

Memorandum

To: Programs, Projects & Operation Subcommittee
From: Paul Woodward, Water Resources Engineer
Date: December 4, 2006
Re: Second Addendum to Cole Creek Inter-Local Agreement

In May 2004, the District amended the previous September 2002 Cole Creek Inter-Local Agreement to provide up to \$1.4 million to the City of Omaha in order to acquire additional flood-prone properties along Cole Creek. With this financial assistance from the NRD, the City of Omaha has made several improvements to mitigate flood damages along Cole Creek from Cass Street to Military Street. Over the last 4 years, the City has purchased over 30 homes with property along the creek that are subject to repetitive flooding, see attached maps. In addition, the City has replaced the previously undersized Western Avenue culvert with a much larger culvert and improved channel that will pass larger flows and debris. The costs of these improvements have accumulated to over \$4.6 million with \$2.2 million coming from FEMA grants.

Despite these efforts, there is still a need to replace upstream culvert crossings to allow more unrestricted flows. The City has plans within the next 4 years to replace 2 culverts at Seward and Hillside Streets. The total estimated cost of these culvert replacements is over \$1 million each. Therefore, in an effort to continue this project and reimburse the City for approximately 50% of the costs incurred, enclosed for your consideration is a Second Addendum to increase annual funding to \$250,000 per year and extend NRD funding for four years (FY 2007 thru FY 2010). This would increase the total NRD funding to \$2.1 million over an 8 year period (FY 2003 to FY 2010).

This doesn't mean that the District or the City is giving up on more buyouts along Cole Creek. Recently, the City and the District met with the Corps of Engineers to discuss a more comprehensive stream and environmental restoration project. Federal dollars would have to be appropriated in order for the Corps to perform a feasibility study.

In conclusion, additional funds are needed to upgrade culverts along Cole Creek to allow more floodwaters and debris to flow unrestricted downstream. The attached second addendum to the original interlocal agreement with the City would allow the NRD to provide Floodway Purchase Program funding for this purpose.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Second Addendum to the Cole Creek Flood Mitigation Program Agreement with the City of Omaha for a maximum cost share of \$2,100,000 over eight years, subject to changes as deemed necessary by the General Manager and approval as to form by District Legal Council.

				ADDITIONAL PURCHASE SUBTOTAL				\$ 158,062.00	\$ 158,062.00
Culvert Design		327,225.72					\$ 163,612.86	\$ 163,612.86	
Western Ave. Construction		870,218.65					\$ 435,109.33	\$ 435,109.33	
ROW/Misc. expense		20,253.07					\$ 10,126.54	\$ 10,126.54	
		1,217,697.44		CULVERT SUBTOTAL			\$ 608,848.72	\$ 608,848.72	
							FEMA	CITY	NRD
				PROJECT TOTALS			\$ 2,234,064.56	\$ 1,194,379.81	\$ 1,194,379.81
Updated Feb 10,2006				TOTAL					\$ 4,622,824.18

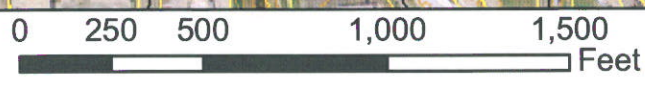


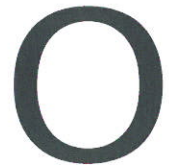
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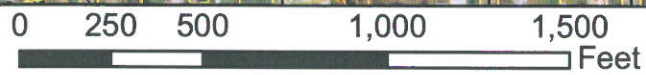
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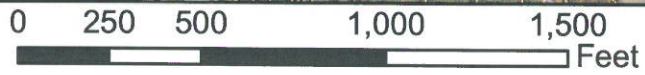
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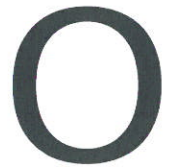




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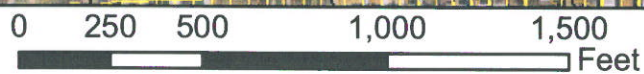
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**SECOND ADDENDUM TO
INTERLOCAL COOPERATION ACT AGREEMENT
Between
THE CITY OF OMAHA, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
COLE CREEK FLOOD MITIGATION PROGRAM**

THIS SECOND ADDENDUM (hereinafter referred to as “this **SECOND ADDENDUM**”) further amends Paragraph No. 23 of the captioned Interlocal Cooperation Act Agreement, that was dated as of September 12, 2002 (hereinafter referred to as the “**AGREEMENT**”) and entered in by and between the **CITY OF OMAHA, NEBRASKA** (hereinafter referred to as the “**CITY**”) and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as the “**NRD**”), and that was further amended by the **FIRST ADDENDUM** thereto (hereinafter referred to as the “**FIRST ADDENDUM**”) that was signed by the NRD on July 12, 2002 and by the CITY on September 12, 2002

1. Said Paragraph 23, as amended by the **FIRST ADDENDUM**, is amended to read as follows, to-wit:

23. COST-SHARING. As its contribution towards the CITY’S outlays to third parties, other than the CITY’S own personnel, for the costs of design, land, easements and rights-of-way, administration, construction, operation, maintenance, repair, replacement and regulation of the **MITIGATION PROGRAM** and its separate components (hereinafter referred to as “the **PROGRAM COSTS**”), and subject to the limitations hereinafter provided, the NRD shall pay to the CITY, on the first day of June in each of the years 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010, an annual installment payment equal to fifty percent (50%) of the total amount actually expended by the CITY during the preceding calendar year for **PROGRAM COSTS** (other than expenditures which are paid or reimbursed by federal or state grant programs or by **ABUTTING LANDOWNERS**, or recouped by sale of structures and other property in the **STUDY AREA** acquired by the CITY during the course of administering the

MITIGATION PROGRAM); provided, however, the payment due on the first day of June in the year 2003 shall not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000), the payments due on the first day of June in the years 2004 and 2005 shall not exceed FOUR HUNDRED THOUSAND DOLLARS (\$400,000), each, the payment due on the first day of June in the year 2006 shall not exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000), and the payments due on the first day of June in the years 2007, 2008, 2009 and 2010 shall not exceed TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), each, each such annual installment to be payable without interest prior to said installment becoming due; and, provided further, the total of the contributions due to the CITY pursuant to this AGREEMENT, as amended, shall not in any case exceed TWO MILLION ONE HUNDRED THOUSAND DOLLARS (\$2,100,000). The CITY shall be solely responsible for the payment of all remaining PROGRAM COSTS and other costs of the MITIGATION PROGRAM in any calendar year without NRD contribution. At least 30 days and not more than 120 days prior to the date an annual installment payment is due to the CITY pursuant to this AGREEMENT, the CITY shall send a written invoice to the General Manager of the NRD itemizing the PROGRAM COSTS from the preceding calendar year for which NRD contribution is sought under this AGREEMENT. Grants or contributions made by third parties to the CITY for PROGRAM COSTS, other than federal or state grants and the contributions of ABUTTING LANDOWNERS, shall not be deemed to offset or diminish the NRD'S obligations under this AGREEMENT.

2. Except as amended by this SECOND ADDENDUM, the AGREEMENT, as amended by the FIRST ADDENDUM, is ratified and confirmed in all respects.

IN WITNESS WHEREOF,

The CITY has executed this SECOND ADDENDUM on _____ 2006.

THE CITY OF OMAHA, NEBRASKA

By _____
Public Works Director

The NRD has executed this SECOND ADDENDUM on _____ 2006.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

ORIGINAL
COPY

**FIRST ADDENDUM TO
INTERLOCAL COOPERATION ACT AGREEMENT
Between
THE CITY OF OMAHA, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
COLE CREEK FLOOD MITIGATION PROGRAM**

THIS FIRST ADDENDUM (hereinafter referred to as "this ADDENDUM") amends Paragraph No. 23 of the Agreement dated as of September 12, 2002 (hereinafter referred to as this "AGREEMENT") entered in by and between the **CITY OF OMAHA, NEBRASKA** (hereinafter referred to as the "CITY") and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as the "NRD").

1. Said Paragraph 23 is amended as follows, to-wit:

23. COST-SHARING. As its contribution towards the CITY'S outlays to third parties, other than the CITY'S own personnel, for the costs of design, land, easements and rights-of-way, administration, construction, operation, maintenance, repair, replacement and regulation of the MITIGATION PROGRAM and its separate components (hereinafter referred to as "the **PROGRAM COSTS**"), and subject to the limitations hereinafter provided, the NRD shall pay to the CITY on the first day of June in each of the years 2003, 2004, 2005, 2006, 2007 and 2008 an annual installment payment equal to fifty percent (50%) of the total amount actually expended by the CITY during the preceding calendar year for PROGRAM COSTS (other than expenditures which are paid or reimbursed by federal or state grant programs or by ABUTTING LANDOWNERS, or recouped by sale of structures and other property in the STUDY AREA acquired by the CITY during the course of administering the MITIGATION PROGRAM); provided, however, the payments due on the first day of June in the years 2004 and 2005 shall not exceed FOUR HUNDRED THOUSAND DOLLARS (\$400,000), each, the payments due on the first day of June in the years ~~2004, 2005,~~ 2006 and 2007 shall not exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000), each, and the payments due on the first day of June in the years 2003 and 2008 shall not exceed ONE

HUNDRED THOUSAND DOLLARS (\$100,000), each, each such annual installment to be payable without interest prior to said installment becoming due; and, provided further, the total of the contributions due to the CITY pursuant to this AGREEMENT shall not in any case exceed ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1,000,000.00(\$1,400,000.00)); ~~and, the~~ The CITY shall be solely responsible for the payment of all remaining PROGRAM COSTS and other costs of the MITIGATION PROGRAM in any calendar year without NRD contribution. At least 30 days and not more than 120 days prior to the date an annual installment payment is due to the CITY pursuant to this AGREEMENT, the CITY shall send a written invoice to the General Manager of the NRD itemizing the PROGRAM COSTS from the preceding calendar year for which NRD contribution is sought under this AGREEMENT. Grants or contributions made by third parties to the CITY for PROGRAM COSTS, other than federal or state grants and the contributions of ABUTTING LANDOWNERS, shall not be deemed to offset or diminish the NRD'S obligations under this AGREEMENT.

2. Except as amended by this ADDENDUM, the AGREEMENT is ratified and confirmed in all respects.

IN WITNESS WHEREOF,

The CITY has executed this ADDENDUM on May 10, 2004.

THE CITY OF OMAHA, NEBRASKA

By 
Public Works Director

The NRD has executed this ADDENDUM on April 19, 2004.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By 
General Manager



City of Omaha
Mike Fahey, Mayor

September 10, 2002

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CITY CLERK
OMAHA, NEBRASKA

Public Works Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 601
Omaha, Nebraska 68183-0601
(402) 444-5220
Telefax (402) 444-5248

Norm Jackman, P.E.
Acting Public Works Director

COPY

Honorable President

and Members of the City Council,

Transmitted herewith is a Resolution approving an Interlocal Cooperation Agreement between the Papio-Missouri River Natural Resources District (NRD) and the City of Omaha. The subject of the Agreement is the Cole Creek Flood Mitigation Program. The City and the NRD will apply to the Federal Emergency Management Agency for funds to purchase high-risk residential homes along the creek. In order to do that, this Resolution authorizes the adoption of the report from Kirkham Michael Consulting Engineers entitled "Cole Creek Flood Damage Mitigation Study, April 2002".

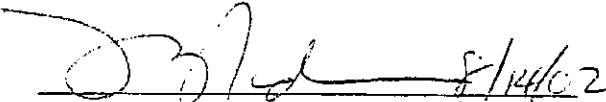
In addition, a channel clearing and culvert replacement project will begin. These two methods of correcting the Cole Creek flooding problem are included in the 2002-2007 Capital Improvement Program as Environmental Projects 204 and 205.

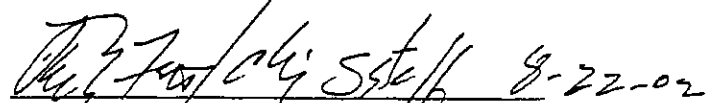
The City will take the lead in this project. The NRD will contribute \$1,000,000 over six years toward the work. The City has scheduled \$1,150,000 toward the project. The City's cost will be paid from the Sewer Bond Construction, Organization 116251, Fund 13116 in the year the work is done. A firm estimate of the total cost of the project is unknown at this time. The amount of participation from the affected homeowners and the response from FEMA will determine that. However, increases in cost (if any) would be returned to the City Council for approval.

The Public Work Department requests your consideration and approval of the attached Resolution and Interlocal Agreement.

Respectfully submitted,

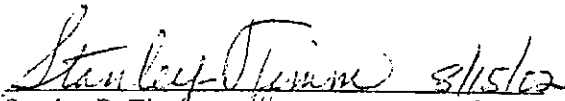
Referred to City Council for Consideration:



Norm Jackman, P.E. 8/14/02 Date
Acting Public Works Director *HR*


Mayor's Office 8-22-02 Date

Approved as to Funding:

This action has been reviewed and found to be in conformance with the Master Plan.


Stanley P. Timm 8/15/02 Date
Finance Director


Robert C. Peters 8.20.02 Date
Planning Director



INTERLOCAL COOPERATION ACT AGREEMENT
Between
THE CITY OF OMAHA, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
COLE CREEK FLOOD MITIGATION PROGRAM

THIS AGREEMENT (hereinafter referred to as this “**AGREEMENT**”) is entered into by and between the **CITY OF OMAHA, NEBRASKA** (hereinafter referred to as the “**CITY**”) and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as the “**NRD**”), and is made pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.).

RECITALS

WHEREAS, flooding and flood-related damage have been common occurrences in the floodplain of the 3-mile portion of Cole Creek extending from its Military Avenue crossing downstream to its confluence with the Little Papillion Creek (the “**STUDY AREA**”), all in the **CITY**; and,

WHEREAS, using a grant obtained from the Federal Emergency Management Agency (“**FEMA**”) through its Hazard Mitigation Grant Program, the **CITY** employed Kirkham Michael Consulting Engineers (“**KMA**”) to perform a flood hazard mitigation study (the “**STUDY**”) for the **STUDY AREA**, and publish a report of the **STUDY** entitled “Cole Creek Flood Damage Mitigation Study, April 2002 (the “**STUDY REPORT**”); and,

WHEREAS, in performing the **STUDY**, **KMA** updated the hydraulic model of Cole Creek, evaluated structural and non-structural alternatives, provided probable cost estimates associated with each alternative, and provided recommendations for mitigating

potential flood damage to homes, businesses and roadways within the STUDY AREA; and,

WHEREAS, flood hazard mitigation projects that the STUDY found feasible in the STUDY AREA included, without limitation,

1. Replacement of existing culverts with construction of new bridges at the locations where Cole Creek crosses Military Avenue, Pratt Street, 72nd Street, Hillside Drive, Seward Street and Western Avenue (all hereinafter referred to collectively as the **“CULVERT REPLACEMENT PROJECT”**);

2. Voluntary purchase and removal from the STUDY AREA of existing private dwellings and other structures that are subject to recurring flood damage, and conversion of the sites thereof to uses which are non-insurable under the Flood Insurance Act (all hereinafter referred to collectively as the **“FLOODPLAIN PURCHASE PROGRAM”**); and,

3. Clearing of trees, brush and other debris from, and performing minor bank-shaping along, various reaches of the Cole Creek channel in the STUDY AREA (all hereinafter referred to collectively as the **“CHANNEL CLEARING PROJECT”**) to reduce the potential for debris collection at crossings, and other locations, and the artificially-high water surface elevations that result from this condition; and,

WHEREAS, the parties desire to establish the COLE CREEK FLOOD MITIGATION PROGRAM (hereinafter referred to as the **“MITIGATION PROGRAM”**), for the purpose of carrying out the CULVERT REPLACEMENT PROJECT, the FLOODPLAIN PURCHASE PROGRAM and the CHANNEL CLEARING PROJECT, all in the STUDY AREA,

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

1. **APPROVAL OF STUDY REPORT.** The parties hereby approve the STUDY REPORT and agree that it indicates the necessity for their establishment of the MITIGATION PROGRAM.

2. **MITIGATION PROGRAM PARTICIPANTS.** The MITIGATION PROGRAM shall be a joint undertaking by and between the NRD and the CITY pursuant to the Nebraska Interlocal Cooperation Act, without a separate entity being created, and the duties and responsibilities of the parties shall be as defined by this AGREEMENT.

CULVERT REPLACEMENT PROJECT

3. **ESTABLISHMENT OF CULVERT REPLACEMENT PROJECT.** The parties do hereby establish the CULVERT REPLACEMENT PROJECT, a component of the MITIGATION PROGRAM which the parties hereby find and determine will be of general benefit to the CITY and the NRD, with only an incidental special benefit, and pursuant to which the CITY will replace existing culverts with new bridges at certain street crossings of Cole Creek in the STUDY AREA.

4. **ADMINISTRATION OF CULVERT REPLACEMENT PROJECT.** The CITY shall be responsible for administering the CULVERT REPLACEMENT PROJECT, which shall include the following:

a. The CITY shall prepare, execute and file with appropriate federal and state agencies such proposals and grant applications, and documents related thereto, as the CITY determines necessary for purposes of the CULVERT REPLACEMENT PROJECT; and,

b. The CITY shall employ and compensate appraisers, title searchers, title insurers, surveyors, engineers, attorneys, demolition contractors, and other persons, firms and corporations, and pay such other expenses, as the CITY determines necessary, to accomplish the CULVERT REPLACEMENT PROJECT pursuant to this AGREEMENT.

5. DESIGN OF CULVERT REPLACEMENT PROJECT. Within the limits of funds appropriated by the CITY for such purpose, the CITY shall retain licensed professional engineering consultants approved by the General Manager of the NRD (hereinafter referred to as "the ENGINEERS"), which approval shall not be withheld or delayed unreasonably, to design the CULVERT REPLACEMENT PROJECT, prepare plans and specifications and contract documents as necessary for the CULVERT REPLACEMENT PROJECT, and administer construction, operation and maintenance of the CULVERT REPLACEMENT PROJECT.

6. CULVERT REPLACEMENT PROJECT DESIGN CRITERIA. The plans and specifications for construction of the CULVERT REPLACEMENT PROJECT shall be created in accordance with written design standards furnished by the ENGINEERS and approved by the City Engineer of the CITY and by the General Manager of the NRD, which approvals shall not be withheld or delayed unreasonably.

7. APPROVAL OF CULVERT REPLACEMENT PROJECT PLANS AND SPECIFICATIONS. Preliminary and final plans and specifications prepared by the ENGINEERS for the CULVERT REPLACEMENT PROJECT shall be subject to the written approval of the City Engineer of the CITY and the General Manager of the NRD, which approvals shall not be withheld or delayed unreasonably.

8. BIDS FOR CULVERT REPLACEMENT PROJECT CONSTRUCTION. Following preparation and approval of final plans and specifications for construction of the CULVERT REPLACEMENT PROJECT, the CITY shall solicit, receive and open competitive sealed bids for construction of the CULVERT REPLACEMENT PROJECT. Within a reasonable time after CITY receipt and opening of such bids for construction of the CULVERT REPLACEMENT PROJECT, the CITY shall deliver a summary of all such bids to the General Manager of the NRD, together with the identification by the CITY of the bidder which the CITY determines is the lowest and best bidder. In the absence of good cause to the contrary being shown by the NRD, the CITY

shall accept such bidder's bid and shall award to such bidder the contract to construct the CULVERT REPLACEMENT PROJECT.

9. CULVERT REPLACEMENT PROJECT CONSTRUCTION. The CITY, through its contractor, shall construct the CULVERT REPLACEMENT PROJECT in accordance with the approved plans and specifications, including the relocation of any utilities or appurtenant highway facilities that are determined to interfere with construction, operation, or maintenance of the CULVERT REPLACEMENT PROJECT.

10. CULVERT REPLACEMENT PROJECT OPERATION AND MAINTENANCE. After completion of construction of the CULVERT REPLACEMENT PROJECT and CITY acceptance of the same from the CITY'S contractor, the CITY shall permanently operate, maintain, repair, replace and regulate the CULVERT REPLACEMENT PROJECT, as the CITY in its discretion determines necessary, at the CITY'S sole cost and expense and in accordance with applicable and generally accepted engineering practices.

FLOODPLAIN PURCHASE PROGRAM

11. THE FLOODPLAIN PURCHASE PROGRAM. The parties hereby establish the FLOODPLAIN PURCHASE PROGRAM, a component of the MITIGATION PROGRAM which the parties hereby find and determine will be of general benefit to the CITY and the NRD, with only an incidental special benefit, pursuant to which ownership of private dwellings and other structures now existing in the STUDY AREA will be purchased by the CITY in voluntary transactions, pursuant to which such dwellings and other structures will be demolished or otherwise removed from the STUDY AREA, and pursuant to which the land now occupied by such dwellings and other structures will be converted to uses which are not insurable under the flood insurance programs administered by FEMA, .

12. ADMINISTRATION OF FLOODPLAIN PURCHASE PROGRAM.

The CITY shall be responsible for administering the FLOODPLAIN PURCHASE PROGRAM, which shall include the following:

a. The CITY shall acquire, by voluntary purchase and sale, such real estate and interests therein, including leaseholds, as the CITY determines necessary or convenient in order to obtain removal of private dwellings and other structures now located in the STUDY AREA, which presently are eligible for disaster assistance, flood damage insurance and other benefits under federal disaster assistance and flood insurance programs, and shall make such payments in respect to such acquisitions as the CITY determines necessary or convenient;

b. The CITY shall prepare, execute and file with appropriate federal and state agencies such proposals and grant applications, and documents related thereto, as the CITY determines necessary for purposes of the FLOODPLAIN PURCHASE PROGRAM;

c. The CITY shall employ and compensate appraisers, title searchers, title insurers, surveyors, engineers, attorneys, demolition contractors, and other persons, firms and corporations, and pay such other expenses, as the CITY determines necessary, to administer the FLOODPLAIN PURCHASE PROGRAM pursuant to this Agreement; and,

d. The CITY shall execute on its own behalf such contracts, applications, and other documents as the CITY determines necessary to administer the FLOODPLAIN PURCHASE PROGRAM pursuant to this Agreement.

CHANNEL CLEARING PROJECT

13. ESTABLISHMENT OF CHANNEL CLEARING PROJECT. The parties hereby establish the CHANNEL CLEARING PROJECT, which the parties hereby find and determine will be of general benefit to the CITY and the NRD, with only an incidental special benefit, and pursuant to which the CITY, with the assistance of owners of

lands abutting the Cole Creek channel (hereinafter referred to as "ABUTTING LANDOWNERS") in the STUDY AREA, will clear trees, brush and other debris from, and perform minor bank-shaping along, various reaches of the Cole Creek channel in the STUDY AREA.

14. ADMINISTRATION OF CHANNEL CLEARING PROJECT. The CITY shall be responsible for administering the CHANNEL CLEARING PROJECT, which shall include the following:

a. The CITY shall prepare, execute and file with appropriate federal and state agencies such proposals and grant applications, and documents related thereto, as the CITY determines necessary for purposes of the CHANNEL CLEARING PROJECT; and,

b. The CITY shall employ and compensate appraisers, title searchers, title insurers, surveyors, engineers, attorneys, demolition contractors, and other persons, firms and corporations, and pay such other expenses, as the CITY determines necessary, to accomplish the CHANNEL CLEARING PROJECT pursuant to this AGREEMENT.

15. SCOPE OF CHANNEL CLEARING PROJECT. The CITY, with the approval of the NRD, shall designate the various reaches of the Cole Creek channel in the STUDY AREA that will be subject to the CHANNEL CLEARING PROJECT. A reach may be so designated as part of the CHANNEL CLEARING PROJECT if the ABUTTING LANDOWNERS along such reach provide to the CITY, without cost, all permanent easement rights-of-way necessary for, and at least twenty percent (20%) of the original construction contract cost of, clearing trees, brush and other debris from, and performing minor bank-shaping along, such reach adjacent to such land. The City will require permanent drainage and access easements for all improvements.

16. DESIGN OF CHANNEL CLEARING PROJECT. Within the limits of funds appropriated by the CITY for such purpose, the CITY shall prepare plans and

specifications and contract documents as necessary for any contract work to be obtained or permanent improvements to be constructed as a part of the CHANNEL CLEARING PROJECT, and shall obtain such contract and volunteer assistance as may be required for performance and maintenance of the CHANNEL CLEARING PROJECT.

17. CHANNEL CLEARING PROJECT DESIGN CRITERIA. The plans and specifications for any contract work to be obtained or permanent improvements to be constructed as a part of the CHANNEL CLEARING PROJECT shall be drawn in accordance with design standards approved by the City Engineer of the CITY and by the General Manager of the NRD, which approvals shall not be withheld or delayed unreasonably.

18. APPROVAL OF CHANNEL CLEARING PROJECT PLANS AND SPECIFICATIONS. Preliminary and final plans and specifications for any contract work to be obtained or permanent improvements to be constructed as a part of the CHANNEL CLEARING PROJECT shall be subject to the written approval of the City Engineer of the CITY and the General Manager of the NRD, which approvals shall not be withheld or delayed unreasonably.

19. BIDS FOR CONSTRUCTION OF CHANNEL CLEARING PROJECT. Following preparation and approval of final plans and specifications for any contract work to be obtained or permanent improvements to be constructed as a part of the CHANNEL CLEARING PROJECT the CITY may let such work to the contractor that the CITY determines is the lowest and best bidder.

20. CHANNEL CLEARING PROJECT CONSTRUCTION. The CITY, through its contractor, shall construct any permanent improvements to be constructed as a part of the CHANNEL CLEARING PROJECT in accordance with the approved plans and specifications.

21. CHANNEL CLEARING PROJECT OPERATION AND MAINTENANCE. After completion of construction of any permanent improvements to

be constructed as a part of the CHANNEL CLEARING PROJECT, the CITY shall operate, maintain, repair, replace and regulate such improvements, as the CITY in its discretion determines necessary, at the CITY'S sole cost and expense and in accordance with applicable and generally accepted engineering practices.

GENERAL PROVISIONS

22. LAND ACQUISITION. Land, easements and rights-of-way, which the CITY determines are necessary for the administration, construction, operation and maintenance of the MITIGATION PROGRAM and its separate components, shall be obtained by the CITY, which shall hold title thereto. The CITY, at the CITY'S sole cost and expense, shall maintain or dispose of such land, easements and rights-of-way in such manner and at such times as the CITY determines necessary or convenient, for uses and purposes consistent with this AGREEMENT, and shall be entitled to all rents and profits therefrom.

23. COST-SHARING. As its contribution towards the CITY'S outlays to third parties, other than the CITY'S own personnel, for the costs of design, land, easements and rights-of-way, administration, construction, operation, maintenance, repair, replacement and regulation of the MITIGATION PROGRAM and its separate components (hereinafter referred to as "the **PROGRAM COSTS**"), and subject to the limitations hereinafter provided, the NRD shall pay to the CITY on the first day of June in each of the years 2003, 2004, 2005, 2006, 2007 and 2008 an annual installment payment equal to fifty percent (50%) of the total amount actually expended by the CITY during the preceding calendar year for PROGRAM COSTS (other than expenditures which are paid or reimbursed by federal or state grant programs or by ABUTTING LANDOWNERS, or recouped by sale of structures and other property in the STUDY AREA acquired by the CITY during the course of administering the MITIGATION PROGRAM); provided, however, the payments due on the first day of June in the years 2004, 2005, 2006 and 2007 shall not exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000), each, and the payments due on the first day of June in the years 2003 and

2008 shall not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000), each, each such annual installment to be payable without interest prior to said installment becoming due; and, provided further, the total of the contributions due to the CITY pursuant to this AGREEMENT shall not exceed ONE MILLION DOLLARS (\$1,000,000.00); and, the CITY shall be solely responsible for the payment of all remaining PROGRAM COSTS and other costs of the MITIGATION PROGRAM in any calendar year without NRD contribution. At least 30 days and not more than 120 days prior to the date an annual installment payment is due to the CITY pursuant to this AGREEMENT, the CITY shall send a written invoice to the General Manager of the NRD itemizing the PROGRAM COSTS from the preceding calendar year for which NRD contribution is sought under this AGREEMENT. Grants or contributions made by third parties to the CITY for PROGRAM COSTS, other than federal or state grants and the contributions of ABUTTING LANDOWNERS, shall not be deemed to offset or diminish the NRD'S obligations under this AGREEMENT.

24. RISK OF LOSS. The CITY shall, as between the parties hereto, have and bear the sole risk of loss of or damage to any and all MITIGATION PROGRAM components, whether such loss or damage results from flood or other casualty whatsoever.

25. INDEMNIFICATION. Except as otherwise provided herein, the CITY shall defend and indemnify the NRD, and hold the NRD harmless, (1) from and against any and all PROGRAM COSTS and other costs of the MITIGATION PROGRAM; (2) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of or caused by the actions or inactions of the CITY, its employees, officers, contractors and agents in the design, administration, acquisition of rights-of-way, construction, operation, maintenance, repair, replacement and regulation of or for the MITIGATION PROGRAM, excepting costs and expenses relating to actions or inactions of the NRD; and, (3) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and

attorneys fees, arising from the introduction or presence in or on any MITIGATION PROGRAM lands, easements or rights-of-way of any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any MITIGATION PROGRAM lands, easements and rights-of-way, and also including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination on the MITIGATION PROGRAM lands, easements and rights-of-way, but excepting costs and expenses relating to any such substances or materials introduced by the NRD or its employees, officers, contractors or agents.

26. EFFECTIVE DATE. This AGREEMENT shall be in force and effect from and after its execution by the parties hereto.

27. TERM. This AGREEMENT shall have permanent duration.

28. NON-DISCRIMINATION. Any contract awarded or executed for work pursuant to this AGREEMENT, or any addenda thereto, shall incorporate therein the equal employment provisions which are contained in a document attached hereto and incorporated herein as Exhibit "A" to this AGREEMENT, if any. The parties hereto shall not, in the performance of this AGREEMENT, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, disability, color, sex, age, political or religious opinions, affiliations or national origin.

29. APPLICABLE LAW. Each party to this AGREEMENT shall follow all statutes, both federal and state, together with all existing CITY 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.

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

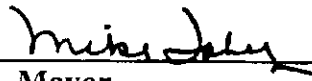
31. CAPTIONS. Captions used in this AGREEMENT are for convenience and not for use in the construction of this AGREEMENT.

32. LIMITED PARTIES This agreement is between only the parties hereto. No third party beneficiaries are recognized in or protect by the terms of this AGREEMENT.

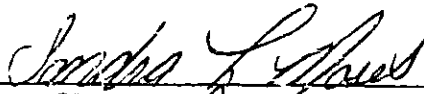
IN WITNESS WHEREOF, the parties have executed this AGREEMENT pursuant to authorizing resolutions duly adopted at regularly-called meetings of their governing bodies.

The CITY has executed this AGREEMENT on September 12, 2002.

THE CITY OF OMAHA, NEBRASKA

By 
Mayor

Attest:

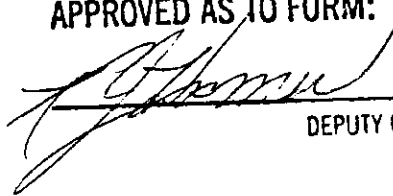

City Clerk *Deputy*

The NRD has executed this AGREEMENT on July 12, 2002.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By 
General Manager

APPROVED AS TO FORM:


DEPUTY CITY ATTORNEY

CITY OF OMAHA

LEGISLATIVE CHAMBER

Omaha, Nebr..... September 10, 2002

RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

WHEREAS, the Papio-Missouri River Natural Resources District (NRD) and the City of Omaha desire to enter into an Interlocal agreement for the Cole Creek Flood Mitigation Program which includes residential home buyouts along with channel clearing and culvert replacement; and,

WHEREAS, an Interlocal Agreement, which by this reference becomes a part hereof, between the City and the NRD details the responsibilities of each; and,

WHEREAS, the NRD will contribute \$1,000,000 to the project over six years and the City has scheduled \$1,150,000 in the 2002-2007 Capital Improvement Program which will be paid from Sewer Bond Construction, Organization 116251, Fund 13116.

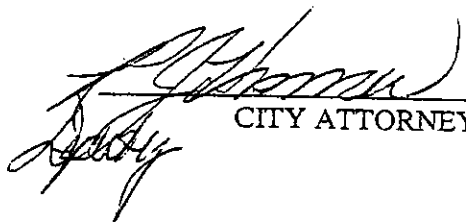
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

THAT, the Interlocal Agreement between the Papio-Missouri River Natural Resources District, and the City of Omaha for the Cole Creek Flood Mitigation Program is hereby approved.

BE IT FURTHER RESOLVED:

THAT, the City adopts the report by Kirkham Michael Consulting Engineers entitled "Cole Creek Flood Damage Mitigation Study, April, 2002".

APPROVED AS TO FORM:


CITY ATTORNEY 8-13-02
DATE

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By.....
Councilmember

Adopted..... SEP 10 2002 7-0
.....
City Clerk

Approved.....
Mayor

I hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's office.

.....
DEPUTY CITY CLERK
BY