**

By \_\_\_\_\_  
**Mayor**

**Attest:**

\_\_\_\_\_  
**City Clerk**

# Memorandum

**To:** PPO Subcommittee  
**From:** Paul Woodward, Water Resources Engineer  
**Date:** December 2, 2003  
**Re:** GIS Agreements with MAPA and Sarpy County

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Over the last year, District staff has worked with representatives from cities and counties in Sarpy County toward the production of a comprehensive GIS system. In addition, District staff has been involved with several agencies representing four counties including Douglas, Sarpy, and Washington in Nebraska and Pottawattamie County, Iowa to select a contractor to produce new aerial photography and topography for the region in 2004. Interlocal agreements have been drafted for each activity and are attached. Below is a description of each agreement.

The GIS Interlocal Agreement proposed between the Cities of Gretna, Papillion, Bellevue, La Vista, and Springfield along with Sarpy County and the NRD would be an addition to a prior agreement previously approved by the District. The District has fulfilled its obligation under this previous agreement with a contribution of \$10,000 made last fiscal year. However, the prior agreement will remain in effect until a "Base Map" is completed or for the remainder of its 5 year period. Under the proposed Phase II GIS Interlocal Agreement, the District would agree to pay \$5,000 for training and GIS support from Sarpy County during the FY 04 fiscal year. Other parties in the agreement are agreeing to additional activities including funding for 2004 aerial photography. However, a separate agreement is proposed between the NRD and MAPA because the District will be participating with multiple counties in this aerial photography effort.

This new agreement between the District and MAPA is attached and would commit the NRD to pay \$25,000 from this year's budget and \$45,000 next fiscal year as a contribution to the production of new aerial photography in all of Douglas, Sarpy, and Washington Counties and topography (2 foot contours) in all of Douglas and Sarpy County. Horizons, Inc out of Rapid City, South Dakota has been selected to perform this large scope as detailed in the attached cost breakdown. A steering committee, likely made up of five knowledgeable representatives from the cities and counties, will assist MAPA in managing the contract. Topography produced as a result of this project is vital to the floodplain mapping project concurrently being undertaken by the District and all digital mapping products produced through this project will be made available as soon as possible.

**Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Phase II GIS Interlocal Agreement with Sarpy County for \$5,000 and the Interlocal Agreement to obtain digital map products with the Metropolitan Area Planning Agency for the sum of \$70,000, subject to changes deemed necessary by the General Manager and approval as to form by District legal council.**

## **GIS INTERLOCAL AGREEMENT**

This GIS Interlocal Agreement (this “Agreement”) is made and entered into by and among City of Gretna, Nebraska (“Gretna”), City of Papillion, Nebraska (“Papillion”), City of Bellevue, Nebraska (“Bellevue”), City of La Vista, Nebraska (“La Vista”), City of Springfield, Nebraska (“Springfield”), (hereinafter collectively called “Cities” or a “City” when used in the singular), County of Sarpy, Nebraska, a body politic and corporate (“Sarpy”), and the Papio Missouri River Natural Resource District (“P-MRNRD”), (collectively the “Parties”; each individually a “Party”).

### **WHEREAS:**

- (A) The Parties hereto engage in the delivery of sundry services to the public supported by information regarding real estate, sewers, water, infrastructure, etc; and,
- (B) Each Party desires to improve the coordination, cooperation, and efficiency in rendering such services through the development and implementation of a Geographic Information System (“GIS”); and,
- (C) The Parties had previously entered into an agreement for with the first phase (“Phase One”) of achieving the GIS being the creation of a Base Map and obtaining the related Equipment necessary to utilize it; and,
- (D) The Parties desire to enter into an additional agreement for future needs and enhancements to the GIS as determined by the GIS Advisory Board, as said Board is described herein; and,
- (C) The Parties desire to establish the parameters for the design, acquisition, installation, operation, participation, management, duration and cost thereof; and,

### **WHEREAS:**

Each Party understands that the development, operation and maintenance of the GIS will require a long term commitment from the Parties; and,

### **WHEREAS:**

Additional phases and enhancement to the GIS will be determined by the financial considerations of all Parties to this Agreement primarily based upon the recommendations of the GIS Advisory Board.

NOW, THEREFORE, in consideration of the recitals above made and in further consideration of the promises and agreements that follow,

IT IS AGREED among the Parties as follows:

1. The Previous agreement between the Parties, titled "GIS INTERLOCAL AGREEMENT", is hereby incorporated herein, and all terms, conditions and provision of said agreement shall remain in full force and effect, except as the same may conflict with this Agreement. In such case, the terms of this agreement shall overrule the prior agreement.

2. SCOPE OF SERVICES PROVIDED. This Agreement provides each City and P-MRNRD concurrence and the cost allocations therefore.

2.1 Each of the Cities, the P-MRNRD and Sarpy acknowledges that it is receiving or will be receiving a GIS Base Map and agrees to cooperate with the County in the development, implementation and maintenance of the system upon the terms and conditions established herein.

3. ACQUISITION AND PURCHASE.

3.1 Under the prior agreement between the parties, a Base Map and related Phase One GIS Equipment has been created and acquired, and the parties shall continue to take all steps reasonably necessary for the functioning and operation of the GIS under Phase One, as called for under said agreement.

3.2 The parties, through the direction of the GIS Advisory Board, will make best efforts to add the following to the existing GIS system as part of Phase Two:

3.2.1 Digital Aerial Photography and Contours- An agreement with the City of Omaha to share in the cost of said project.

3.2.2 Training and GIS Support- Sarpy County will provide training classes to employees of the parties hereto, as said training is defined and approved by the GIS Advisory Board. Sarpy County will provide GIS technical support, and will create and maintain GIS data and projects. Said projects shall be approved by the GIS Advisory Board, who shall also prioritize said projects and allocate the existing resources among the projects.

3.3.3 Consulting Services- Sarpy County shall issue request for proposals ("RFP") to qualified vendors for and internet mapping system and a spatial database engine for GIS application development. Any responses to said RFPs shall be presented to the GIS Advisory Committee for review, selection, and action, if any.

3.4 The total project cost of Phase II is \$387,022.00. Of this amount, \$262,751.02 is attributable only to Sarpy County and will not be included in determining the Parties Share. In addition, the P-MRNRD will contribute \$5,000 leaving a total of \$119,270.98 that will be allocated as follows:



3.5 The number of land parcels in each Party's jurisdiction, and thus the resulting consulting and training cost Shares, is hereby based upon the 2003 Assessor parcel data which exists as of the date of this Agreement (See attachment A).

3.6 The square mileage in each Party's jurisdiction, and thus the resulting 2004 aerial photos and contours cost Shares, is hereby based upon the Sarpy County GIS city limits map which exists as of the date of this Agreement (See attachment A).

3.7 Each Party agrees to pay its Share of Phase Two. Sarpy will receive progress billings from the Contractor and thereafter Sarpy will send an invoice to each Party for the amount of its respective Share. Each Party shall pay the amount of its respective Share within forty five (45) days after receipt of an invoice therefor.

3.8 Phase Two is expected to take 12 months complete. Each party's total allocation of expenses as set forth in Attachment A is for Phase Two of the project and will be billed over budget year FY 2003-2004.

3.9 Should a Party fail to timely pay its Share, Sarpy may terminate services upon forty five (45) days written notice by Sarpy to the non-paying Party.

3.10 Additional Phases of the GIS will be addressed by the GIS Advisory Board to be effective FY 2004-2005 and include operational costs necessary to maintain the GIS.

4. GOVERNING LAW. The governing law of the State of Nebraska shall apply concerning the validity, construction, interpretation and effect of this Agreement. To the extent any provision herein is inadvertently inconsistent, conflicts with, or because of legislative amendment becomes contrary to any provision of legislation, such legislative provisions shall prevail and this Agreement shall be construed to the end that it be and become in conformity to such legislation.

4.1 To the extent any provision herein is declared to be void by final decision of a court, such event shall not constitute a cessation of this Agreement. Each Party will be responsible for carrying out the faithful performance of the remaining Agreement provisions. Each Party hereto represents and declares that it has, by acts of business, taken all steps necessary or required to authorize the execution of this Agreement and implement or carry out its several rights, duties, or obligations contained herein.

5. COMMENCEMENT DATE. This Agreement begins upon execution by all Parties.

6. TERM. This Agreement begins upon its execution by all Parties and shall terminate after five (5) years plus that additional period which shall be necessary to enable the term of this Agreement to end on the last day of Sarpy's fiscal year. In the event a Party becomes a Withdrawn Party this Agreement will continue with the continuing Parties.

7. AUTHORITY TO CONTRACT. Each Party acknowledges and declares that the relationship created herein is that of independent contractor.

7.1 Each Party to this Agreement is authorized pursuant to the Interlocal Cooperation Act of the State of Nebraska to enter into this Agreement, found at 13-801 et. seq. Neb. Rev. Stat., '43, Reissue 1991.

8. ENTIRETY AND AMENDMENTS. This Agreement, and the previous Agreement between the parties, contains the entire agreement between the Parties hereto and the terms are contractual and not a mere recital. There are no further agreements or understandings between the Parties other than those expressed herein. An amendment to this Agreement occurs when in writing and signed by all of the Parties hereto.

9. AUTHORITY TO ACT. Each Party hereto declares that it has by regular acts of business taken all steps and passed all resolution(s)/ordinances(s) which are legally necessary or required to authorize this Agreement and the rights, duties, and obligations herein. Each Party represents and warrants that each has the power and authority to enter into this Agreement, perform its obligations, incur expenditures or debt, and to consummate the contemplated transactions.

10. NOTICE AND CONTACT PERSON. Except as otherwise specifically provided in this Agreement, all notices and other communications required or permitted to be given under this Agreement shall be in writing, addressed to the Parties at their respective addresses as provided below, and may be delivered in person, sent by overnight express mail or courier service, or by facsimile, or by e-mail, certified or registered mail, postage prepaid, return receipt requested. Provided that all notices and other communications sent by e-mail shall not be effective unless followed up the same day by registered mail, postage prepaid, return receipt requested. The addresses of the Parties are as follows:

If to Gretna:

City of Gretna  
Attn: Mayor Jim Warren  
PO Box 69  
Gretna, NE 68028  
Telephone: (402) 332-3336  
Facsimile: (402) 332-5631  
E-Mail: jim@warren.net

If to Papillion:

City of Papillion  
Attn: Dan Hoins, City Administrator  
122 East Third Street  
Papillion, NE 68046  
Telephone: (402) 597-2029  
Facsimile: (402) 339-0670  
E-Mail: dhoins@monarch.papillion.ne.us

If to Bellevue:	City of Bellevue Attn: Evelyn Wicks City Administrator 210 West Mission Avenue Bellevue, Nebraska 68005 Telephone: (402) 293-3010 Facsimile: (402) 293-3058 E-Mail: ewicks3@cox.net
If to La Vista:	City of La Vista Attn: Rita Ramirez, City Clerk 8116 Parkview Blvd. LaVista, NE 68128-2198 Telephone: (402) 331-2198 Facsimile: (402) 331-2198 E-Mail: rramirez@ci.la-vista.ne.us
If to Springfield:	City of Springfield Attn: Sandy Powell 170 North 3rd Street Springfield, NE 68059 Telephone: (402) 253-2204 Facsimile: (402) 253-2204 E-Mail: Springfield@inebraska.com
If to Sarpy:	Sarpy County Attn: Deb Houghtaling Sarpy County Clerk 1210 Golden Gate Drive, Suite 1118 Papillion, Nebraska 68046-2895 Telephone: (402) 593-5915 Facsimile: (402) 593-4360 E-Mail: deb@sarpy.com
If to P-MRNRD:	Papio-Missouri River Natural Resources District Attn: Steve Oltmans General Manager 8901 South 154 <sup>th</sup> Street Omaha, Nebraska 68138 Telephone: (402) 444-6222 Facsimile: (402) 895-6543 E-Mail: soltmans@papionrd.org

This Agreement was executed in seven (7) duplicate originals as of this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

Governing Body:  
CITY OF GRETNA

SEAL

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Governing Body:  
CITY OF PAPILLION

SEAL

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Governing Body:

CITY OF BELLEVUE

SEAL

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Bellevue City Attorney

Governing Body:

CITY OF LA VISTA

SEAL

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Governing Body:

CITY OF SPRINGFIELD

SEAL

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Governing Body:

PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT

SEAL

\_\_\_\_\_  
Chairman, Board of Directors

ATTEST:

\_\_\_\_\_  
Secretary

Governing Body:

SARPY COUNTY

SEAL

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Chairman, Board of Commissioners

ATTEST:

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County Clerk

APPROVED AS TO FORM:

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Sarpy County Attorney

SARPY COUNTY GIS COALITION  
FY 2003-2004 FUNDING

JURISTICTION	*2004 AERIAL COSTS	**TRAINING & GIS SUPPORT	**IMS, SDE & APPLICATION DEVELOPMENT	P-MNRD CONTRIBUTION	FY 2003-2004 JURISTICTION TOTALS
GREYNA	\$70.25	\$1,300.00	\$2,275.00	\$162.50	\$3,482.75
SPRINGFIELD	\$27.02	\$564.00	\$987.00	\$70.50	\$1,507.52
PAPILLION	\$1,081.96	\$5,024.00	\$8,792.00	\$628.00	\$14,269.96
LaVIASTA	\$728.47	\$3,936.00	\$6,888.00	\$492.00	\$11,060.47
BELLEVUE	\$3,372.46	\$14,048.00	\$24,584.00	\$1,756.00	\$40,248.46
SARPY Co.	\$8,979.82	\$15,132.00	\$26,481.00	\$1,891.00	\$48,701.82
<b>TOTALS</b>	<b>\$14,259.98</b>	<b>\$40,000.00</b>	<b>\$70,000.00</b>	<b>\$5,000.00</b>	<b>\$119,270.98</b>

JURISTICTION	*FY 2004-2005 CONTOUR COSTS
GREYNA	\$170.85
SPRINGFIELD	\$65.71
PAPILLION	\$661.48
LaVIASTA	\$445.37
BELLEVUE	\$2,061.83
SARPY Co.	\$32,754.11
<b>TOTALS</b>	<b>\$36,759.33</b>

JURISTICTION	TOTAL PARCELS	PERCENTAGE
GREYNA	1,599	3.25%
SPRINGFIELD	692	1.41%
PAPILLION	6,170	12.56%
LaVIASTA	4,836	9.84%
BELLEVUE	17,258	35.12%
SARPY Co.	18,591	37.83%

\*\*FORMULA USED

P-MNRD CONTRIBUTION  
\$5,000.00

JURISTICTION	SQUARE MILES	PERCENT OF TOTAL AREA
GREYNA	1.17	0.47%
SPRINGFIELD	0.45	0.18%
PAPILLION	4.53	1.83%
LaVIASTA	3.05	1.23%
BELLEVUE	14.12	5.70%
SARPY Co. (w/o CITY LIMITS)	224.31	90.58%
SARPY 1/4 METER	156.34	
SARPY 1/8 METER	65.49	

\*FORMULA USED



**AN AGREEMENT BETWEEN THE OMAHA-COUNCIL BLUFFS METROPOLITAN AREA  
PLANNING AGENCY, AND PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT TO  
OBTAIN DIGITAL MAP PRODUCTS FOR THE REGION**

THIS AGREEMENT, is made and entered into this       day of       , 2003 by and between the Omaha-Council Bluffs Metropolitan Area Planning Agency (hereinafter called MAPA), and Papio-Missouri River Natural Resources District (hereinafter called NRD),

**WITNESSETH:**

WHEREAS, agencies within MAPA's jurisdiction (hereinafter called the Mapping Consortium) and MAPA officials mutually agree that the metropolitan area will benefit from MAPA obtaining mapping products consisting of new aerial photography of Washington County, Nebraska; Douglas County, Nebraska; Sarpy County, Nebraska; Dodge County, Nebraska; Pottawatomie County, Iowa; and Cass County, Iowa (hereinafter called the Project), and have determined that such products can be acquired at a lower cost through a joint mapping effort than if acquired by individual agencies.

WHEREAS, the Mapping Consortium and MAPA officials have further determined that the mutual sharing of all mapping products obtained by the Project under this agreement (hereinafter called the Mapping Products), as well as other non-proprietary digital data already owned by Mapping Consortium members, benefits all Mapping Consortium agencies.

NOW, THEREFORE, the parties do agree that:

**I.  
PURPOSE**

The purpose of this agreement is to provide for the funding and administration of the Project that shall be undertaken by the mapping firm of Horizons, Inc of Rapid City, South Dakota (hereinafter sometimes called the Project Contractor).

**II.  
STEERING COMMITTEE**

A Steering Committee shall be formed, which shall be made up of at least five representatives of the Mapping Consortium members, and which shall be responsible for guiding the conduct of the Project, and deciding whether to accept the finished products of the Project Contractor. The Steering Committee shall select a Project Manager who will be the point of contact between MAPA and Horizons, Inc. The Steering committee will provide general direction relating to Project contract administration; such direction will be carried out by the Project Manager. The Steering Committee will provide staff resources necessary to review the Mapping Products and to distribute and install the Mapping Products for Mapping Consortium members.

**III.  
SCOPE OF SERVICES**

The scope of services for the Project to be performed or procured pursuant to this agreement will be as described in a Contract between MAPA and Horizons, Inc. The work shall include obtaining aerial photography for all or portions of Washington County, Nebraska; Douglas County, Nebraska; Sarpy County, Nebraska; Dodge County, Nebraska; Pottawatomie County, Iowa; and Cass County, Iowa. The Project Contractor will produce digital orthophotos, contours, and other digital Mapping Products, as further specified in the Contract, within the mapping area.

**IV.  
METHODS AND PROCEDURE**

The work program developed by the Steering Committee shall be performed by Horizons, Inc. which is recognized to have expertise in the field of this endeavor. MAPA shall enter into the contract with Horizons, Inc. for completion of the contemplated work. No contract shall be signed with Horizons, Inc. until MAPA and the Mapping Consortium members have executed this Interlocal Agreement or substantially similar counterparts hereof. After completion of the Project by Horizons, Inc, each party to this Agreement shall receive a copy of the Mapping Products which may be used for whatever purpose they desire.

V.  
FEES, RECORDS, PAYMENT

MAPA shall make payment in response to the billings by Horizons, Inc.

Horizons, Inc. shall provide regular monthly progress reports which shall be available to all Mapping Consortium members. An account of Project billings and payments by MAPA shall made be available to Mapping Consortium members upon request.

The NRD shall make a contribution to MAPA in the amount of \$70,000 towards the costs of the Project. Accordingly, MAPA shall bill the NRD \$25,000 on or before June 30, 2004 and \$45,000 after July 1, 2004 and prior to termination of this contract. The NRD shall make such payments to MAPA within 30 days of receipt of bill.

VI.  
ADMINISTRATION

Administration of the Project shall be the responsibility of MAPA. The Steering Committee shall review payment decisions made by MAPA before payment is made to Horizons, Inc. Payment may be withheld if, in the opinion of the Steering Committee, Horizons, Inc. has not properly performed or documented the services for which the billing has been made, or if said services are not within the approved scope of work.

VII.  
DURATION

This Agreement shall remain in full force and effective until March 31, 2005, unless the Project contemplated by this Agreement has been fully performed to the satisfaction of MAPA and the Mapping Consortium prior to that date, in which case, the Agreement will terminate upon the completion of the Steering Committee's duties. This Agreement may be extended past March 31, 2005, upon the mutual agreement of all Mapping Consortium members, if it is necessary for completion of the Project contemplated by it.

VIII.  
NON-DISCRIMINATION

The parties to this Agreement 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, color, sex, age, disability, political or religious opinions, affiliations or national origin.

IX.  
APPLICABLE LAW

Parties to this Agreement shall conform with all existing and applicable local ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.

X.  
STRICT COMPLIANCE

All provisions of this Agreement and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from an authorized representative.

XI.  
MERGER

This Agreement shall not be merged into any other oral or written contract, lease or deed of any type. This is the complete and full agreement of the parties.

XII.  
MODIFICATION

This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of the respective parties.

In WITNESSETH WHEREOF, the parties hereto have caused this instrument to be signed and sealed by their duly authorized representative.

OMAHA-COUNCIL BLUFFS  
METROPOLITAN AREA PLANNING AGENCY

ATTEST:

BY: \_\_\_\_\_  
Chairperson

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

PAPIO-MISSOURI RIVER NRD

ATTEST:

BY: \_\_\_\_\_  
Chairperson, Board of Directors

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

APPROVED AS TO FORM

\_\_\_\_\_  
MAPA Legal Counsel  
Date

# MAPA SPRING 2004 MAPPING PROJECT

Date: 11/18/2003

	Sq Miles	Unit \$	Amount	County Total
<b>DOUGLAS COUNTY</b>				
10" orthos - B/W and COLOR (Digital Camera)	386	\$71.45	\$27,579.70	
2.5" orthos - B/W (Film Camera)	195	\$794.02	\$154,833.90	
2' contours	386	\$408.51	\$157,684.86	
Additional County Survey Work with LRA	1	\$22,000.00	\$22,000.00	\$362,098.46
<b>WASHINGTON COUNTY</b>				
10" orthos - B/W and COLOR (Digital Camera)	400	\$71.45	\$28,580.00	\$28,580.00
<b>SARPY COUNTY</b>				
10" orthos - B/W and COLOR (Digital Camera)	248	\$71.45	\$17,719.60	
5" orthos - B/W (Digital Camera)	88	\$279.76	\$24,618.88	
2' contours	248	\$408.51	\$101,310.48	\$143,648.96
<b>POTTAWATAMIE COUNTY</b>				
10" orthos - B/W and COLOR (Digital Camera)	959	\$71.45	\$68,520.55	
5" orthos - B/W and COLOR (Digital Camera)	223	\$355.47	\$79,269.81	
2.5" orthos - B/W (Film Camera)	42	\$794.02	\$33,348.84	
2' contours	42	\$408.51	\$17,157.42	
4' contours	230	\$336.00	\$77,280.00	
Building Footprints	125	\$209.36	\$26,170.00	
Building Points	834	\$16.00	\$13,344.00	\$315,090.62
<b>DODGE COUNTY (FREMONT)</b>				
10" orthos - B/W and COLOR (Digital Camera) (New DEM)	120	\$98.00	\$11,760.00	\$11,760.00
				\$861,178.04

# MEMORANDUM

**TO:** PROGRAMS, PROJECTS & OPERATIONS SUBCOMMITTEE

**SUBJECT:** Proposed OPPD Transmission Line along Little Papio Channel/Keystone Trail Project

**DATE:** November 24, 2003

**BY:** Martin P. Cleveland

At the November 13, 2003 Board of Directors meeting the General Manager was directed to prepare a permit for the proposed OPPD Transmission Line on District ROW along the Little Papio Channel/Keystone Trail Project (Pine Street to the Union Pacific Railroad), for consideration by the Subcommittee at its December Meeting. Attached is a copy of this draft permit and letters related to remaining project questions. Also attached is a letter sent to OPPD outlining the issues and concerns expressed at the November 11, 2003 Subcommittee meeting.

**It is Management's recommendation that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Co-occupation Agreement between the District, Douglas County and OPPD for a Power Transmission Line on District ROW along the Little Papio Channel/Keystone Trail Project (Pine Street to the Union Pacific Railroad) for a cost of \$\_\_\_\_\_, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

Enclosure

CC: Janelle Mavis, Corps of Engineers  
Kent Holm, Douglas County

Lp90 File: 532 Reach: 7-5

REGISTER OF DEEDS USE

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,  
COUNTY OF DOUGLAS, NEBRASKA and  
OMAHA PUBLIC POWER DISTRICT**

**AGREEMENT FOR CO-OCCUPATION OF LITTLE PAPIO CREEK PROJECT  
RIGHTS-OF-WAY (PINE STREET TO UPRR)**

\_\_\_\_\_  
  
**THIS AGREEMENT** ("THIS AGREEMENT") is made pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 to 13-827 R.R.S. 1997, et seq., by and among the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** ("the **NRD**"), a subdivision of the State of Nebraska, the **COUNTY OF DOUGLAS, NEBRASKA** ("the **COUNTY**") and the **OMAHA PUBLIC POWER DISTRICT**, a public corporation ("**OPPD**"). The **NRD**, the **COUNTY** and **OPPD** hereinafter are referred to collectively as "the **PARTIES**."

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**WHEREAS**, **OPPD** desires to construct, operate and maintain a high voltage electrical transmission line ("the **TRANSMISSION LINE**") on parcels of land originally

acquired by the COUNTY for use as levee and channel rights-of-way for the reach of the U. S. Army Corps of Engineers' ("the **CORPS**") Little Papillion Creek Flood Control Project ("the **CHANNEL PROJECT**") extending from Pine Street to the Union Pacific Railroad right-of-way ("the **NRD ROW**") in the COUNTY, constructed in circa 1966; and,

**WHEREAS**, the NRD ROW is legally described as a parcel of land in the West 1/2 of Section 25 and the East 1/2 of Section 36, in Township 15N, Range 12 East, Douglas County, Nebraska, more particularly described [as follows /or/ in the legal description attached hereto as Exhibit \_\_\_\_\_ and incorporated herein by reference]; and,

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**WHEREAS**, in 1996 the COUNTY assigned to the NRD all of the NRD ROW as well as the COUNTY'S responsibilities to act as the local sponsor for the CHANNEL PROJECT, which the NRD now operates and maintains; and,

**WHEREAS**, subsequent to construction of the CHANNEL PROJECT, and pursuant to an agreement between the NRD and the COUNTY, the COUNTY has operated and maintained in the NRD ROW a segment of the COUNTY'S Keystone Trail Project ("the **TRAIL PROJECT**"), consisting of a poured concrete, public, bicycle and pedestrian trail; and,

**WHEREAS**, OPPD desires to construct the TRANSMISSION LINE in the NRD ROW in substantial accordance with the conceptual project location plan sheet dated September 30, 2003 (a copy of which is attached hereto and incorporated herein by reference as Exhibit A) and the typical pole structure cross-section sheet dated October 2, 2003 (a copy of which is attached hereto and incorporated herein by reference as Exhibit B); and,

**NOW, THEREFORE, IN CONSIDERATION** of the payment by OPPD to the NRD of the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), the

receipt of which is acknowledged; the foregoing recitals; and, the mutual covenants of the PARTIES, the PARTIES hereby agree as follows:

**1. PURPOSE.** The purpose of THIS AGREEMENT is to set forth the terms under which the TRANSMISSION LINE will be designed, constructed, operated, maintained, repaired and replaced in the NRD ROW, and to specify the rights, duties and obligations of the PARTIES in connection therewith.

**2. DUTIES OF THE PARTIES.** The obligations of THIS AGREEMENT will be undertaken without any separate entity being created, and, the duties and responsibilities of the PARTIES with respect thereto shall be as defined by THIS AGREEMENT.

**3. PLANS AND SPECIFICATIONS.** Prior to commencing construction of the TRANSMISSION LINE in the NRD ROW, OPPD, at its sole cost and expense, shall submit the plans and specifications for the TRANSMISSION LINE ("the **TRANSMISSION LINE PLANS**") to the NRD, the COUNTY and the CORPS for their separate examinations and written approvals. The NRD, the COUNTY and the CORPS shall have a period of 60 days to examine the **TRANSMISSION LINE PLANS** and to accept or reject the same, and to examine and accept or reject any amendments or revisions thereto. Such approvals shall not be unreasonably withheld; provided, however, if after receipt of the TRANSMISSION LINE PLANS and prior to commencement of construction of the TRANSMISSION LINE, (a) the NRD or the COUNTY, in their sole discretion, determine that the TRANSMISSION LINE cannot be designed to be compatible with the TRAIL PROJECT or the CHANNEL PROJECT, or (b) the CORPS in its sole discretion determines that the TRANSMISSION LINE will interfere with or jeopardize the CHANNEL PROJECT in any way, this agreement shall be terminated by the NRD or the COUNTY upon written notice to the other PARTIES.

**4. ESTHETIC IMPACTS.** In designing the TRANSMISSION LINE, OPPD shall make every reasonable and feasible effort to minimize the negative impact of the

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TRANSMISSION LINE upon the recreational and esthetic values now present in the NRD ROW including, without limitation, employing innovative designs wherever feasible and limiting, wherever feasible, the number and size of TRANSMISSION LINE structures, appendages and appurtenances. Except at turns, all TRANSMISSION LINE poles installed in the NRD ROW shall be free-standing. No TRANSMISSION LINE pole or other surface improvement installed by OPPD in the NRD ROW shall be located within ten feet (10') of any TRAIL PROJECT pavement.

**Deleted:** camouflaging materials and

**Deleted:** and designed in the same manner as OPPD'S transmission line poles now adjacent to the west (72<sup>nd</sup> Street) line of the College of St. Mary property in Omaha, Nebraska

**5. ADDITIONAL INFORMATION.** OPPD shall promptly furnish to the NRD, the COUNTY and the CORPS any additional information any of them may reasonably request or require concerning the TRANSMISSION LINE or the TRANSMISSION LINE PLANS. OPPD shall pay, within 45 days of demand, all the fair and reasonable costs incurred for any preconstruction soils and slope stability technical reviews of the TRANSMISSION LINE PLANS by independent third party engineers that the NRD or the COUNTY believe necessary.

**6. CONSTRUCTION COMMENCEMENT.** OPPD may commence construction of the TRANSMISSION LINE in the NRD ROW after the TRANSMISSION LINE PLANS have received the written consents of the NRD, the COUNTY and the CORPS, such construction to be performed in substantial accordance with the TRANSMISSION LINE PLANS and in a good and workmanlike manner.

**7. OTHER PERMITS.** OPPD shall have the responsibility to obtain from the CORPS or other federal, state or local agencies, at OPPD'S sole cost and expense, all other permits, consents, approvals, lands, easements and rights-of-way required or convenient for construction or for operation and maintenance of the TRANSMISSION LINE, including, without limitation, zoning and subdivision approvals, floodplain and floodway zoning permits, Section 404 permits, licenses and water rights. Neither the NRD nor the COUNTY warrants its title to the NRD ROW. OPPD, at its sole cost and

expense, shall obtain all additional land rights that OPPD determines necessary for its construction, operation, maintenance, repair, replacement, inspection, management or regulation of the TRANSMISSION LINE in the NRD ROW.

**8. AS-BUILT PLANS.** Within 45 days after final completion of the TRANSMISSION LINE, OPPD shall provide to NRD “as-built” plans showing the TRANSMISSION LINE, as completed, together a certification by a Nebraska-licensed engineer that the TRANSMISSION LINE was constructed in full accordance therewith.

**9. DAMAGE TO EXISTING IMPROVEMENTS.** Any damage to or structural failure of (a) any TRAIL PROJECT paving, signage, drainage provisions or other TRAIL PROJECT improvement(s) or (b) any CHANNEL PROJECT channel improvements, drainage structures, fences, road surfacing, ground cover or other CHANNEL PROJECT improvement(s), occurring in areas of the NRD ROW traversed by OPPD’S reconnaissance, construction, inspection or repair vehicles, or other OPPD wheeled or tracked equipment, prior to, during or after construction of the TRANSMISSION LINE and appearing at any time within four (4) years after such traverse(s), shall be presumed to have been caused by OPPD’S activities in the NRD ROW; whereupon OPPD, at its sole cost and expense, shall repair such damage and restore such improvements to their as-built condition within sixty (60) days after receipt of notice of such damage from the owner of such improvements, or as soon thereafter as weather reasonably permits. OPPD shall keep and maintain logs recording the dates and locations of such traverses and identifying the vehicles and equipment involved in such traverses. Any repair, modification, reconstruction or re-grading of the CHANNEL PROJECT or TRAIL PROJECT improvements by OPPD, mandated or permitted by this agreement, shall be equal to or better than the original improvement in materials and quality, and be performed in a good and workmanlike manner and in accordance with generally-accepted engineering principles and practices. In addition,

a) Such work shall not be commenced prior to ten days after written notification of the intended commencement of such work is delivered to both the NRD and the COUNTY, along with proposed specifications for such repair or reconstruction;

b) All excavations involved in such work shall be backfilled with material equal, superior or comparable to the material excavated and compacted to a density at least equal to that of the adjacent undisturbed levee;

c) All seeded areas which are disturbed shall be re-seeded and an acceptable ground cover re-established;

d) Upon completion of such work, all construction materials, pipe, debris and other materials shall be removed from the NRD ROW and a new three inch (3") thick by ten foot (10') wide crushed limestone (1-1/2 inch crusher run) surfacing will be placed on all unpaved portions of levee roadway in the NRD ROW used by OPPD; and,

e) All OPPD work involving TRAIL PROJECT improvements:

i) Shall be in general compliance with the American Association of State Highway and Transportation Officials' "1999 AASHTO Guide for the Development of Bicycle Facilities;"

ii) Shall be performed in accordance with applicable Nebraska state and federal statutes, rules and regulations;

iii) Shall provide curb-cuts and other provisions for the handicapped as now required for Federal and Federal-Aid projects; and,

iv) If necessitating trail closure of longer duration than one week, shall be preceded by the construction by OPPD of a temporary detour trail, conforming to present Nebraska Department of Roads specifications for a 6-inch asphalt course, substituting for the segment intended to be repaired or

reconstructed, such temporary trail to be intended for bicycle and pedestrian use by the public during the period of such repair or reconstruction.

v) If involving cracked or otherwise damaged concrete, repairs shall be accomplished by concrete replacement and not by routing, caulking or sealing; and, concrete trail replacement shall be performed in accordance with the following:

A) base foundation must be of soil and compacted to a minimum of 95 percent of Standard Proctor (ASTM D698);

B) all pavement concrete for the Trail shall be class 47B (Nebraska);

C) pavement thickness must be 8 inch minimum;

D) pavement width must be equal to the width of the in-place pavement, typically 8 feet north of Mercy Road and 10 feet south of Mercy Road;

E) all replacement pavement must have a thickened edge, as per City of Omaha specifications (taper from 12 inch thick to 8 inch thick pavement in the first 5 feet from the old concrete edge);

F) all joints must be hot pour joints and conform to City of Omaha specifications;

G) pavement surface elevation must be equal to adjacent old pavement elevations, unless an overbuild requirement is in force;

H) openings in the pavement must be properly signed (e.g. barricade on each side of the opening), during construction; and,

I) pavement removal/replacement must be done as quickly as possible;

J) a detour route around the trail opening must be provided throughout the project construction and must be safe and properly fenced (e.g. orange temporary construction fence or equivalent);

**10. TRANSMISSION LINE MAINTENANCE.** OPPD shall keep and maintain the TRANSMISSION LINE in as-built condition and repair, at its sole cost and expense, and in accordance with generally accepted engineering practices. Neither the NRD nor the COUNTY shall have any duty to operate, maintain, repair, replace and regulate the TRANSMISSION LINE or any part thereof.

**11. RELOCATIONS OF TRANSMISSION LINE.** Notwithstanding any prior NRD or COUNTY consent to the design or location of the TRANSMISSION LINE, OPPD nevertheless shall, at its own cost and expense, relocate or modify, as indicated by the NRD or the COUNTY, any portion of the TRANSMISSION LINE that the NRD or the COUNTY, in its sole discretion, subsequently determines unreasonably interferes with the operation, maintenance, repair, replacement, inspection, management or regulation of the CHANNEL PROJECT or of the TRAIL PROJECT, or any portion of either such project.

**12. ABANDONMENT OF TRANSMISSION LINE.** In the event OPPD ceases to use the TRANSMISSION LINE or a portion thereof for the transmission of high voltage electrical power, or abandon use of the TRANSMISSION LINE or any portion thereof, then within six (6) months after the NRD'S or the COUNTY'S demand, OPPD, at its own cost and expense, shall remove from the NRD ROW such TRANSMISSION LINE, or such portion thereof, and all poles, towers, arms, supporting structures, piers, foundations and other equipment appurtenant thereto.

**13. INDEMNIFICATIONS.** OPPD shall defend, indemnify and hold harmless the NRD and the COUNTY from and against any and all claims, demands, causes of action, costs and expenses, including without limitation court costs and

attorneys fees, for inverse condemnation damages (including, without limitation, damages under 42 U.S.C. 1983) or personal injury or property damages arising out of or caused by OPPD'S construction, operation, maintenance, repair, replacement, inspection, management or regulation of the TRANSMISSION LINE in the NRD ROW; including, without limitation, any such claims, demands, causes of action, costs and expenses that are in any way related to or involve power-frequency electric and magnetic fields ("EMFs") or obstruction of a drainageway; excepting, however, personal injuries or property damages caused by the sole negligence of the indemnified party other than in review and approval of the TRANSMISSION LINE PLANS.

**14. RISK OF LOSS.** The risk of loss of or damage to the TRANSMISSION LINE or any portion thereof from flood or other casualty whatsoever shall be borne solely by OPPD.

**15. SUCCESSORS AND ASSIGNS BOUND BY COVENANTS.** All covenants, stipulations and agreements contained in THIS AGREEMENT shall extend to and bind the legal representatives and successors of the PARTIES.

**16. REVIEW OF AGREEMENT.** The PARTIES each represent that they have carefully reviewed the terms and conditions of THIS AGREEMENT and are familiar with such terms and conditions and agree faithfully to comply with the same to the extent to which said terms and conditions apply to its activities, authorized and required by THIS AGREEMENT.

**17. NONDISCRIMINATION.** 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, color, sex, age, political or religious opinions, affiliations or national origin.

**18. CAPTIONS.** Captions used in THIS AGREEMENT are for convenience and are not used in the construction of THIS AGREEMENT.

**19. APPLICABLE LAW.** The PARTIES to THIS AGREEMENT shall conform to all existing and applicable ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under THIS AGREEMENT.

**20. MERGER.** THIS AGREEMENT shall not be merged into any other oral or written Agreement, lease or deed of any type.

**21. MODIFICATION.** THIS AGREEMENT contains the entire agreement of the PARTIES. No representations were made or relied upon by any of the PARTIES other than those that may be expressly set forth herein. No agent, employee or other representative of any PARTY is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of such respective PARTY.

**22. STRICT COMPLIANCE.** All provisions of THIS AGREEMENT and each and every document that shall be attached shall be strictly complied with as written.

**23. INVALID PROVISIONS.** In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of THIS AGREEMENT which shall in all respects remain a legally binding agreement with the invalid portion being deleted; provided that the validity of any such covenant, condition, or provision does not materially prejudice any of the PARTIES in its respective rights and obligations contained in the valid covenants, conditions, or provisions of THIS AGREEMENT.

**24. NON-WAIVER.** No delay or failure by any of the PARTIES to exercise any right under THIS AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein.

A valid waiver by any of the PARTIES shall not be deemed to extend the amount of time available to perform any other act required under THIS AGREEMENT.

**26. TIME IS OF THE ESSENCE.** Time is expressly declared to be of the essence of THIS AGREEMENT.

**27. DEFAULT.** If the any of the PARTIES fails to comply with any provision of THIS AGREEMENT after reasonable request for performance has been served on such party, the remaining PARTIES may seek specific performance, or may terminate THIS AGREEMENT, upon written notice to the other PARTIES.

**28. EFFECTIVE DATE AND TERM.** THIS AGREEMENT shall become effective upon its execution by all PARTIES, and shall be perpetual in its duration.

**29. NOTICES.** Any notices required under the terms of THIS AGREEMENT shall be deemed to have been given within forty-eight (48) hours after notice has been deposited in the United States mail, postage prepaid. Notices to the NRD provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail addressed to:

Steven G. Oltmans, General Manager  
Papio-Missouri River NRD  
8901 South 154th Street  
Omaha, Nebraska 68138-3621

notices to the COUNTY provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail addressed to:

Kent E. Holm, Director  
Douglas County Environmental Services  
3015 Menke Circle  
Omaha, Nebraska 68134

and notices to OPPD provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail addressed to:



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other respective address(s) as the PARTIES may designate to each other from time to time in writing.

**IN WITNESS WHEREOF**

THIS AGREEMENT is executed by the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT on this \_\_\_\_ day of \_\_\_\_\_, 2003

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_  
**General Manager**

THIS AGREEMENT is executed by the COUNTY OF DOUGLAS, NEBRASKA, on this \_\_\_\_ day of \_\_\_\_\_, 2003

**THE COUNTY OF DOUGLAS**

Attest: By \_\_\_\_\_  
**Chairperson, Board of Commissioners**

\_\_\_\_\_  
**County Clerk**

THIS AGREEMENT is executed by the OMAHA PUBLIC POWER DISTRICT on this \_\_\_\_ day of \_\_\_\_\_, 2003

THE OMAHA PUBLIC POWER DISTRICT

Attest: By \_\_\_\_\_  
General Manager

\_\_\_\_\_  
STATE OF NEBRASKA )  
COUNTY OF SARPY ) SS.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 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 he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said District.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) SS.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, a Notary Public, personally came \_\_\_\_\_, Chairperson of the BOARD OF COMMISSIONERS OF DOUGLAS COUNTY, NEBRASKA, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said County.

WITNESS my hand and Notarial Seal the date last aforesaid.

---

Notary Public

REGISTER OF DEEDS USE

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,  
COUNTY OF DOUGLAS, NEBRASKA and  
OMAHA PUBLIC POWER DISTRICT**

**AGREEMENT FOR CO-OCCUPATION OF LITTLE PAPIO CREEK PROJECT  
RIGHTS-OF-WAY (PINE STREET TO UPRR)**

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**THIS AGREEMENT** (“**THIS AGREEMENT**”) is made pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 to 13-827 R.R.S. 1997, et. seq., by and among the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (“the **NRD**”), a subdivision of the State of Nebraska, the **COUNTY OF DOUGLAS, NEBRASKA** (“the **COUNTY**”) and the **OMAHA PUBLIC POWER DISTRICT**, a public corporation (“**OPPD**”). The **NRD**, the **COUNTY** and **OPPD** hereinafter are referred to collectively as “the **PARTIES**.”

**WHEREAS**, **OPPD** desires to construct, operate and maintain a high voltage electrical transmission line (“the **TRANSMISSION LINE**”) on parcels of land originally

acquired by the COUNTY for use as levee and channel rights-of-way for the reach of the U. S. Army Corps of Engineers' ("the **CORPS**") Little Papillion Creek Flood Control Project ("the **CHANNEL PROJECT**") extending from Pine Street to the Union Pacific Railroad right-of-way ("the **NRD ROW**") in the COUNTY, constructed in circa 1966; and,

**WHEREAS**, the NRD ROW is more particularly described as being all that land now occupied by the CHANNEL PROJECT in the West 1/2 of Section 25 and the East 1/2 of Section 36, in Township 15N, Range 12 East, Douglas County, Nebraska; and,

**WHEREAS**, in 1996 the COUNTY assigned to the NRD all of the NRD ROW as well as the COUNTY'S responsibilities to act as the local sponsor for the CHANNEL PROJECT, which the NRD now operates and maintains; and,

**WHEREAS**, subsequent to construction of the CHANNEL PROJECT, and pursuant to an agreement between the NRD and the COUNTY, the COUNTY has operated and maintained in the NRD ROW a segment of the COUNTY'S Keystone Trail Project ("the **TRAIL PROJECT**"), consisting of a poured concrete, public, bicycle and pedestrian trail; and,

**WHEREAS**, OPPD desires to construct the TRANSMISSION LINE in the NRD ROW in substantial accordance with the conceptual project location plan sheet dated September 30, 2003 (a copy of which is attached hereto and incorporated herein by reference as Exhibit A) and the typical pole structure cross-section sheet dated October 2, 2003 (a copy of which is attached hereto and incorporated herein by reference as Exhibit B); and,

**NOW, THEREFORE, IN CONSIDERATION** of the payment by OPPD to the NRD of the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.\_\_), the receipt of which is acknowledged; the foregoing recitals; and, the mutual covenants of the PARTIES, the PARTIES hereby agree as follows:

1. **PURPOSE.** The purpose of THIS AGREEMENT is to set forth the terms under which the TRANSMISSION LINE will be designed, constructed, operated, maintained, repaired and replaced in the NRD ROW, and to specify the rights, duties and obligations of the PARTIES in connection therewith.

2. **DUTIES OF THE PARTIES.** The obligations of THIS AGREEMENT will be undertaken without any separate entity being created, and, the duties and responsibilities of the PARTIES with respect thereto shall be as defined by THIS AGREEMENT.

3. **CONSENTS TO PLANS AND SPECIFICATIONS.** Prior to commencing construction of the TRANSMISSION LINE in the NRD ROW, OPPD, at its sole cost and expense, shall submit the plans and specifications for the TRANSMISSION LINE ("the **TRANSMISSION LINE PLANS**") to the NRD, the COUNTY and the CORPS for their separate examinations and written consents. If, after receipt of the TRANSMISSION LINE PLANS and prior to commencement of construction of the TRANSMISSION LINE, (a) the NRD or the COUNTY, in their sole discretion, determine that the TRANSMISSION LINE cannot be designed to be compatible with the TRAIL PROJECT or the CHANNEL PROJECT, or (b) the CORPS determines that the TRANSMISSION LINE will interfere with or jeopardize the CHANNEL PROJECT in any way, this agreement shall be terminated upon written notice to the other PARTIES.

4. **ESTHETIC IMPACTS.** In designing the TRANSMISSION LINE, OPPD shall make every reasonable and feasible effort to minimize the negative impact of the TRANSMISSION LINE upon the recreational and esthetic values now present in the NRD ROW including, without limitation, employing camouflaging materials and innovative designs wherever feasible and limiting, wherever feasible, the number and size of TRANSMISSION LINE structures, appendages and appurtenances. Except at turns, all TRANSMISSION LINE poles installed in the NRD ROW shall be free-standing and designed in the same manner as OPPD'S transmission line poles now adjacent to the west

(72<sup>nd</sup> Street) line of the College of St. Mary property in Omaha, Nebraska. No TRANSMISSION LINE pole or other surface improvement installed by OPPD in the NRD ROW shall be located within ten feet (10') of any TRAIL PROJECT pavement.

**5. ADDITIONAL INFORMATION.** OPPD shall promptly furnish to the NRD, the COUNTY and the CORPS any additional information any of them may reasonably request or require concerning the TRANSMISSION LINE or the TRANSMISSION LINE PLANS. OPPD shall pay, within 45 days of demand, all the fair and reasonable costs incurred for any technical reviews of the TRANSMISSION LINE PLANS by independent third party engineers that the NRD or the COUNTY believe necessary.

**6. CONSTRUCTION COMMENCEMENT.** OPPD may commence construction of the TRANSMISSION LINE in the NRD ROW after the TRANSMISSION LINE PLANS have received the written consents of the NRD, the COUNTY and the CORPS, such construction to be performed in substantial accordance with the TRANSMISSION LINE PLANS and in a good and workmanlike manner.

**7. OTHER PERMITS.** OPPD shall have the responsibility to obtain from the CORPS or other federal, state or local agencies, at OPPD'S sole cost and expense, all other permits, consents, approvals, lands, easements and rights-of-way required or convenient for construction or for operation and maintenance of the TRANSMISSION LINE, including, without limitation, zoning and subdivision approvals, floodplain and floodway zoning permits, Section 404 permits, licenses and water rights. Neither the NRD nor the COUNTY warrants its title to the NRD ROW. OPPD, at its sole cost and expense, shall obtain all additional land rights that OPPD determines necessary for its construction, operation, maintenance, repair, replacement, inspection, management or regulation of the TRANSMISSION LINE in the NRD ROW.

**8. AS-BUILT PLANS.** Within 45 days after final completion of the TRANSMISSION LINE, OPPD shall provide to NRD “as-built” plans showing the TRANSMISSION LINE, as completed, together a certification by a Nebraska-licensed engineer that the TRANSMISSION LINE was constructed in full accordance therewith.

**9. DAMAGE TO EXISTING IMPROVEMENTS.** Any damage to or structural failure of (a) any TRAIL PROJECT paving, signage, drainage provisions or other TRAIL PROJECT improvement(s) or (b) any CHANNEL PROJECT channel improvements, drainage structures, fences, road surfacing, ground cover or other CHANNEL PROJECT improvement(s), occurring in areas of the NRD ROW traversed by OPPD’S reconnaissance, construction, inspection or repair vehicles, or other OPPD wheeled or tracked equipment, prior to, during or after construction of the TRANSMISSION LINE and appearing at any time within four (4) years after such traverse(s), shall be presumed to have been caused by OPPD’S activities in the NRD ROW; whereupon OPPD, at its sole cost and expense, shall repair such damage and restore such improvements to their as-built condition within sixty (60) days after receipt of notice of such damage from the owner of such improvements, or as soon thereafter as weather reasonably permits. OPPD shall keep and maintain logs recording the dates and locations of such traverses and identifying the vehicles and equipment involved in such traverses. Any repair, modification, reconstruction or re-grading of the CHANNEL PROJECT or TRAIL PROJECT improvements by OPPD, mandated or permitted by this agreement, shall be equal to or better than the original improvement in materials and quality, and be performed in a good and workmanlike manner and in accordance with generally-accepted engineering principles and practices. In addition,

- a) Such work shall not be commenced prior to ten days after written notification of the intended commencement of such work is delivered to both the NRD and the COUNTY, along with proposed specifications for such repair or reconstruction;



b) All excavations involved in such work shall be backfilled with material equal, superior or comparable to the material excavated and compacted to a density at least equal to that of the adjacent undisturbed levee;

c) All seeded areas which are disturbed shall be re-seeded and an acceptable ground cover re-established;

d) Upon completion of such work, all construction materials, pipe, debris and other materials shall be removed from the NRD ROW and a new three inch (3") thick by ten foot (10') wide crushed limestone (1-1/2 inch crusher run) surfacing will be placed on all unpaved portions of levee roadway in the NRD ROW used by OPPD; and,

e) All OPPD work involving TRAIL PROJECT improvements:

i) Shall be in general compliance with the American Association of State Highway and Transportation Officials' "1999 AASHTO Guide for the Development of Bicycle Facilities;"

ii) Shall be performed in accordance with applicable Nebraska state and federal statutes, rules and regulations;

iii) Shall provide curb-cuts and other provisions for the handicapped as now required for Federal and Federal-Aid projects; and,

iv) If necessitating trail closure of longer duration than one week, shall be preceded by the construction by OPPD of a temporary detour trail, conforming to present Nebraska Department of Roads specifications for a 6-inch asphalt course, substituting for the segment intended to be repaired or reconstructed, such temporary trail to be intended for bicycle and pedestrian use by the public during the period of such repair or reconstruction.

v) If involving cracked or otherwise damaged concrete, repairs shall be accomplished by concrete replacement and not by routing, caulking

or sealing; and, concrete trail replacement shall be performed in accordance with the following:

- A) base foundation must be of soil and compacted to a minimum of 95 percent of Standard Proctor (ASTM D698);
- B) all pavement concrete for the Trail shall be class 47B (Nebraska);
- C) pavement thickness must be 8 inch minimum;
- D) pavement width must be equal to the width of the in-place pavement, typically 8 feet north of Mercy Road and 10 feet south of Mercy Road;
- E) all replacement pavement must have a thickened edge, as per City of Omaha specifications (taper from 12 inch thick to 8 inch thick pavement in the first 5 feet from the old concrete edge);
- F) all joints must be hot pour joints and conform to City of Omaha specifications;
- G) pavement surface elevation must be equal to adjacent old pavement elevations, unless an overbuild requirement is in force;
- H) openings in the pavement must be properly signed (e.g. barricade on each side of the opening), during construction; and,
- I) pavement removal/replacement must be done as quickly as possible;
- J) a detour route around the trail opening must be provided throughout the project construction and must be safe and properly fenced (e.g. orange temporary construction fence or equivalent);

**10. TRANSMISSION LINE MAINTENANCE.** OPPD shall keep and maintain the TRANSMISSION LINE in as-built condition and repair, at its sole cost and expense, and in accordance with generally accepted engineering practices. Neither the

NRD nor the COUNTY shall have any duty to operate, maintain, repair, replace and regulate the TRANSMISSION LINE or any part thereof.

**11. RELOCATIONS OF TRANSMISSION LINE.** Notwithstanding any prior NRD or COUNTY consent to the design or location of the TRANSMISSION LINE, OPPD nevertheless shall, at its own cost and expense, relocate or modify, as indicated by the NRD or the COUNTY, any portion of the TRANSMISSION LINE that the NRD or the COUNTY, in its sole discretion, subsequently determines interferes with the operation, maintenance, repair, replacement, inspection, management or regulation of the CHANNEL PROJECT or of the TRAIL PROJECT, or any portion of either such project.

**12. ABANDONMENT OF TRANSMISSION LINE.** In the event OPPD ceases to use the TRANSMISSION LINE or a portion thereof for the transmission of high voltage electrical power, or abandon use of the TRANSMISSION LINE or any portion thereof, then within six (6) months after the NRD'S or the COUNTY'S demand, OPPD, at its own cost and expense, shall remove from the NRD ROW such TRANSMISSION LINE, or such portion thereof, and all poles, towers, arms, supporting structures, piers, foundations and other equipment appurtenant thereto.

**13. INDEMNIFICATIONS.** OPPD shall defend, indemnify and hold harmless the NRD and the COUNTY from and against any and all claims, demands, causes of action, costs and expenses, including without limitation court costs and attorneys fees, for inverse condemnation damages (including, without limitation, damages under 42 U.S.C. 1983) or personal injury or property damages arising out of OPPD'S construction, operation, maintenance, repair, replacement, inspection, management or regulation of the TRANSMISSION LINE in the NRD ROW; including, without limitation, any such claims, demands, causes of action, costs and expenses that are in any way related to or involve power-frequency electric and magnetic fields ("EMFs") or

obstruction of a drainageway; excepting, however, personal injuries or property damages caused by the sole negligence of the indemnified party.

**14. RISK OF LOSS.** The risk of loss of or damage to the TRANSMISSION LINE or any portion thereof from flood or other casualty whatsoever shall be borne solely by OPPD.

**15. SUCCESSORS AND ASSIGNS BOUND BY COVENANTS.** All covenants, stipulations and agreements contained in THIS AGREEMENT shall extend to and bind the legal representatives and successors of the PARTIES.

**16. REVIEW OF AGREEMENT.** The PARTIES each represent that they have carefully reviewed the terms and conditions of THIS AGREEMENT and are familiar with such terms and conditions and agree faithfully to comply with the same to the extent to which said terms and conditions apply to its activities, authorized and required by THIS AGREEMENT.

**17. NONDISCRIMINATION.** 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, color, sex, age, political or religious opinions, affiliations or national origin.

**18. CAPTIONS.** Captions used in THIS AGREEMENT are for convenience and are not used in the construction of THIS AGREEMENT.

**19. APPLICABLE LAW.** The PARTIES to THIS AGREEMENT shall conform to all existing and applicable ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under THIS AGREEMENT.

**20. MERGER.** THIS AGREEMENT shall not be merged into any other oral or written Agreement, lease or deed of any type.

**21. MODIFICATION.** THIS AGREEMENT contains the entire agreement of the PARTIES. No representations were made or relied upon by any of the PARTIES other than those that may be expressly set forth herein. No agent, employee or other representative of any PARTY is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of such respective PARTY.

**22. STRICT COMPLIANCE.** All provisions of THIS AGREEMENT and each and every document that shall be attached shall be strictly complied with as written.

**23. INVALID PROVISIONS.** In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of THIS AGREEMENT which shall in all respects remain a legally binding agreement with the invalid portion being deleted; provided that the validity of any such covenant, condition, or provision does not materially prejudice any of the PARTIES in its respective rights and obligations contained in the valid covenants, conditions, or provisions of THIS AGREEMENT.

**24. NON-WAIVER.** No delay or failure by any of the PARTIES to exercise any right under THIS AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by any of the PARTIES shall not be deemed to extend the amount of time available to perform any other act required under THIS AGREEMENT.

**26. TIME IS OF THE ESSENCE.** Time is expressly declared to be of the essence of THIS AGREEMENT.

**27. DEFAULT.** If the any of the PARTIES fails to comply with any provision of THIS AGREEMENT after reasonable request for performance has been served on

such party, the remaining PARTIES may seek specific performance, or may terminate THIS AGREEMENT, upon written notice to the other PARTIES.

**28. EFFECTIVE DATE AND TERM.** THIS AGREEMENT shall become effective upon its execution by all PARTIES, and shall be perpetual in its duration.

**29. NOTICES.** Any notices required under the terms of THIS AGREEMENT shall be deemed to have been given within forty-eight (48) hours after notice has been deposited in the United States mail, postage prepaid. Notices to the NRD provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail addressed to:

Steven G. Oltmans, General Manager  
Papio-Missouri River NRD  
8901 South 154th Street  
Omaha, Nebraska 68138-3621

notices to the COUNTY provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail addressed to:

Kent E. Holm, Director  
Douglas County Environmental Services  
3015 Menke Circle  
Omaha, Nebraska 68134

and notices to OPPD provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other respective address(s) as the PARTIES may designate to each other from time to time in writing.

**IN WITNESS WHEREOF**

THIS AGREEMENT is executed by the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT on this \_\_\_\_ day of \_\_\_\_\_, 2003

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_  
**General Manager**

THIS AGREEMENT is executed by the COUNTY OF DOUGLAS, NEBRASKA, on this \_\_\_\_ day of \_\_\_\_\_, 2003

**THE COUNTY OF DOUGLAS**

Attest: By \_\_\_\_\_  
**Chairperson, Board of Commissioners**

\_\_\_\_\_  
**County Clerk**

THIS AGREEMENT is executed by the OMAHA PUBLIC POWER DISTRICT on this \_\_\_\_ day of \_\_\_\_\_, 2003

**THE OMAHA PUBLIC POWER DISTRICT**

Attest: By \_\_\_\_\_  
**General Manager**

\_\_\_\_\_

STATE OF NEBRASKA           )  
  ) SS.  
COUNTY OF SARPY           )

On this \_\_\_\_\_ day of \_\_\_\_\_, 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 he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said District.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA           )  
  ) SS.  
COUNTY OF DOUGLAS        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, a Notary Public, personally came \_\_\_\_\_, Chairperson of the BOARD OF COMMISSIONERS OF DOUGLAS COUNTY, NEBRASKA, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said County.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public



READING COPY

PAPIO-MISSOURI RIVER  
NATURAL  
RESOURCES  
DISTRICT



November 25, 2003

Mr. Larry Hagan  
Omaha Public Power District  
ENG/ROW DEPT 6W/EP1  
Omaha, NE 68102-2247

8901 S. 154TH ST.  
OMAHA, NE 68138-3621  
(402) 444-6222  
FAX (402) 895-6543

RE: Little Papio Creek Channel Project/Keystone Trail (Pine Street to UPRR)  
OPPD Proposed Transmission Line

Dear Mr. Hagan:

On November 13, 2003, the Papio-Missouri River NRD Board of Directors directed NRD staff to prepare a permit for the referenced project and bring it to the Programs, Projects and Operations Subcommittee on December 9, 2003 for Subcommittee consideration. The NRD's attorney is drafting a permit document between OPPD, NRD and possibly Douglas County. We hope to provide you with a copy for review the week of December 1, 2003. Staff was also directed to continue to work on the issues listed in the NRD's letter of October 23, 2003 to OPPD. The items that still need to be addressed are as follows:

- Additional information will be required to evaluate the pole foundation impact on channel stability. In particular, we would need to review design calculations for pole foundations, especially the lateral stresses. Cross-sections would need to show depth, size and tie-backs for respective pole structures. Enclosed is a November 14, 2003 letter from Corps of Engineers about this issue. This design process can wait until it is determined whether or not all three parties can agree on the permit format.
- NRD Board and staff have indicated a preference to relocate the line alignment to the east bank (left bank looking downstream) of the Little Papio Creek from Mercy Road to Grover Street. This alignment would impact a shorter segment of Keystone Trail and should be easier to access for construction/maintenance. Please evaluate this proposed alignment.
- Poles located downstream of Grover Street appear to be situated near an existing drainage way that has considerable tree canopy in and over it. Please provide additional information on proposed location relative to the drainage and anticipated tree/brush clearing zone (width westward of powerline alignment).
- At least 2 pole locations (# 5 and #6) appear to be located in the creek floodway and as such will need to be hydraulically evaluated and mitigated. This task can wait until the permit format is approved by all parties.
- Some poles may be located in the Little Papio Creek Floodway and therefore may require a hydraulic analysis to show that there will be no impact on the floodwater surface profile. This task can wait until the permit format is approved by all parties.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martin P. Cleveland', written in a cursive style.

Martin P. Cleveland, P.E.  
Construction Engineer

Enclosure

CC: Janelle Mavis, Corps of Engineers  
Kent Holm, Douglas County Environmental Services  
Marlin Petermann, Gerry Bowen and Ron Lehman, NRD  
Paul Peters, NRD Legal Counsel  
Lp91 File: 532 Reach: 7-5



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
OMAHA DISTRICT, CORPS OF ENGINEERS  
106 SOUTH 15<sup>TH</sup> STREET  
OMAHA, NEBRASKA 68102-1618

November 14, 2003

Emergency Management (910-300)

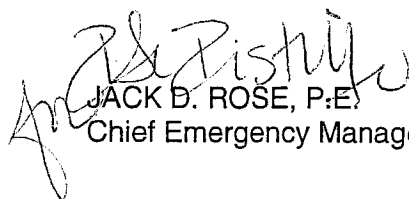
Mr. Martin Cleveland  
Natural Resource District  
8901 South 154<sup>th</sup> Street  
Omaha, NE 68138-3621

Dear Mr. Cleveland:

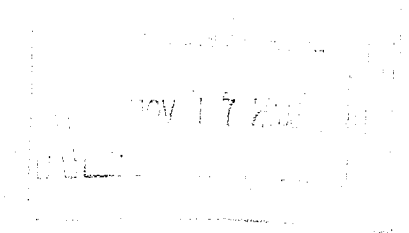
We reviewed the OPPD letter dated October 30, 2003 that responded to the Corps of Engineers requested information regarding the proposed power transmission line layout between Pine Street and the UPPR bridge along the Little Papillion Creek Federal Flood Control Project. The OPPD responses stated that the design is not complete as of now, but if this route is selected, then the design will be provided for our review.

As previously stated the Corps of Engineers requires review and approval of plans and specifications for any modification within the Federal Flood Control Project right-of-way. Therefore, we require review of the design calculations for the pole foundations and cross sections from the pole to the bottom of the channel for a typical pole located closest to the channel, for example poles #5 and #6. The cross sections provided for poles #5 & #6 did not show the depth, size, or tie-backs and there were no large angle structure cross sections provided.

Feel free to contact someone from my office with any questions or concerns at (402) 221-4148.

  
JACK D. ROSE, P.E.  
Chief Emergency Management Br

CF:  
CENWO-OD-MR (Willcuts)  
CENWO-ED-GB (Bertino)



Agenda Item: 9 **(Updated memo posted 12/9/03)**

## MEMO

To: Programs, Projects, and Operations Subcommittee

From: Jim Becic

Re: Request to Cost Share on Grass Stripper Head

Date: December 8, 2003

Updated: December 9, 2003

The attached correspondence and justification describes the request from the U.S. Fish and Wildlife Service for the Papio-Missouri River NRD to cost share half of the purchase price (\$30,000) of a rice stripper head. Over the years, this investment should save the District multiple times its investment as well as provide better habitat for the wildlife on our projects.

Seed costs for the Nathan's Lake/Stratbucker site (not including labor) was approximately \$60,000. Most recently, a similar \$250 per acre cost (total of ~ \$14,000) has been seen for the California Bend Habitat Restoration Site as well.

This type of a cutter head is crucial for harvesting native grass seed and the \$15,000 expenditure by the NRD, based solely on the NRD's annual seed purchase costs for our current and future habitat restoration projects, is certainly justified.

**It is staff recommendation that the PPO Subcommittee recommend to the Board that the Papio-Missouri River Natural Resources District cost share with the U.S. Fish and Wildlife Service, one-half of the cost - up to \$15,000 - for the purchase of a rice stripper cutter head for use in harvesting native grass seed with the understanding that a portion of the harvested seed will be available for the NRD use at no cost.**

To: Programs, Projects, and Operations Subcommittee  
From: Jim Becic  
Re: Request to Cost Share on Grass Stripper Head  
DATE: 8 December, 2003

The attached correspondence and justification describes the request from the U.S. Fish and Wildlife Service for the Papio-Missouri River NRD to cost share half of the purchase price (\$30,000) of a rice stripper head. Over the years, this investment should save the District multiple times its investment as well as provide better habitat for the wildlife on our projects.

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**It is staff recommendation that the PPO Subcommittee recommend to the Board that the Papio-Missouri River Natural Resources District cost share with the U.S. Fish and Wildlife Service, one-half of the cost - up to \$15,000 - for the purchase of a rice stripper cutter head.**



IN REPLY REFER  
TO:

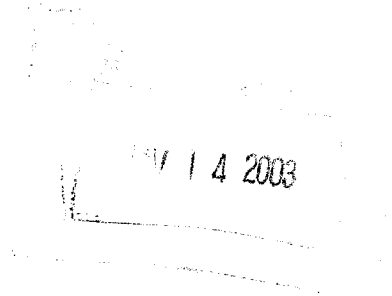
## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
BOYER CHUTE NATIONAL WILDLIFE REFUGE  
PO BOX 69, 3720 RIVERS WAY  
FT. CALHOUN, NE 68023  
TEL: 402/468-4313 FAX: 402/468-4316



November 12, 2003

Papio-Missouri NRD  
c/o Steve Oltmans  
8901 S. 154<sup>th</sup> St.  
Omaha, NE 68138-3621



Dear Mr. Oltmans and Board Members,

I respectfully request your consideration to fund, as a challenge grant through the Upper Mississippi Joint Venture, a piece of equipment that will facilitate future restoration efforts to our mutual benefit. The following is the main body of the text I submitted for potential funding. You are under no obligation at this point. This was submitted ahead of a hard deadline of Oct. 31 in order to stand any chance at all in receiving matching dollars from FWS:

“Approximately 5000 acres of the refuge are yet to be restored to native grassland. The majority of that land base has yet to be acquired. However, through mechanical and volunteer hand-collecting of ecotype seed from local prairies, we have begun the process of restoring plots that will provide the seed source for all future restorations. Large scale harvesting will require specialized machinery.

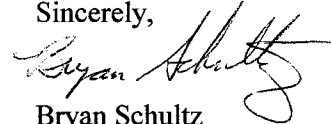
This project will, with the help of the Papio-Missouri Natural Resources District, purchase a rice stripper head, attachable to any combine, to facilitate seed harvest. We hope to make use of the Heavy Equipment rental program for short-term leasing of a combine. Using this attachment, additional seed cleaning costs are unnecessary. Furthermore, the vegetation remains standing, thereby retaining its quality as winter cover. With boughten seed costs currently averaging \$150/acre, there is a 100%+ return on the investment in the first harvest year which redoubles itself into the future. The benefit far outweighs the purchase of local ecotype seed (limited by annual budget constraints) in any given year, if seed is even available.

This project supports “Fulfilling the Promise” recommendations WH 1 and 3, and P8, BCR 22 and Lower Missouri Ecosystem objectives for Resources of Concern, Joint Venture objectives for Habitat Delivery and Implementation, and Boyer Chute NWR Habitat Management Plan objectives for grassland priority species.”

The total cost of the project is \$30,000 to be split equally between the PMRNRD and the Joint Venture. Whereas a \$15K investment on your part may be a difficult hurdle at face value, it may be much easier to justify the return on that investment into the future. We have some very diverse seedings coming online in the next year or two, including WRP land administered by us that the NRCS will allow us to use, from which we will be able to harvest. As mentioned above, considering the per-acre cost of a good diverse stand, it makes much more sense financially (to us as well as to the taxpayer) to harvest our own, than to live with the annual seed costs which can be burdensome. The virtue of harvesting our own seed with this machinery is that we can, depending on the production year, generate great quantities in short order fulfilling all of our mutual seeding needs. If funding becomes a reality, we can craft a Cooperative Agreement whereby both of us can take advantage of the seed source we have developing now.

Attached are a couple of pictures of the combine header to visually describe what we are proposing to purchase.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bryan Schultz", written in black ink.

Bryan Schultz  
Refuge Manager

