

## Memorandum

**To:** Programs, Projects and Operations Subcommittee  
**Re:** Contract with Dykon Explosive Demolition Corp. for Ice Jam Explosive Services  
**Date:** February 8, 2008  
**From:** Paul Woodward, Water Resources Engineer

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Last month, the District Board authorized the General Manager to execute a contract with Dykon Explosive Demolition Corporation (Dykon) to perform explosives services in response to Ice Jams on the Platte River. Over the past month, District staff and legal counsel has worked diligently with Jim Redyke, President of Dykon, to negotiate a final contract. As you may recall, there were several unresolved details including: 1) insurance coverages for the contractor and subcontractors and 2) logistics getting everyone (contractor and subcontractors) and everything (equipment and materials) in place for a potential emergency situation.

During negotiations with Dykon, one particular issue has become a sticking point that staff feels should be reconsidered by the Board. This issue deals with indemnification and liability of the contractor beyond the limits of his insurance coverage. In this particular case, the contractor has excellent general liability insurance with a current total coverage of \$10 million. Therefore, the contractor is requesting that the District not require full indemnification under the contract, but that it limit the contractor's liability, even for negligent acts, to the limits of his insurance. District legal counsel has prepared the enclosed memo dated February 8, 2008 to address this matter.

In addition, other minor modifications have been made to the contract and are highlighted below:

- The contractor's annual retainer has been reduced from \$5,000 to \$2,000 and will cover the cost of his general liability insurance during years when no blasting is necessary.
- The District will be responsible for covering the cost of a pre-blast survey and monitoring as required under the contractor's insurance.
- The District will be responsible for reimbursing the contractor for additional premiums necessary to secure USH&L (Longshoreman's) Worker Compensation coverage as recommended by insurance consultant, Bill Johnson with Harry Koch Insurance Co.

In summary, District staff and management have reviewed the potential liability assumed by the District with limiting the contractor to the liability covered under his insurance policy and feel that it would be acceptable provided the minimum insurance coverage is raised to \$7 million instead of \$2 million. District staff, legal counsel, and Mr. Johnson have also spent a lot of time reviewing the issues with general liability and workers comp insurance and feel that the District should cover the necessary costs to include USH&L coverage as well as the pre-blast survey and monitoring. The result of these changes may mean more yearly costs under the Ice Jam Agreement, but should reduce the overall insurance premiums paid during an event.

**It is management's recommendation that the subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the revised proposed contract with Dykon Explosive Demolition Corporation, subject to changes deemed necessary by the General Manager and approval as to form by District legal counsel.**

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To: Marlin Petermann, Assistant General Manager  
Papio-Missouri River Natural Resources District

Date: February 8, 2008

Subject: Ice jam explosive services contract

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As you requested, attached is the latest draft of the proposed contract, incorporating numerous negotiated changes from the NRD's original form, particularly the following recent amendments:

- Dykon and its attorneys have been strident in their request that Paragraph XVII, subparagraph A, be amended as follows:

**“XVII. INDEMNIFICATIONS AND WAIVERS.**

- A. To the extent of liability insurance provided by the CONTRACTOR pursuant to Paragraph XVI hereof and otherwise to the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless the DISTRICT and its officers, directors, partners, employees, agents, consultants and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the work called for by this Contract, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of such work or anyone for whose acts any of them may be liable. In any and all claims against the DISTRICT or any of its respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any

Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the preceding indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts except CONTRACTOR'S indemnity obligations do not extend beyond liability insurance limits as required.

These above-suggested changes to paragraph XVII are of a sort that the NRD Board has not accepted in any past NRD contract to my recollection, and essentially call for the NRD to accept the risk of liability for any part of the damages caused by the Contractor's negligence that exceeds the Contractor's insurance. Fortunately, the contractor is willing to compensate by increasing its public liability insurance loss limits.

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**  
**CONTRACT FOR EXPLOSIVE SERVICES**

\_\_\_\_\_

**THIS CONTRACT** (hereinafter referred to as “this Contract”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2008, by and between **DYKON EXPLOSIVE DEMOLITION CORPORATION** (hereinafter referred to as “the CONTRACTOR”) and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “the DISTRICT”).

**WHEREAS**, an agreement entitled “Interlocal Cooperation Act Agreement - Platte River Ice-jam Removal” (hereinafter referred to as “the Interlocal Agreement”) has been entered into by and among the DISTRICT, the Lower Platte North Natural Resources District, the Lower Platte South Natural Resources District, the County of Cass, the County of Douglas, the County of Sarpy, and the County of Saunders, all in the State of Nebraska; and,

**WHEREAS**, the Interlocal Agreement was made pursuant to authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.) and the Nebraska Disaster and Civil Defense Act (§§81-829.36 to 81-829.68, R.R.S., 1943), such agreement providing for the institution and implementation of an interjurisdictional plan for dealing with ice-jams in and along the lower Platte River, South of the limits of the City of Fremont, Nebraska; and,

**WHEREAS**, under the Interlocal Agreement, the DISTRICT may employ persons, firms or corporations to remove ice-jams and thereby release impounded flood waters in the Contract Reach of the Platte River, using explosives.

**NOW, THEREFORE**, the DISTRICT and the CONTRACTOR, in consideration of their mutual promises hereinafter set forth, do hereby agree as follows:

I. **DEFINITIONS.** As used in this Contract:

- A. "Contract Reach" shall mean that portion of the lower Platte River lying South of the limits of the City of Fremont, Nebraska, and North of the confluence of the Platte and Missouri Rivers; the portion of the Elkhorn River located in Sarpy County, Nebraska; and, the portion of the Salt Creek located within one-half mile of its confluence with the Platte River.
- B. "Contract Season" shall mean the entire months of January, February, March, and April during the Term of this Contract.
- C. "Explosive Materials" shall mean explosives, blasting agents, and detonators, as defined by Neb.Rev.Stat. §28-1213.
- D. "Explosives Handlers" shall mean persons employed by one or both of the parties as discussed hereinafter, and supervised by the CONTRACTOR, who are assigned to a helicopter landing/staging area for the purpose of assembling explosive charges from Explosive Materials delivered to the landing/staging area by the CONTRACTOR.
- E. "General Manager" shall mean the duly appointed General Manager of the DISTRICT or, in his or her absence, the duly appointed Assistant General Manager of the DISTRICT. The General Manager shall have complete authority to designate Project Ice-jams, transmit the DISTRICT's notices and instructions pursuant to this Contract, receive information, interpret and define the DISTRICT's policies, and make decisions with respect thereto.
- F. "Mobilization Notice" shall mean a notice by the DISTRICT to the CONTRACTOR, verbally or in writing, advising the CONTRACTOR that the DISTRICT has designated one or more ice-jams in the Contract Reach as Project Ice-jams for break-up by the CONTRACTOR using explosives pursuant to this Contract. Such notice may be given to the CONTRACTOR verbally in person, verbally by telephone, by fax message transmitted to the fax phone number, if any is set out below or later provided by the

CONTRACTOR, or by a writing delivered to the CONTRACTOR or to the CONTRACTOR's address set out below.

G. "Project Ice-jam" shall mean each geographically separate ice-jam in the Contract Reach which the DISTRICT or its General Manager shall designate for break-up by the CONTRACTOR's use of explosives pursuant to this Contract.

H. "Stand-by Notice" shall mean a notice by the DISTRICT to the CONTRACTOR advising the CONTRACTOR that the DISTRICT expects to issue a Mobilization Notice with respect to one or more ice-jams in the Contract Reach. Unless waived in writing by the CONTRACTOR, the DISTRICT shall give a Stand-by Notice to the CONTRACTOR at least 72 hours before giving the CONTRACTOR a Mobilization Notice. Such notice may be given to the CONTRACTOR verbally in person, verbally by telephone, by fax message transmitted to the fax phone number, if any is set out below or later provided by the CONTRACTOR, or by a writing delivered to the CONTRACTOR or to the CONTRACTOR's address set out below.

I. "Term of this Contract" shall mean the five year period commencing as of January 1, 2008.

II. CONTRACTOR RETAINED. The DISTRICT hereby retains the CONTRACTOR, and the CONTRACTOR hereby agrees to be retained by the DISTRICT, to use explosives to break up those ice-jams which the General Manager may designate from time to time as Project Ice-jams, such work to be carried out by the CONTRACTOR at such times during the term of this Contract, and at such locations in the Contract Reach, as the General Manager shall specify, all in accordance with the provisions of this Contract.

III. TIME OF PERFORMANCE. Detonation of charges of explosive materials on a Project Ice-jam by the CONTRACTOR pursuant to this Contract shall commence

within six (6) hours after the DISTRICT has given a Mobilization Notice to the CONTRACTOR; and, the CONTRACTOR's use of explosives to break-up such Project Ice-jam will continue until such ice-jam has been removed to the satisfaction of the General Manager of the DISTRICT, or Assistant General Manager in his/her absence, or until he or she directs the CONTRACTOR to terminate such effort.

IV. CONTRACTOR'S SERVICES. The CONTRACTOR's services shall include the following:

- A. The CONTRACTOR shall acquire and transport to the helicopter landing/staging area all Explosive Materials necessary for the assembly of explosive charges used by the CONTRACTOR pursuant to this Contract.
- B. The CONTRACTOR shall be required to employ and to provide all Explosives Handlers who may be necessary to enable the CONTRACTOR to carry out this Contract; provided, however, prior to allowing any such Explosives Handlers to commence any activities under this Contract, the CONTRACTOR shall submit to the DISTRICT written proof that such Explosives Handlers are covered by workers' compensation insurance, as required by this Contract.
- C. The CONTRACTOR shall supervise and direct the Explosives Handlers in the assembly of charges containing Explosive Materials, in the loading of such charges in the CONTRACTOR's helicopter, and in the disassembly of unused charges.
- D. The CONTRACTOR shall provide at least one certified and airworthy helicopter, together with such licensed pilot(s) and fuel as may be required to operate such aircraft, to enable the CONTRACTOR to effectively place and detonate charges of Explosive Materials.



- E. The CONTRACTOR shall provide all such other personnel, vehicles, equipment, and materials as may be necessary to enable the CONTRACTOR to carry out this Contract with the exception of materials provided by the DISTRICT under the provisions of this Contract.
- V. HELICOPTER LANDING/STAGING AREAS. The DISTRICT, at the DISTRICT's cost and expense, will provide at least one helicopter landing/staging area within a 5 mile radius of each Project Ice-jam for the CONTRACTOR's use, together with rights of ingress and egress to and from such landing/staging area. The DISTRICT shall also provide a tent and sand bags for the CONTRACTOR to use in assembling the explosive materials. The CONTRACTOR, at the CONTRACTOR's own cost and expense, may procure such additional landing/staging areas, with accompanying rights of ingress and egress, as the CONTRACTOR determines are necessary or convenient for the CONTRACTOR's operations. The CONTRACTOR will allocate a safe location at each landing/staging area for the DISTRICT's portable office facilities.
- VI. AVAILABILITY. At all times during the Contract Seasons during the Term of this Contract, the CONTRACTOR shall have all vehicles, equipment and materials necessary to the CONTRACTOR's performance of this Contract readily available.
- VII. METHODS AND TECHNIQUES. The CONTRACTOR's methods and techniques for acquiring, assembling, loading, transporting, placing and detonating explosives charges shall be in compliance with all applicable County, State and Federal laws, codes and regulations; and the CONTRACTOR's services under this Contract will be performed in a good and workmanlike manner.
- VIII. NO WARRANTIES OF SUCCESS. The CONTRACTOR agrees to use his, her, or its best efforts to break-up Project Ice-jams using explosives; however, nothing herein contained shall be deemed to constitute a covenant or warranty by the

CONTRACTOR that all Project Ice-jams will be successfully broken up by the CONTRACTOR.

- IX. EXPLOSIVE CHARGES. The CONTRACTOR shall be responsible for determining the size and power of the explosive charges to be used to break up Project Ice-jams, based on information provided by the General Manager and on the CONTRACTOR's experience and expertise. Charge size and power shall be reduced or increased as necessary to optimize the effectiveness thereof in removing Project Ice-jams.
- X. PERMITS. The CONTRACTOR, at the CONTRACTOR's own expense, shall obtain, and continuously during the term of this Contract shall possess and exhibit to the DISTRICT on request, all Federal and Nebraska State permits and licenses as may be required by law to enable the CONTRACTOR to lawfully carry out all of the CONTRACTOR's obligations under this Contract; including but not limited to permits required by 18 U.S.C. Chapter 40, permits from the Nebraska State Patrol required by Neb.Rev.Stat. §28-1229, and permits and notifications required by the U. S. Federal Aviation Administration. Within 24 hours after a request of the DISTRICT, made from time to time during the term of this Contract, the CONTRACTOR shall provide the DISTRICT with true and correct copies of all such Federal and State permits and licenses obtained by the CONTRACTOR which are then in effect. The DISTRICT, at the DISTRICT's own expense, will secure all required permits or licenses required by the U. S. Fish and Wildlife Service, the Nebraska Game and Parks Commission.
- XI. PUBLIC NOTIFICATIONS. The DISTRICT is responsible for giving all notifications as may be required by law to enable it to lawfully carry out its obligations under this Contract, including but not limited to notifications to fire protection districts under Neb.Rev.Stat. §28-1233. If required by the CONTRACTOR'S commercial general liability insurer, CONTRACTOR is also

responsible for obtaining a timely pre-blast survey from a qualified subcontractor (having professional liability insurance) of all adjacent improvements and visible utilities; and for preparing a seismic/vibration impact study to determine acceptable vibrations to adjacent structures based on U.S. Bureau of Mines Criteria.

XII. INDEPENDENT CONTRACTOR STATUS. Nothing in this Contract shall create an employment contract between the DISTRICT and the CONTRACTOR or between the DISTRICT and the CONTRACTOR's subcontractors; including but not limited to any Explosives Handlers and aircraft pilots retained by the CONTRACTOR, and the parties agree and stipulate that, in the relationship between the DISTRICT and the CONTRACTOR pursuant to this Contract, the CONTRACTOR shall be deemed to be an independent contractor.

XIII. COMPENSATION. The CONTRACTOR shall be compensated by the DISTRICT as follows:

- A. In the amount of Two Thousand Dollars (\$2,000) as a retainer for each Contract Season during the Term of this Contract being for a term of five years; and,
- B. For time expended by the CONTRACTOR on Project Ice-jam break-up at the fixed unit rates specified in the CONTRACTOR's plan for operations attached to this Contract as Exhibit "A" and incorporated herein by reference; a \$5,000 advance against such compensation to be payable to the CONTRACTOR at the time a mobilization notice is given; and,
- C. For (1) helicopter services, (2) professional services consisting of a pre-blast survey and seismic/vibration impact study if required by the CONTRACTOR'S commercial general liability insurer, and (3) explosive materials expended by the CONTRACTOR on Project Ice-jam break-up at the CONTRACTOR's costs, which costs shall not be greater per unit than the unit prices specified in the price proposal which the CONTRACTOR agrees

to provide annually or more frequently if applicable, the form of which proposal shall be as attached to this Contract as Exhibit "B" and incorporated herein by reference; and,

- D. For partial reimbursement of premiums required to be expended by the CONTRACTOR for Commercial General Liability Insurance pursuant to this Contract during a Contract Season, such partial reimbursement to be equal to five percent (5%) (or such other percentage as CONTRACTOR'S insurer shall require) of the compensation earned by the CONTRACTOR under this Contract for time expended during the Contract Season covered by such insurance, less the annual retainer provided above.
- E. For full reimbursement of any deductible amount required to be expended by the CONTRACTOR pursuant to Commercial General Liability Insurance.
- F. For full reimbursement of additional premiums for USL&H coverage required by this Contract, paid by CONTRACTOR and its subcontractors.
- G. For full reimbursement of the CONTRACTOR's reasonable expenses for travel, meals and lodging actually incurred in response to a mobilization notice given by the DISTRICT pursuant to this Contract.

XIV. INVOICES. Except as to premiums for workers' compensation insurance provided under subparagraph D of the preceding paragraph and for Comprehensive General Liability Insurance provided under subparagraph E of the preceding paragraph, invoices for compensation due to the CONTRACTOR under this Contract will be submitted by the CONTRACTOR to the DISTRICT and are due and payable by the DISTRICT within 30 days after receipt of the CONTRACTOR's invoice. Unpaid balances shall be subject to an additional interest charge at the rate of one percent (1%) per month after 30 days from date of invoice. In addition, if payment by the DISTRICT is not received within 30 days of billing date, after seven days written notice to the DISTRICT, the CONTRACTOR may suspend services

without liability until the DISTRICT has paid in full all amounts due the CONTRACTOR.

XV. INSURANCE. The CONTRACTOR shall not commence work under this Contract until the CONTRACTOR has obtained, all insurance required under this Contract. Nor shall the CONTRACTOR allow any Subcontractor to commence work on any Subcontract under this Contract until the same insurance requirements have been complied with by each such Subcontractor.

XVI. CONTRACTOR'S INSURANCE REQUIREMENTS. The CONTRACTOR shall at all times during each Contract Season within the term of this Contract, provide and maintain the following types of insurance protecting the interest of the CONTRACTOR, and naming the DISTRICT as an Additional Insured (or naming the DISTRICT as an alternate employer in the case of workers compensation), with limits of liability of not less than those set forth below. Such insurance policies and the policy-issuing company or companies shall be subject to approval by the DISTRICT. The CONTRACTOR shall require all of its Subcontractors to comply with the same insurance requirements.

A. If the CONTRACTOR (or any subcontractor) employs any Explosives Handlers pursuant to this Contract, or employs any other persons to perform work for the DISTRICT pursuant to this Contract, then the CONTRACTOR shall provide and maintain insurance to cover full USL&H liability in limits not less than the statutory amount and workers' compensation insurance to cover full liability under the workers' compensation laws of the State of Nebraska with Employer's liability coverage in limits not less than the statutory amount. This insurance must be endorsed with Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise, from the DISTRICT. This insurance shall also include "Other States" and "Voluntary Compensation" endorsements.

- B. Commercial General Liability Insurance, including insurance for Hazards of Premises, and affording coverage for explosion, collapse, and underground. Such coverage shall include a “Broad Form Comprehensive Liability Endorsement” including but not limited to endorsements for: Blanket Contractual, Personal injury, and “Broad Form Property Damage” including Completed Operations.
- C. Automobile Liability Insurance covering all owned, non-owned and hired automobiles.
- D. Aircraft Liability insurance covering all owned, non-owned and hired helicopters and other aircraft used by the CONTRACTOR, or any of the CONTRACTOR’s subcontractors, for purposes of this Contract. The certificate issued for such insurance shall expressly identify this Contract as an insured activity and as reflecting the contractually-assumed liability.
- E. Limits of Liability for the Insurance of the CONTRACTOR described in subparagraphs B, C, and D, above, shall be a minimum of \$2,000,000 per occurrence and \$7,000,000 aggregate, and limits of liability for the insurance of Subcontractors also shall be a minimum \$1,000,000 per occurrence and \$2,000,000 aggregate.
- F. Excess Liability Insurance can be used in combination with primary coverages to satisfy policy limits set out, above.
- G. Professional liability insurance with “per occurrence” limits of at least \$1,000,000, insuring the Subcontractor performing the afore-mentioned pre-blast survey of all adjacent improvements and visible utilities and the afore-mentioned seismic/vibration impact study.
- H. All policies of insurance required by this Contract must contain endorsed provisions obligating the respective insurance companies to give not less than thirty (30) days’ written notice by registered mail to the DISTRICT prior to the effective date of any cancellation or change which would negate

or diminish coverage or limits of such policies, regardless of whether such cancellation or change is initiated by the insurance company or by instructions of the insured.

- I. All insurance policies obtained by the CONTRACTOR in compliance with the requirements of subparagraphs B, C, and D, above, shall name the DISTRICT as an additional insured on a primary, non-contributing basis.
- J. Within 14 days after this Contract has been executed by the parties, or before the CONTRACTOR commences services under this Contract, whichever is sooner, the CONTRACTOR and all Subcontractors shall furnish Certificates of Insurance satisfactory to the DISTRICT from each carrier evidencing that insurance as required by this Contract is in force. Such certificate shall state the policy number(s), dates of expiration and limits of liability thereunder, and shall certify the cancellation or change notice provisions required in subparagraph G, above. On request of the DISTRICT, the CONTRACTOR shall provide copies of the insurance policies certified on such certificates.
- K. The CONTRACTOR shall incorporate all the provisions of this paragraph as contractual requirements of any subcontract for helicopter services or for any other subcontract let by the CONTRACTOR in connection with this Contract, in such manner as to require the same to be done in all tiers of contracts let thereunder.
- L. Nothing contained in this paragraph shall be construed as limiting the extent of the CONTRACTOR's responsibility for payment of damages resulting from the CONTRACTOR's operations under this Contract; and, subject to the following paragraph, the CONTRACTOR agrees that the CONTRACTOR alone shall be completely responsible for procuring and maintaining full insurance coverage as provided herein or as may be otherwise required by applicable law or regulation.

- M. All insurance required by this Contract to be purchased and maintained by the CONTRACTOR or any subcontractor shall be obtained from insurance companies that are duly licensed or authorized in the State of Nebraska to issue insurance policies for the limits and coverages so required.
- N. In addition to the insurance required to be provided by CONTRACTOR, the DISTRICT, at the DISTRICT's option, may purchase and maintain at the DISTRICT's expense the DISTRICT's own insurance as will protect the DISTRICT against claims which may arise from operations under this Contract.

XVII. INDEMNIFICATIONS AND WAIVERS. To the extent of liability insurance provided by the CONTRACTOR pursuant to Paragraph XVI hereof and otherwise to the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless the DISTRICT and its officers, directors, partners, employees, agents, consultants and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the work called for by this Contract, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of such work or anyone for whose acts any of them may be liable. In any and all claims against the DISTRICT or any of its respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity



directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the preceding indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts except CONTRACTOR'S indemnity obligations do not extend beyond liability insurance limits as required.

XVIII. WAIVER OF RIGHTS. The DISTRICT and CONTRACTOR intend that all policies of insurance purchased by the CONTRACTOR or any of its subcontractors in accordance with this Contract will protect the DISTRICT, the CONTRACTOR and such Subcontractors (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

XIX. TERMINATION. This Contract may be terminated by the DISTRICT on ninety (90) days' written notice to the CONTRACTOR; or may be terminated by either party upon thirty (30) days' written notice in the event of a substantial failure of the other party to perform its obligations under this Contract through no fault of the terminating party. This Contract may be terminated by the CONTRACTOR on ten (10) days' written notice to the DISTRICT in the event the carrier for the Aircraft Liability Insurance referred to in subparagraph D of Paragraph XVI of this Contract increases the premiums for such insurance solely because of additional risk resulting from aircraft operations pursuant to this Contract and the DISTRICT, within 30 days

after receiving notice from the CONTRACTOR of such increase and verification from the carrier as to the cause thereof, declines to pay to the CONTRACTOR, as additional compensation, the amount of such increase in such premiums. This Contract also may be terminated by the DISTRICT on ten (10) days' written notice to the CONTRACTOR in the event the carrier for the Comprehensive General Liability Insurance referred to in subparagraph B of Paragraph XVI of this Contract increases the premiums for such insurance.

XX. GRATUITIES. The CONTRACTOR represents that no gratuities (in the form of entertainment, gifts or otherwise) were offered or given to any officer, agent, employee or representative of the DISTRICT with a view towards securing a contract or securing favorable treatment with respect to the wording, amending or the making of any determination with respect to the performance of this Contract.

XXI. GOVERNING LAW. This Contract is to be governed by and construed in accordance with the laws of the State of Nebraska.

XXII. HEADINGS. Headings are used for convenience only and are not to be constructed as limiting contents of any section.

XXIII. WAIVER OF BREACH. Failure of either party to insist upon strict performance of any of the terms of this Contract or to exercise any right or option conferred herein shall not be construed as a waiver of any such terms, rights or options, but the same shall remain in full force and effect.

XXIV. ASSIGNMENT. This Contract is binding on successors and assigns of both parties, and neither party shall assign any rights under or interest in this Contract without the consent of the other party. The CONTRACTOR may, with the DISTRICT's consent, employ Subcontractors in the performance of its obligations under this Contract.

XXV. NONDISCRIMINATION. During the performance of this Contract, the CONTRACTOR agrees as follows:

- A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or disability. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin or disability. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or by other means; compensated; selected or trained, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. the CONTRACTOR agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices of this nondiscrimination agreement.
- B. The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race religion, color, sex, national origin, or disability.
- C. The CONTRACTOR shall send to each labor union or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the CONTRACTOR's commitment to equal employment opportunity and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The CONTRACTOR shall furnish to the DISTRICT's General Manager, upon request, all employment records.

- E. The CONTRACTOR shall take such actions with respect to any Subcontractor as may be necessary to enforce the provisions of paragraphs A through H herein, including penalties and sanctions for non-compliance.
- F. The CONTRACTOR shall file and shall cause Subcontractors, if any, to file compliance reports with the CONTRACTOR in the same form and to the same extent as required by the federal government for federal contracts under federal rules and regulations. Such compliance reports shall be filed with the DISTRICT's General Manager. Compliance reports shall contain information as to the employment practices, policies, programs and statistics of the CONTRACTOR and all Subcontractors.
- G. The CONTRACTOR shall include the provisions of sub-paragraphs A through H of this paragraph in every subcontract, if any, or purchase order so that such provisions will be binding upon Subcontractors and vendors.
- H. The CONTRACTOR also agrees to abide by the provisions of Section 3, Clause of the Housing and Urban Development Act of 1968, a copy of which clause is attached hereto and incorporated herein by reference as Exhibit "C".

**IN WITNESS WHEREOF,**

This Contract is executed by the CONTRACTOR on this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Contractor:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

**Fax:** ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

**Email:** \_\_\_\_\_

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

This Contract is executed by the DISTRICT on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL RESOURCES  
DISTRICT**

8901 South 154th Street, Omaha, NE 68138-3621

Phone: (402) 444-6222, Fax (402) 895-6543

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

**PRICE PROPOSAL – EXHIBIT “A”**

LABOR

Contractor (per hour, including contract administration) \_\_\_\_\_

Explosives Supervisor (per hour) \_\_\_\_\_

Ground Labor (per hour) \_\_\_\_\_

Approx # of Laborers \_\_\_\_\_

Mobilization (Emergency Travel, lump sum) \_\_\_\_\_

Annual Retainer \_\_\_\_\_

**PRICE PROPOSAL – EXHIBIT “B”**

EXPLOSIVES

ANFO (per cwt) \_\_\_\_\_  
Fuse Caps (per 100) \_\_\_\_\_  
Fuses (per meter) \_\_\_\_\_  
Dynamite (per cwt) \_\_\_\_\_  
Delivery (per trip) \_\_\_\_\_  
Other Materials \_\_\_\_\_  
\_\_\_\_\_

HELICOPTER SERVICES

Ferry Time (per hour) \_\_\_\_\_  
Operation Time (per hour) \_\_\_\_\_

PROFESSIONAL SERVICES

Professional pre-blast survey of adjacent improvements  
and visible utilities and seismic/vibration impact study \_\_\_\_\_

USL&H INSURANCE

Cost of USL&H coverages for Contract Season \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_      **Fax:** ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

**Email:** \_\_\_\_\_

**By** \_\_\_\_\_ **Date:** \_\_\_\_\_

## EXHIBIT C

### SECTION 3 CLAUSE OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

1. The work to be performed under this Contract is a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the Project.
2. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. CONTRACTOR will send to each labor organization or representative of workers with which CONTRACTOR has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of CONTRACTOR's commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. CONTRACTOR will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant or receipt of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. CONTRACTOR will not subcontract with any Subcontractor where CONTRACTOR has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the Subcontractor has first provided CONTRACTOR with a preliminary statement of ability to comply with the requirements of these regulations.