

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

SUBJECT: Turtle Creek Watershed PL566 Site #2
Rehabilitation Project Agreement

DATE: December 3, 2007

FROM: Martin P. Cleveland

In 2001, the USDA – Natural Resources Conservation Service (NRCS) initiated a dam rehabilitation assistance program to address the needs of aging dams throughout the United States, in particular those dams built through their Public Law (PL) 566 Program. The PL 566 Program has been designing/building dams for about 65 years.

The District owns/operates 83 dams, 50 of which were built via the PL 566 Program. The District's PL 566 dams were built in the period from 1962 to 1997. Turtle Creek Structure #2 was built in 1962 by the Sarpy County Soil & Water Conservation District (SCSWSD) and was transferred to Papio NRD in the 1970's. Attached is a location map. In March 2005, the District initiated dam rehabilitation with NRCS on Turtle Creek Site #2 via execution of Memorandum of Understanding for rehabilitation assistance.

The NRCS has completed draft plans and specifications for the proposed rehabilitation project. The existing earthen dam spillways are planned to be replaced with a concrete baffled chute (approximately 30 ft. wide by 150 ft. long). Enclosed are some plan sheets for proposed Turtle #2 and photos of a completed baffled chute structure, but at a much larger scale, located in North Dakota.

Enclosed is the Turtle Creek Watershed Site #2 Project Agreement for your review. This agreement provides for rehabilitation (with cost share and estimated costs for referenced dam). This agreement is subject to NRCS and NRD funding.

<u>Works of Improvement</u>	<u>Sponsors (NRD)</u>	<u>NRCS</u>	<u>Estimate Project Costs</u>
#2	\$282,692.00 2/	\$525,000.00	\$807,692.00 1/
	(35%)	(65%)	(100%)

1/ Estimated Project Costs do not include NRCS Engineering and Project Administration costs. NRCS pays for 100% of planning and engineering costs.

2/ Sponsor (NRD) is required to secure land rights for these structures and this cost is credited towards sponsor's 35%.

It is management's recommendation that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Turtle Creek Watershed Site #2 Project Agreement with NRCS rehabilitation for PL 566 Grade Stabilization Structure Turtle Creek Site #2, subject to changes deemed necessary by the General Manager and approved to as to form by District Legal Counsel.

Turtle Creek Watershed Structure #2

Location Map

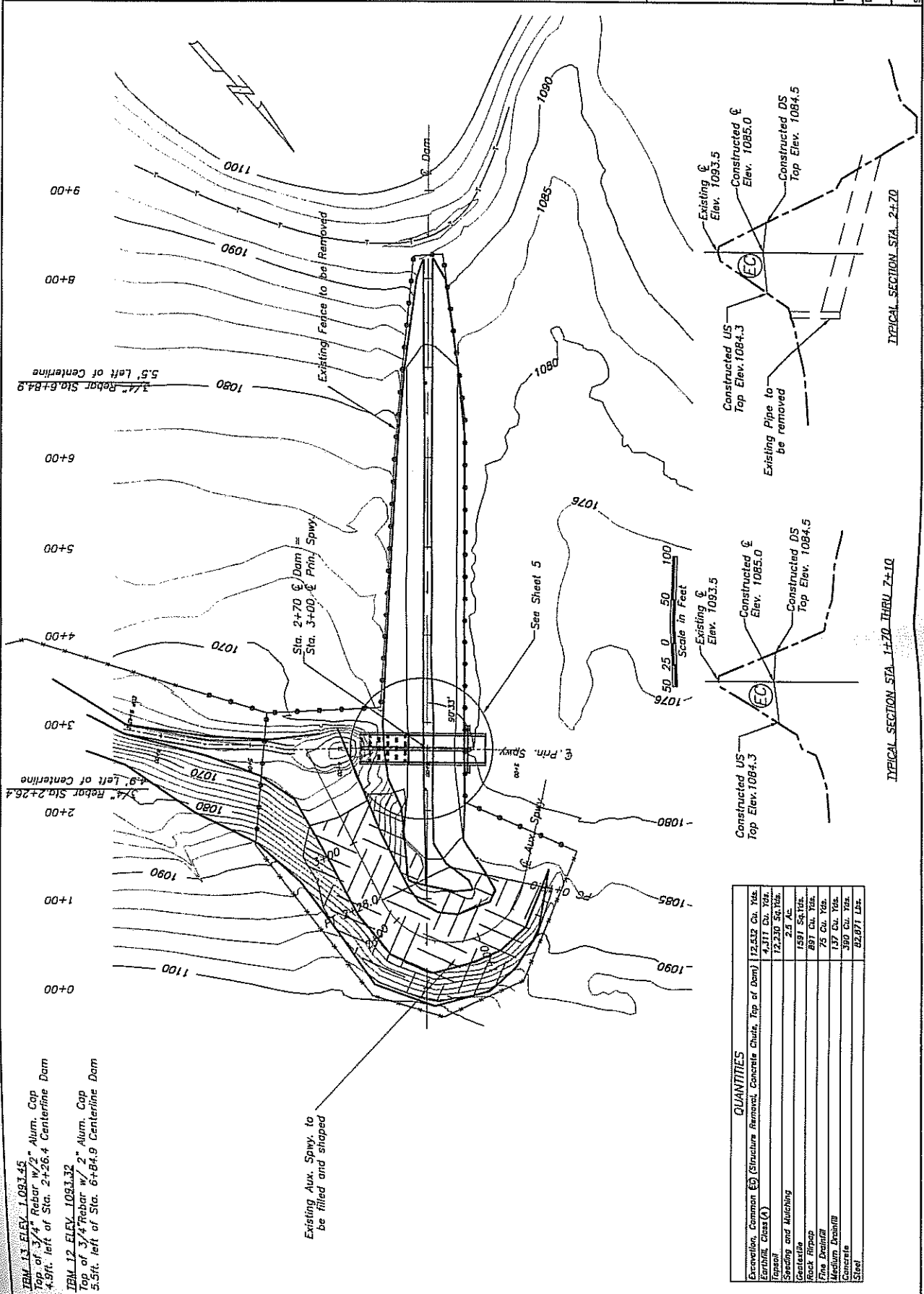




Approved _____
 Checked _____
 Drawn _____
 Designed _____
 Date _____

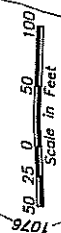
PLAN OF EMBANKMENT
 Turtle Creek No. 2 Rehabilitation
 Turtle Creek Watershed
 Sarpy County, Nebraska

NRCS
 National Resources Conservation Service
 United States Department of Agriculture
 File Name _____
 Drawing Name _____
 Sheet 4 of 18



EBM 13 ELEV. 1083.45
 Top of 3/4" Rebar w/ 2" Alum. Cap
 4.9ft. left of Sta. 2+26.4 Centerline Dam
 EBM 12 ELEV. 1083.32
 Top of 3/4" Rebar w/ 2" Alum. Cap
 5.3ft. left of Sta. 6+84.9 Centerline Dam

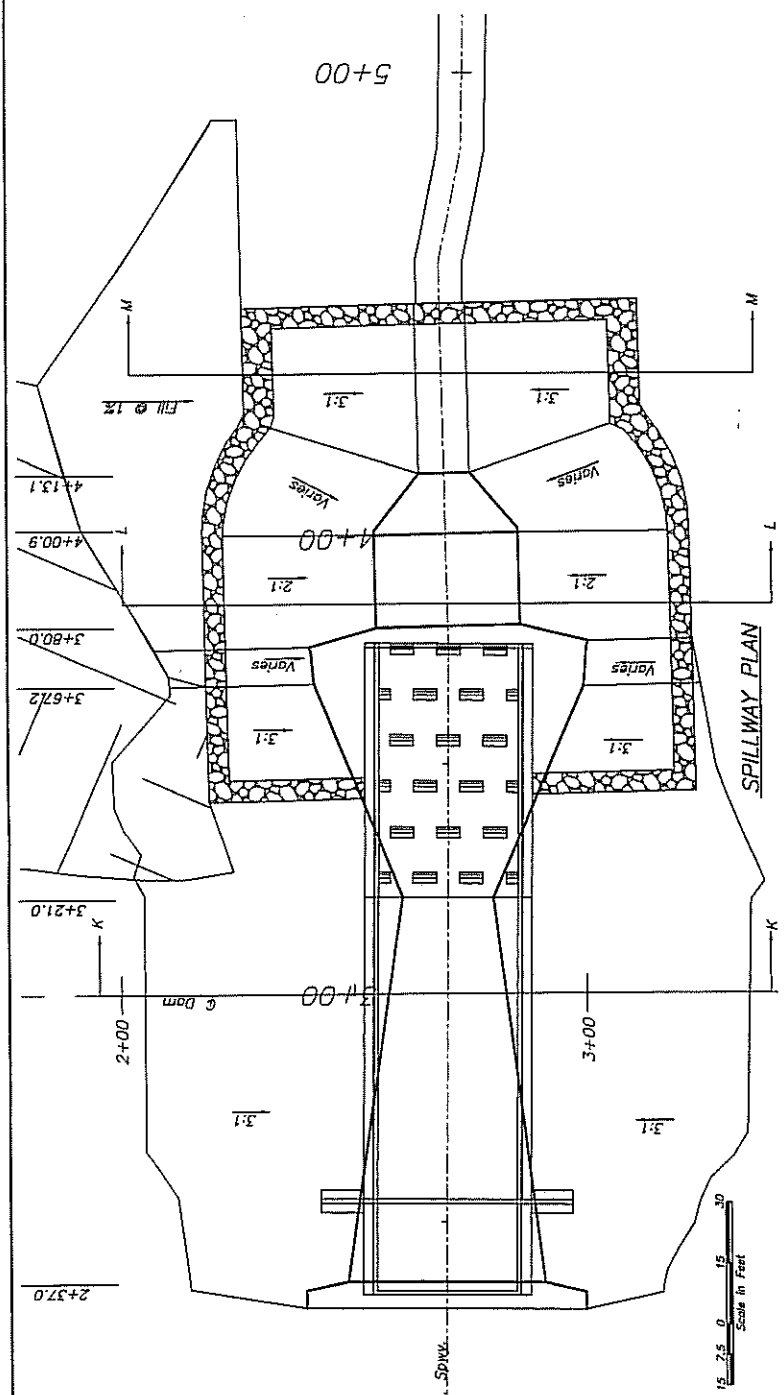
Existing Aux. Spwy. to be filled and shaped



QUANTITIES	
Excavation, Common (E) (Structure Removal, Concrete Chute, Top of Dam)	12,532 Cu. Yds.
Excavation, Class (A)	4,311 Cu. Yds.
Gravel	12,230 Cu. Yds.
Seeding and Mulching	2.5 AC
Grass Seed	1391 Sq. Yds.
Rock Riprap	287 Cu. Yds.
Fine Drainage	75 Cu. Yds.
Medium Drainage	137 Cu. Yds.
Concrete	390 Cu. Yds.
Steel	22,071 Lbs.

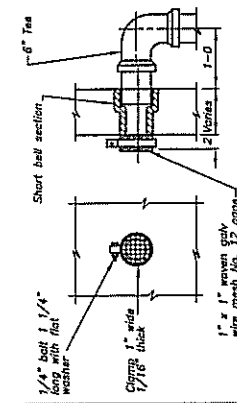
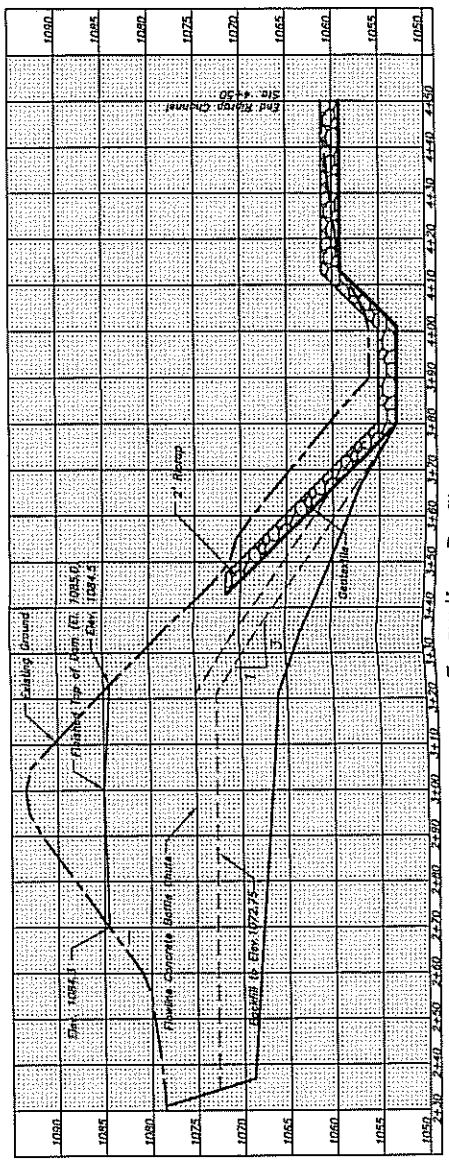
Approved _____
 Checked _____
 Drawn _____
 Designed _____
 Date _____

STRUCTURE EXCAVATION
 Turtle Creek No. 2 Rehabilitation
 Turtle Creek Watershed
 Sarpy County, Nebraska



Structure Excavation Table

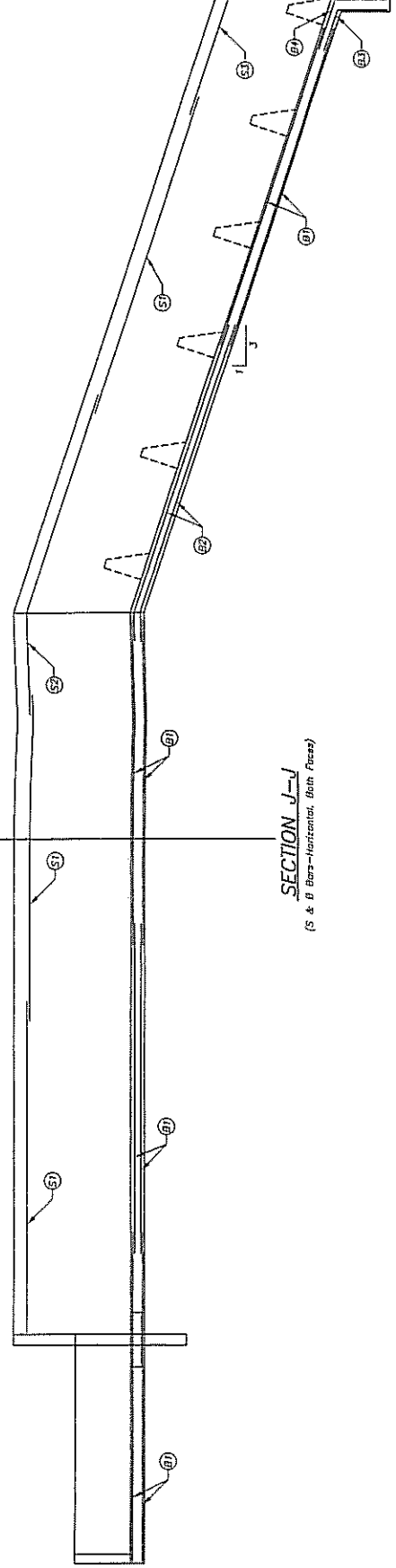
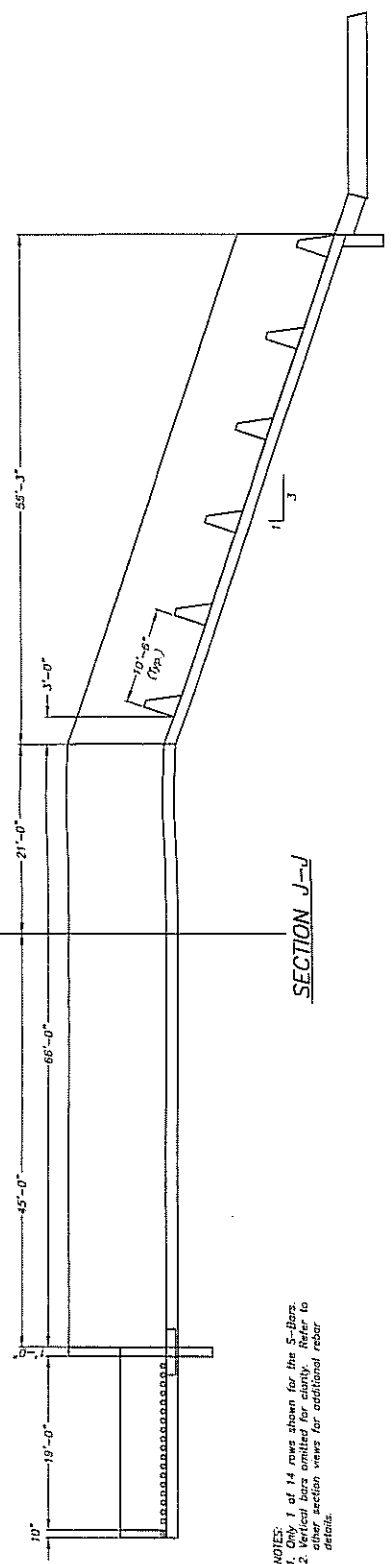
Station	Elevation
2+31.1	1076.6
2+37	1066.6
3+21	1066.0
3+67.2	1057.0
3+80	1053.1
4+00.9	1053.1
4+13.1	1052.2
4+50	1052.2
450	1061.2



NOTES:

1. Outlets for foundation trench drain are straight pipe that contain 90° elbows but do not contain tee's.
2. Equivalent small animal guards may be used on approved by engineer.

Structure Excavation Profile







Agreement Number: _____
State: Nebraska
Watershed: Turtle Creek

PROJECT AGREEMENT

BETWEEN THE

Papio Missouri River Natural Resource District

AND THE

UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

RELATIVE TO: Rehabilitation in the Turtle Creek Watershed, Site #2 in Sarpy County, Nebraska.

THIS AGREEMENT, made this _____ day of December, 2007, by and between the Papio Missouri River Natural Resource District, called the Sponsor and the Contracting Local Organization; and the Natural Resources Conservation Service, United States Department of Agriculture, called the NRCS.

AUTHORITY: Watershed Rehabilitation Program, 16 U.S.C. 1012 (CFDA 10.916).

WITNESSETH THAT:

WHEREAS, under the provisions of the Watershed Protection and Flood Prevention Act, the Sponsors and the NRCS agreed to a plan for the above watershed, which provides for installation of certain works of improvement; and

WHEREAS, Site #2 of the Turtle Creek Watershed needs to be rehabilitated to prevent the loss of life from catastrophic dam failure and flooding as well as to continue benefits of reduced flood damages; and

WHEREAS, the parties named above have a mutual interest in maintaining the benefits associated with the Turtle Creek Watershed, and in developing methods for the rehabilitation of watershed infrastructure.

NOW THEREFORE, in consideration of the premises and of the several promises to be faithfully performed by the parties hereto as set forth, the Sponsors, and the NRCS do hereby agree as follows:

- A. It is agreed that the following-described work (rehabilitation construction including land acquisition, easements, contracting, construction and vegetating) is to be completed at an estimated cost of **\$ 807,692.00:**

Rehabilitation of Site #2 Turtle Creek Watershed, as described in the Turtle Creek Watershed Plan and Environmental Assessment, dated August 2006.

B. The Sponsors and Contracting Local Organization will:

1. Provide a portion (no less than 35%) of the costs of implementing the Rehabilitation Plan as described in Section A. This share is estimated to be **\$ 282,692.00.**
2. Accept financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits, and licenses needed for the works of improvement described in Section A.
3. Designate an individual to serve as the Sponsor's liaison for this agreement.

Name: Marlin Petermann

Papio Missouri River Natural Resource District
Address: 8901 S. 154th Street, Omaha NE 68138-3621

Phone: (402) 444-6222

4. Appoint a Contracting Officer and an authorized representative who shall have authority to act for the Contracting Officer, listing their duties, responsibilities, and authorities. Furnish such information in writing to the State Administrative Officer.
5. Provide certification that real property rights have been obtained for installation of watershed protection measures prior to advertising. Certification will be provided on Form NRCS-ADS-78, "Assurances Relating to Real Property Acquisition".
6. Be responsible for all administrative expenses necessary to arrange for and carry out the works of improvement described in Section A. These administrative matters include but shall not be limited to facilities, clerical expenses, and legal counsel, including the fees of such attorney or attorneys deemed necessary by the NRCS to resolve any legal matters.
7. Issue an invitation for bids, which is to contain the NRCS requirements including Form SCS-AS-43, drawings and specifications or equivalent, and Contracting Local Organization requirements when concurred in by the State Administrative Officer.
8. Receive, protect, and open bids. Determine the lowest qualified bidder, and with written concurrence of the State Administrative Officer, make award.
9. Secure written concurrence of the State Administrative Officer before approving the contractor's proposed workweek and time of day during which work will be performed, and before approving any changes in the approved workweek and time of day during which work will be performed.
10. Ensure that any special requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
11. Secure concurrence of the Government Representative before approving the construction schedule.
12. Secure the written concurrence of the State Administrative Officer before approving performance and payment bonds.

13. Secure written concurrence of the State Administrative Officer before approving subcontractors.
14. Secure the written concurrence of the State Administrative Officer before issuing the notice to proceed.
15. Secure written concurrence of the State Administrative Officer before approving a waiver or an adaptation of any of the safety provisions.
16. Secure written concurrence of the State Administrative Officer before giving consent for the contractor to (a) assign the contract in whole or in part of (b) assign any monies due or to become due under the contract.
17. Secure written concurrence of the State Administrative Officer before waiving the requirements for any material certification.
18. Secure concurrence of the State Administrative Officer before modifying the contract and the NRCS concurrence before issuing suspend and resume work orders; modify the contract and issue suspend and resume work orders when recommended by the NRCS.
19. Pay the contractor as provided in the contract. Request reimbursement from the NRCS for the agency's share of the costs of the initiative, not to exceed **\$525,000 .00**. However, under no condition can the NRCS' share exceed 65% of the total costs of implementing the Rehabilitation Plan, or exceed 100% of construction costs, as described in Section A. Reimbursement shall be through the use of properly completed Form SF-270, Request for Advance or Reimbursement, which shall be submitted to the NRCS, State Administrative Officer, 100 Centennial Mall North, Room 152, Lincoln, Nebraska 68508-3866. The Form SF-270 must be certified by the Government Representative with the following statement signed and dated in the "This space for agency use" area located at the bottom of the form: "I certify that, to the best of my knowledge, this bill has not been previously submitted and that program accomplishments will meet planned activities under this agreement. I have examined and certify that this request is correct for payment." Request for reimbursement shall be no more often than every 30 days for the period this agreement is in force.
20. Request advance assistance funds from the NRCS pursuant to this agreement, as needed, to accomplish work items up to a maximum of a 30-day period. Advances shall be made to satisfy immediate disbursement needs on a monthly basis. Advances shall be requested through the use of properly completed Form SF-270, Request for Advance or Reimbursement, which shall be submitted to the NRCS, State Administrative Officer, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, Nebraska 68508-3866, Form SF-270 must be certified by the Responsible Official with the following statement signed and dated in the "This space for agency use" area located at the bottom of the form: "I certify that, to the best of my knowledge, this bill has not previously submitted and that program accomplishments will meet planned activities under this agreement. I have examined and certify that this request is correct for payment."

21. Comply with the provisions of the Debt Collection Act of 1996, as amended, 31 U.S.C. which requires federal agencies to convert from check payments to Electronic Fund Transfers (EFT). The Sponsor will contact the Miscellaneous Payment section of the USDA – National Finance Center (NFC) to request an EFT enrollment package. The telephone number is (800) 421-0323. The package will include a nine-digit Vendor Identification Number (VIN) and information to be completed by the financial institution of choice. The VIN must be included on all payment requests. Once completed, the enrollment package must be returned to the NFC. If a EFT number has already been set up by the sponsor no further act is needed.
22. Dispose of all claims resulting from the contract; secure prior written concurrence of the State Administrative Officer if the NRCS funds are involved.
23. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract awarded under this agreement. This includes, but is not limited to disputes, claims, protests of award, source evaluation, and litigation that may result from the project. Such actions will be at the expense of the Contracting Local Organization, including any legal expenses. The Contracting Local Organization will advise, consult with, and obtain prior written concurrence of the NRCS on any such matters in which the NRCS could have financial interest.
24. Hold and save the NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by the Contracting Local Organization under this agreement or resulting from the work provided for in this agreement.
25. Secure written concurrence of the State Administrative Officer before terminating the contractor's right to proceed under the contract and declaring the contractor in default, and take such actions when requested to do so by the State Administrative Officer.
26. Take necessary legal action, including bringing suit, to collect from the contractor any monies due in connection with the contract, or upon request of the NRCS, assign and transfer to the NRCS any or all claims, demands, and causes of action of every kind whatsoever which the Contracting Local Organization has against the contractor or his or her sureties.
27. Arrange for and conduct final inspection of completed works of improvement with the NRCS to determine whether all work has been performed in accordance with contractual requirements. Secure written concurrence of the State Administrative Officer before notifying the contractor of the acceptance of the job.
28. Upon completion and acceptance of all work, when provided by the terms of the contract, obtain a written release from the contractor of all claims against the Contracting Local Organization arising by virtue of the contract, other than claims in stated amounts as may be specifically accepted by the contractor.
29. Upon acceptance of the work from the contractor(s), assume responsibility for Operation and Maintenance (O&M), as per the O&M agreement, which upon its completion will be made part of this agreement.

30. Retain all records dealing with the award and administration of the contract for three (3) years from the date of the Contracting Local Organization's submission of the final request for reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the three-year period, the records are to be retained until the litigation or the end of the three-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcriptions.
31. Comply with requirements and certifications of Federal Executive Order 11246, which is hereby made a part of this agreement by reference.
32. Comply with Office of Management and Budget Circular A-133, June 24, 1997. This circular is also known as the Single Audit Act. This law requires state and local governments that receive \$500,000 or more in federal assistance funds to have a single audit made for that year. Conservation districts have been determined to be bodies of local government and must comply with the requirements of OMB Circular No. A-133.

C. The NRCS will:

1. Provide a portion of the costs of implementing the Rehabilitation Plan as described in Section A. This cost to the NRCS is estimated at \$525,000.00. However, under no condition can the NRCS' share exceed 65% of the total costs of implementing the Rehabilitation Plan, or exceed 100% of construction costs, as described in Section A.
2. Reimburse the Contracting Local Organization for the NRCS' share of the costs of the initiative upon the receipt and approval of properly completed, certified and documented Form SF-270, Request for Advance or Reimbursement, withholding the amount of damages sustained by the NRCS as provided for in this agreement.
3. Provide authorized assistance such as estimates of contract costs, length of contract period, results of tests and studies as available, construction inspection, site investigations, design and layout, and drawings and specifications.
4. Consult with the Contracting Local Organization in preparing the invitation for bids and awarding and administering the contract.
5. Provide the services of a Government Representative.
6. Provide the services of Government Inspectors, as required.
7. Designate the following individual to serve as the NRCS' liaison for this agreement:

Name: Stacy Modelski (Engineering Staff)

NRCS- State Office-100 Centennial Mall North, Room 152
Address: Lincoln, Nebraska 68508-3866

Phone: (402) 437-4041

D. It is mutually agreed that:

1. This agreement shall become null and void 90 calendar days after the date the NRCS has executed this agreement, if a contract has not been awarded. Prior to expiration of the agreement, the State Conservationist of the NRCS, may extend the agreement one time for a period not more than an additional 90 calendar days.
2. The State Administrative Officer may make adjustments in the estimated cost to the NRCS set forth in Section C.1 for constructing the works of improvement. Such adjustments may increase or decrease the amount of estimated funds that are related to differences between such estimated cost and the amount of the awarded contract or to changes, differing site conditions, quantity variations, or other actions taken under the provisions of the contract. No adjustment is to change the cost sharing assistance to be provided by the NRCS as set forth in sub-section E.1. nor reduce funds below the amount required to carry out the NRCS' share of the contract.
3. The contract for constructing the work described in Section A. will not be awarded to the Sponsors, the Contracting Local Organization, or to any firm in which any Sponsor or Contracting Local Organization official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms.
4. Additional funds including interest properly allocable as construction costs as determined by the NRCS, required as a result of a decision of the Contracting Officer or a court judgment in favor of the contractor, will be provided in the same ratio as construction funds are contributed under the terms of this agreement. The NRCS will not be obligated to contribute funds under any agreement or commitment made by the Contracting Local Organization without prior concurrence of the NRCS.
5. The furnishing of financial and other assistance by the NRCS is contingent on the availability of funds appropriated by the Congress from which payment may be made and shall not obligate the NRCS upon failure of the Congress to appropriate funds.
6. The terms and conditions of this agreement are subject to modification by amendment duly executed by all parties, provided such modification is executed during the period this agreement is valid and remains in force.
7. In the event of default, any additional funds properly allocable as construction costs required to ensure completion of the job are to be provided in the same ratio as construction funds are contributed by the parties under the terms of this agreement. Any excess costs including interest resulting from a judgment collected from the defaulting contractor, or his or her surety, will be prorated between the Contracting Local Organization and the NRCS in the same ratio as construction funds are contributed under the terms of the agreement.
8. The NRCS may terminate this agreement in whole or in part if it is determined by the NRCS that the Sponsors or the Contracting Local Organization have failed to comply with any of the conditions of this agreement. The NRCS shall promptly notify the Sponsors and Contracting Local Organization in writing of the determination and reasons for the termination, together with the effective date. Payments made by or recoveries made by the NRCS under this termination shall be in accordance with the legal rights and liabilities of the NRCS, the Contracting Local Organization, and the Sponsors.
9. This agreement may be terminated at any time by mutual agreement of all parties providing 30 days advance written notice to the other parties.

10. This agreement may be temporarily suspended by the NRCS if the NRCS determines that corrective action by the Contracting Local Organization or the Sponsors is needed to meet the provision of this agreement. Further, the NRCS may suspend this agreement when it is evident that a termination is pending.
11. The NRCS, at its sole discretion, may refuse to cost share should the Contracting Local Organization, in administering the contract, elect to proceed without obtaining concurrence as set out in Section D. of this agreement.
12. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.
13. The furnishing of the administrative and technical services by the NRCS as set out in Section E. is contingent upon the continuing availability of appropriations by the Congress from which payment may be made and shall not obligate the NRCS if the Congress fails to so appropriate.
14. The program or activities conducted under this agreement shall be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Americans with Disabilities Act of 1990. They shall be in accordance with regulations of the Secretary of Agriculture (7 CFR 15, Subparts A & B), which provide that no person in the United States shall, on the grounds of race, color, national origin, gender, religion, age, disability, political beliefs, marital or family status, or sexual orientation, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving federal financial assistance from the Department of Agriculture or any agency thereof.

This agreement is approved and hereby duly executed:

Papio Missouri River Natural Resource District

By: _____

Title: _____

Date: _____

This action authorized at an official meeting of:

Papio Missouri River Natural Resource District

on the ____ day of _____ 20____

at _____

State of Nebraska.

Natural Resource Conservation Service

(Signature)

Title: State Conservationist

Date: _____