

# MEMORANDUM

**TO:** Programs, Projects and Operations Subcommittee

**FROM:** Dick Sklenar, Projects Manager

**SUBJECT:** Trails Development Assistance Fund Project Agreement

**DATE:** January 30, 2007

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The Nebraska Game and Parks Commission recently approved a grant in the amount of \$74,000 for the District's proposed development of the Elkhorn River public access on West Dodge Road. The District was one of just a few of the recipients to receive a grant from the Trails Development Assistance Fund (TDA).

Attached is the project agreement with the Game and Parks Commission regarding the general conditions and terms with which the District must comply in order to receive the grant?

**It is recommended that the Subcommittee recommend to the Board of Directors that the Trails Development Assistance Fund Project Agreement for the Elkhorn River public access on West Dodge Road to be approved and that the General Manager be authorized to execute said Agreement.**



# Nebraska Game and Parks Commission

2200 N. 33rd St. / P.O. Box 30370 / Lincoln, NE 68503-0370

Phone: 402-471-0641 / Fax: 402-471-5528 / [www.outdoornebraska.org](http://www.outdoornebraska.org)

January 26, 2007

Dick Sklennar  
Papio-Missouri NRD  
8901 S. 154th Street  
Omaha, NE 68138-3621

RE: Elkhorn River Public Canoe Access Graske Crossing- TDA 2007 (003)

Dear Dick,

I am pleased to inform you that on January 25, 2007, the Nebraska Game and Parks Commission approved the grant application from the Papio-Missouri NRD for funding through the Trails Development Assistance Fund. According to the provisions of this program, the Papio-Missouri NRD will receive up to \$74,000.00, towards the Elkhorn River Public Canoe Access at Graske Crossing.

It is our understanding, that the Papio-Missouri NRD has obtained the required approvals from the various governmental agencies, including the State Historical Society. Enclosed please find two copies of the Trails Development Assistance (TDA) Project Agreement. Each Project Agreement will need to be signed by the NRD chairman, and then mailed back to me for obtaining Nebraska Game and Parks Commission (NGPC) approval. Please mail both copies directly to: Nebraska Game and Parks Commission Attn: Neal Bedlan, 2200 North 33<sup>rd</sup> Street, PO Box 30370, Lincoln, NE 68503-0370.

When the Project Agreements are approved by the Director of NGPC, we will forward one copy of the Agreement to you for your records. Upon receipt of your **approved and signed** copy of the Project Agreement, you can then proceed with this project. After approval is made, I will go ahead and process your reimbursement for the trail.

As you proceed with this project, please keep NGPC informed on your progress. Once you are finished with the project, please contact this office so we can schedule a final inspection. We will also need a copy of all cancelled checks and any bills and invoices you obtain in regards to this project once you are finished.

On behalf of the Nebraska Game and Parks Commission, I want to congratulate you for receiving grant funds to assist improve the canoe access on the Elkhorn river. You are encouraged to call me at (402) 471-5424 or email me at [nbedlan@ngpc.ne.gov](mailto:nbedlan@ngpc.ne.gov) if you have any questions about the process of administering the TDA grant or any other information regarding the Nebraska Game and Parks Commission. I look forward to working with you on this project.

Sincerely,

Neal J. Bedlan  
Federal Aid Administrator

JAN 29 2007

Enc. 2 copies of TDA Fund Project Agreement

**STATE OF NEBRASKA  
GAME AND PARKS COMMISSION  
TRAILS DEVELOPMENT ASSISTANCE FUND  
PROJECT AGREEMENT  
2/03**

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**Project Sponsor**  
Papio-Missouri NRD

**Project Number**  
TDA 2007 (003)

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**Project Title**  
Elkhorn River Public Access – Graske Crossing

**Project Period**  
Completion Date - Fall 2009

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**Project Scope (Description of the Project)**

Construct a canoe access site and support facilities on the Elkhorn River at Graske Crossing.

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**Project Cost:**

1. Acquisition	\$ _____
2. Development	\$ 148,000.00
3. Maintenance	\$ _____
4. Total Cost	\$ 148,000.00
5. Fund Amount	\$ 74,000.00
6. State Percent	50%

The following are hereby incorporated into this agreement:

1. General Provisions
2. Project Application and Supplemental Documents

By virtue of the authority contained in Sections 37-1001 to 37-1008 inclusive, Revised Statutes of Nebraska, the State of Nebraska, represented by the Nebraska Game and Parks Commission, hereinafter referred to as the State or Commission, does on this day hereby enter into an agreement with the Papio - Missouri NRD, hereinafter referred to as the Project Sponsor, for the purposes of executing and administering the provisions of the Trail Development Assistance Fund Act of 1991, Article 15, hereinafter referred to as the Act, as applicable to agreements of this nature.

In consideration of the covenants of the Project Sponsor as hereinafter set forth, including project application, cost estimates, and other supporting documents as made part of this agreement, the State of Nebraska, through the Nebraska Game and Parks Commission, hereby agrees to disburse a lump sum grant to be used as matching funds of not more than fifty percent (50%) of the total cost as aforementioned herein for project expenditures.

The Project Sponsor agrees to execute the project as set forth herein in a timely and businesslike manner for the purposes intended and in accord with the following terms, conditions and covenants of this Project Agreement.

### SPECIAL PROVISIONS

Leased Property: If your political subdivision does not own the property a lease or easement must be executed to gain control of the corridor for the purpose of using state funds to develop it. All leases and easements must be for a minimum of 25 years and it is recommended to include an option to renew it for an equal period of time. Submit one copy of the lease or easement as assurance your board and other entity that owns the property has reviewed and accepted the agreement.

The following special project terms and conditions were added to this agreement before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this Project Agreement as of the date entered below and the covenants herein shall extend to and be binding upon the successors of the parties to this agreement both for the term and duration of this grant and the Act.

### THE STATE OF NEBRASKA

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Director  
Nebraska Game and Parks Commission

### THE PROJECT SPONSOR

\_\_\_\_\_  
Sponsor Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature Title

# TRAILS DEVELOPMENT ASSISTANCE FUND

## GENERAL PROVISIONS

### PART I- DEFINITIONS

- A. The term **“Act”** shall mean the Trails Development Assistance Fund Act of 1991, as Revised August 1999, Chapters 37-1001 through 37-1008.
- B. The term **“Project”** shall mean the scope of work that is identified in the application and its supporting documents, the Project Scope of the Project Agreement, plans and specifications and other required and related documents.
- C. The term **“Project Sponsor,” “Applicant,”** or **“Grantee”** shall mean any Natural Resources District, Political Subdivision or other public agency or private non-profit organization whose primary purpose is the purchase, development or maintenance of a recreational trail. Any such entity shall constitute a qualified applicant to receive assistance from the Trails Development Assistance Fund.
- D. The term **“State”** shall mean the State of Nebraska.
- E. The term **“Commission”** shall mean the Nebraska Game and Parks Commission with headquarters located at 2200 North 33<sup>rd</sup> Street, PO Box 30370, Lincoln, NE 68503-0370.
- F. The term **“Director”** shall mean the Game and Parks Commission appointed Secretary, who will act as its Director and Chief Conservation Officer and be in charge of its activities.
- G. The term **“Fund”** or **“Fund Assistance”** shall mean the financial resource created by the Trails Development Assistance Fund Act and shall consist of any direct appropriation by the Legislature and any funds received as gifts, bequests or other contributions to such fund from public or private entities.
- H. The term **“Rules,” “Regulations,”** or **“Guidelines”** shall mean the rules, regulations or guidelines contained in either/or the Project Agreement; Article 15, Revised August 1999, Chapters 37-1001 through 37-1008; the application instructions or other program instructions given during the course of this project.
- I. The term **“Project Agreement”** or **“Agreement”** shall mean this document that binds the sponsor to the terms, conditions or applicable state laws included herein, or made reference to as a condition of receiving assistance from the Fund.

## PART II- TERMS AND CONDITIONS

The sponsor to this Agreement specifically recognizes and agrees that this Fund-assisted project will help create a system of recreational trails by which the citizens of Nebraska may enjoy the recreation opportunities offered by the State's greenways or linear parks. The sponsor hereto recognizes and acknowledges that the purchase and development of such trail corridors with Fund-assistance creates an obligation on the sponsor's part to operate and maintain the trail consistent with the provisions of this Agreement and in accord with both the Act and the following requirements.

It is the acknowledged intent of the sponsor to use the funds granted hereunder for the purpose of this program and that assistance granted from this fund will result in a net increase in trail opportunities for public use and enjoyment.

1. The Project Sponsor agrees, as recipient of this Assistance, that it will comply with the terms of this Agreement and with the following specific requirements, where applicable. The Project Sponsor understands that trail projects are governed by any applicable provisions of State Statutes in effect at the time of execution of this Agreement and any statute or amendment to any Statutes subsequent to the execution of this Agreement.
2. This Project Agreement is entered into by the Sponsor and the Commission, State of Nebraska, based on the assurance by the Sponsor that the requirements of the application and all supporting documents have been met and are true and correct to the best of the sponsor's ability. Any breach of this performance on the sponsor's part discovered either before, during or after completion of the project may be cause by the Commission to cancel the project or require refund of grant funds pursuant to State Law and the conditions and terms of this Project Agreement.
3. The Project Sponsor agrees that the appropriate remedy in the event of a breach by the Project Sponsor of this Agreement shall be the specific performance of the Agreement.
4. The Project Sponsor agrees that should this project be unilaterally canceled by the Sponsor, the Project Sponsor must promptly refund any unused grant funds allocated by the Commission. The Project Sponsor understands that already expended funds will be recovered and remitted according to State Law and the terms of this Agreement.
5. The Project Sponsor agrees that it will expend the lump sum funds granted by the Commission only on the elements described in the Project Scope (Description of the Project) of this Agreement. The Project Sponsor agrees to notify the Commission of its intent to change the scope by increasing or decreasing scope elements, request a time-extension or a decrease or increase in the grant amount. In the event of a grant fund decrease, the Project Sponsor agrees to refund, to the Commission, in a timely manner, any surplus funds. Amendments of scope or fund changes will become effective upon approval by the Commission.

6. The Project Period shall begin with the date entered on the first page of the Project Agreement or the effective date of the Waiver of Retroactivity and shall terminate at the end of the stated or amended project period unless the project is completed or terminated sooner, in which event, the Project Period shall end on the date of completion or termination.
7. The Project Sponsor agrees to incur project costs for the elements described in the Project Scope within the time period of this Agreement, and that only such expenditures within the time period are eligible for assistance from the Fund.
8. The Project Sponsor agrees to commence and complete projects in a timely, expeditious and workmanlike manner. Failure to initiate the project in a reasonable time period or to complete the project in a timely or workmanlike manner may be cause for termination of the grant, return of grant funds at the time of termination, cancellation of the grant by the Commission, or the Commission may require remedial action on the part of the grant sponsor. Such action by the Commission will be conducted at a public meeting and the sponsor may appeal the decision as provided by the Administrative Procedures Act (Chapter 84, Article 9).
9. The Project Sponsor agrees that the completed project is a dedicated public trail and agrees to operate and maintain, at Sponsor's sole expense, or cause to be operated or maintained, the property or facilities acquired or developed pursuant to this Agreement in the manner and according to the standards set forth including, but not necessarily limited to, the following:
  - a. Upon project completion a sign must be erected to credit the use of "State Trail Development Assistance Funds administered by the Nebraska Game and Parks Commission".
  - b. The property shall be maintained so as to appear attractive and inviting to the public.
  - c. Sanitation and sanitary facilities shall be maintained in accordance with applicable state and local public health standards.
  - d. Reasonable precautions shall be taken to ensure public safety which are commensurate with the use and objectives of the property and facilities developed under this Project Agreement.
  - e. Trails, roads, buildings and other structures and improvements shall be kept in reasonable repair so as to limit liability, prevent undue deterioration and to encourage public use.
  - f. The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.
  - g. All new utility lines will be buried, as well as any future lines after project completion.
10. The Project Sponsor shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that Title, to the end that, in accordance with Title VI of that Act, no person in the United States shall, on the grounds of race, religion, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any property or facility acquired or developed pursuant to the

Project Agreement. The Project Sponsor shall immediately take any measures necessary to effectuate this provision. This assurance shall be binding on the Project Sponsor to which Fund-assistance or property acquired or developed with Fund-assistance has been transferred for public trail purposes.

11. The Project Sponsor shall comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101), as amended (Title III of P.L. 94-135).
12. The Project Sponsor shall comply, where applicable, with the handicapped accessible regulations and guidelines promulgated pursuant to Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), the Americans with Disabilities Act, 36 CFR, Part 1191 and with all State Statutes regarding handicapped accessibility, including, but not limited to, Nebraska Revised Statutes 1943, reissue of 1976, Sections 72-11010 through 72-1124.
13. The Project Sponsor agrees to comply with all state statutes regarding public acquisition of real property and relocation, including, but not necessarily limited to, Revised Statutes Supplement 1973, Section 25-2501 through 25-2506 and Revised Statutes of Nebraska 1943, Reissue of 1976 Sections 76-1201 through 76-1213.
14. The Project Sponsor agrees to submit to the Commission for review and approval one appraisal report for each tract of land to be acquired under this project. Such appraisal report will be prepared by a Nebraska General Certified Real Estate Appraiser and such appraisal will be conducted in such a manner pursuant to State Statutes so as to protect the private landowner.
15. The Project Sponsor agrees that local matching funds will be from sources other than from the Trails Development Assistance Fund, and further that such local matching funds will not include grants from other state agencies or from in-kind labor services.
16. The Project Sponsor, as owner or operator of a trail development pursuant to the Trails Development Assistance Act, agrees that it will, at appropriate entry points, place signs warning that users departing from the boundaries of the trail, as marked by fences or otherwise may result in prosecution for trespassing. Such signs are eligible for assistance from the Trails Development Fund.
17. The Project Sponsor agrees that personnel of the Commission or State Auditor's Office may audit all project costs and records incurred for compliance with the project agreement, including costs and records that are part of the matching contribution. Grant recipients shall keep adequate and complete records relating to the project administration and all records shall be retained in accordance with State laws. Such records for retention shall include, but are not necessarily limited to, copies of cancelled checks, invoices, contracts, agreements and any other records of others having responsibility for, and administration of, any part of the project of this Agreement.
18. The Project Sponsor agrees that whenever abandoned railroad right-of-way trails are developed pursuant to the Trails Development Assistance Act, boundary fences will be constructed and maintained as required for railroads in Sections 74-601 through 74-609. Unless such



construction and maintenance is waived in writing by affected adjoining property owners, such fences shall be deemed to be manifestly designed to exclude intruders for the purposes of subdivisions (1) (c) of Section 28-521.

19. The Project Sponsor agrees that a cultural survey will be conducted pursuant to the direction and procedures established by the Nebraska State Historical Society prior to commencing acquisition and construction of the trail.
20. The Project Sponsor agrees to award construction contracts in excess of \$10,000 through a process of competitive bidding involving formal advertising with adequate purchase description, sealed bids and public bid openings. The Project Sponsor will retain all documents relating to the bid process for inspection by the Commission. In the event that State law or local rules require competitive bidding for projects estimated to cost less than \$10,000 such laws or rules apply. Written Change Orders shall be issued for all necessary changes in the facility being constructed under contract. Such Change Orders shall be submitted to the Commission for approval and shall be made a part of the project file and kept available for audit.
21. The Project Sponsor agrees to secure such plans and specifications for construction of the project, where required by state law or as may be directed by the Commission. Such plans, where necessary, will be prepared by a Nebraska licensed architect, engineer or landscape architect. Such plans will meet at least all current building codes to ensure the provisions of public health, safety, access, facility performance and other requirements.
22. The Project Sponsor agrees to provide and maintain complete and adequate architectural, engineering or landscape architectural supervision and inspection at the construction site to ensure that the completed work conforms substantially with approved plans, specifications and change orders and that the Sponsor will furnish progress reports or other related information as may be required by the Commission.
23. The Project Sponsor agrees to comply with all applicable state laws governing acquisition and/or development of flood plains, including, but not necessarily limited to, Nebraska Revised Statutes 1977, Volume 1, Sections 2-1506.01 to 1506-27 and to comply with the applicable provisions of Executive Order 11988 "Flood Plain Management."
24. The Project Sponsor agrees that it will make every effort to preserve the natural and beneficial values served by wetlands. The Sponsor will avoid development in wetlands when there are expected adverse impacts on the wetland's natural and beneficial values and where practicable alternatives exist. The Sponsor first will consult with personnel of the Commission to ensure that the project complies with the provisions of Executive Order No. 11990- "Protection of Wetlands." The Sponsor agrees to submit any reports, plans or other documents as required by the Executive Order or by Commission personnel for review and approval prior to commencing construction.
25. The Project Sponsor agrees to comply with state law or local rules governing conflict of interest on the part of sponsor officials and/or employees that approve a contract or subcontract in

connection with this project. The Project Sponsor will be responsible for enforcing any applicable conflict of interest provisions. The Project Sponsor agrees that the funds granted for this project from the Fund are public moneys and shall be deposited in a bank with FDIC insurance coverage.

26. In the event that qualified non-profit organizations are project sponsors and the project involves acquisition of land from private landowners, the Sponsor agrees to place in the contract for purchase a provision that guarantees the original landowner the right of first refusal in the event the land must be sold for whatever reason.
27. Whenever the Commission and a grantee mutually agree that land acquired or developed with Trails Development Assistance Funds are no longer of value for the program purposes, or that the grantee can show good cause why the land should no longer be used in accord with the approved project purpose; the land may be disposed of with the Commission's approval and the proceeds there from shall be returned to the State Trails Development Assistance Fund account or deposited in an account as directed by State Law. Where land to be disposed of was acquired by non-profit organizations, it will first be offered to the original seller for repurchase.

### **PART III- NON-COMPLIANCE AND TERMINATION**

#### **Project Termination:**

The essence of this Agreement is a net gain in the quantity and quality of public trail facilities and resources, which shall become available to the citizens of the Sponsor and the State through the execution of this Agreement. Failure of the Project Sponsor to comply with the terms of this Agreement, except as provided herein shall be cause for termination and suspension of all obligations of the State and of any future assistance to the Project Sponsor.

1. The Commission may temporarily suspend assistance under the project pending corrective action by the Project Sponsor or pending a decision to terminate the grant by the Commission.
2. The Project Sponsor may unilaterally terminate the project at any time prior to the start of construction or acquisition of properties.
3. The Commission may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Commission will promptly notify the Project Sponsor in writing of the determination and the reasons of the termination, together with the effective date.
4. The Commission may terminate grants in whole, or in part, at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date, and in the case of partial

termination, the portion to be terminated. The Project Sponsor shall not incur new obligation for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. The Commission may allow full credit to the Project Sponsor for the share of the noncancellable obligations properly incurred by the grantee prior to termination.

**Non-Compliance:**

The Commission may revoke funding commitments, seek repayment of funds granted, or both actions if:

1. The terms of the Project Agreement have not been, or are not anticipated to be fulfilled.
2. The Commission finds that the application contained inaccuracies, omissions, errors or misrepresentations.
3. The time schedule for project completion was misrepresented or has not been maintained.
4. Any property, real or personal, acquired or developed with Trails Development Assistance Funds passes or diverts from control of the grantee, prior to project expiration or prior to expiration of the time limit of the Act or is used for purposes other than the approved project purpose, unlawful or otherwise.
5. Whenever the Director determines at any time that a grantee is in violation of the provisions of the aforementioned rules, the grantee shall be ineligible for further assistance for subsequent projects until the matter has been resolved to the satisfaction of the Director and the Nebraska Game and Parks Commission.
6. Remitted funds for either personal or acquired property will be remitted in the amount of the original purchase price of the property or at a value pursuant to current State law.
7. The grantee shall have a period of two years after notification by the Commission in which to remit unlawfully used funds.

**Appeal:**

The Project Sponsor may appeal the decision of the preceding action by the Commission as provided by the Administrative Procedure Act (Chapter 84, Article 9).