

MEMORANDUM

TO: Programs, Project and Operations Subcommittee

SUBJECT: West Branch Levee Repair Project (84th to 72nd Street)
Cooperation Agreement with USA

DATE: February 3, 2009

FROM: Martin P. Cleveland, Construction Engineer

In May-June 2008 period, the West Branch Channel Project experienced multiple high water events. The cumulative effect of these events was channel bank erosion in many areas. District staff submitted several damage area locations to the Corps of Engineers for possible cost share assistance under the Corps Public Law 84-99 (PL84-66) Program. The referenced project area (see location map) is in the Corps program and the program provides an 80% Federal/20% Sponsor Cost-share ratio for flood related damage repairs. The Corps has designed the repair project and will handle project contracting.

Enclosed is a proposed cooperation agreement between USA (Corps) and the District to allow the Corps to repair the before-mentioned area and for District to provide 20% cost share of construction cost and administration. The Corps Project cost estimate is \$47,248.19 (for construction plus administration) and the District share is estimated at \$9,449.66. Once the project has been bid, we will have more accurate cost figures.

This work will be funded via West Branch Channel Project Contract Work Account (Account 0103044479) and as of January 6, 2009, there is \$72,000 left in this account.

- **It is Management's recommendation that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute a cooperation agreement with USA for the West Branch Levee Repair Project.**



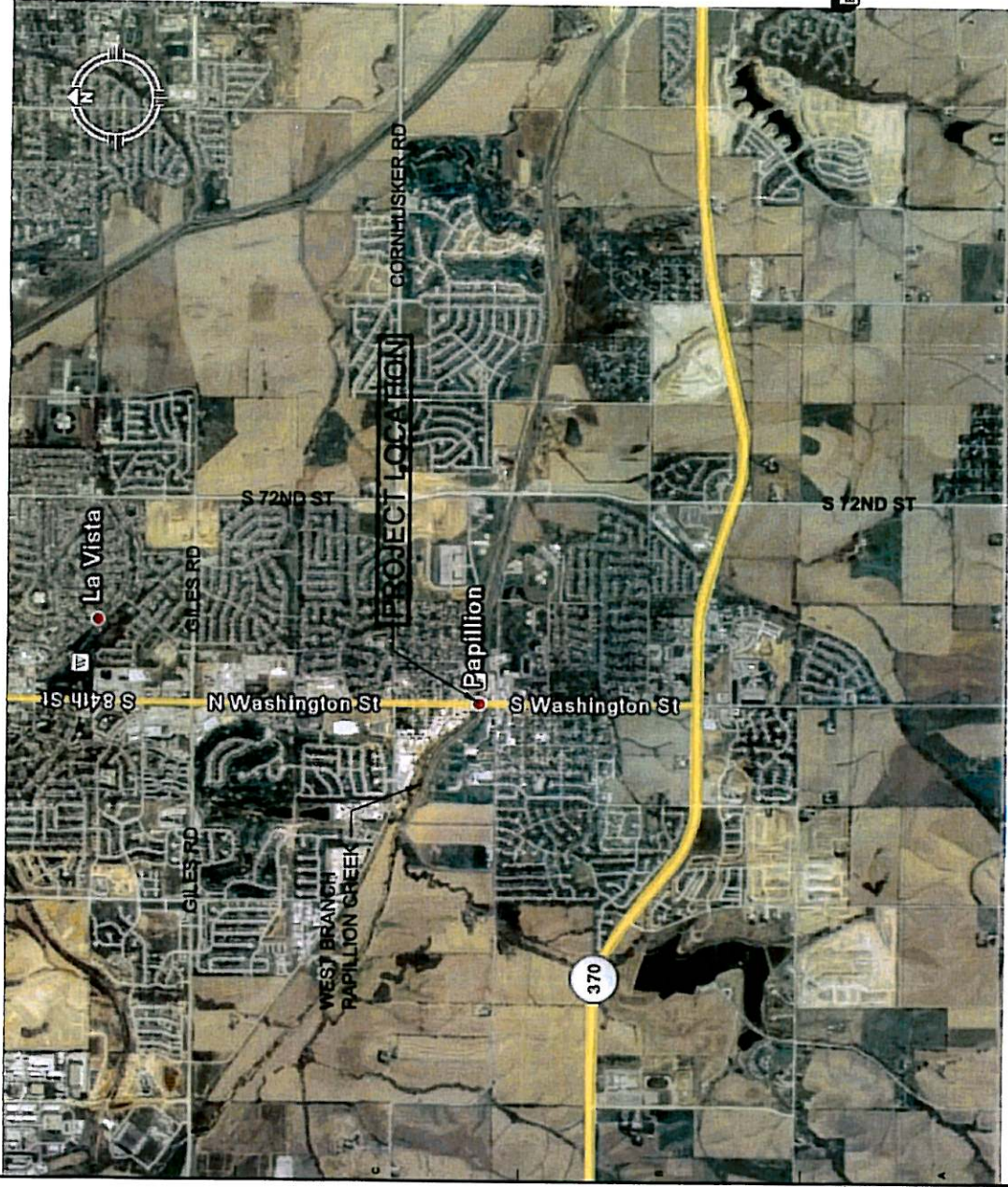
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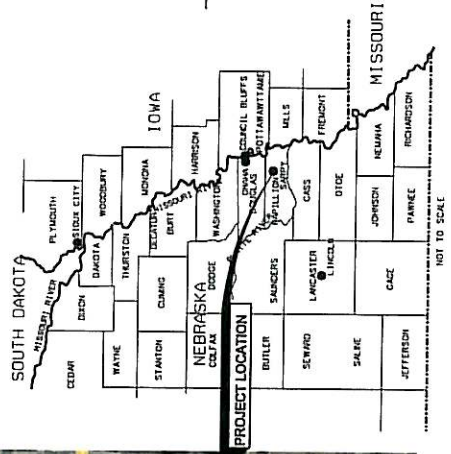
WEST BRANCH PAPILLON CREEK LEVER REPAIR
PROJECT LOCATION PLAN
U.S. ARMY ENGINEER DISTRICT
FORT CAVAZOS, TEXAS
DRAWN BY: [blank]
CHECKED BY: [blank]
DATE: [blank]

PROJECT LOCATION PLAN
WEST BRANCH PAPILLON CREEK LEVER REPAIR
U.S. ARMY ENGINEER DISTRICT
FORT CAVAZOS, TEXAS
DRAWN BY: [blank]
CHECKED BY: [blank]
DATE: [blank]

DESIGNATION NUMBER
GI-101



NO SCALE



NOT TO SCALE



DATE	DESCRIPTION	BY	DATE	DESCRIPTION	BY

PROJECT NO.	
DATE	
SCALE	
DRAWN BY	
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PROJECT VICINITY MAP
 WEST BRANCH PAPILLON CREEK LEVEE
 PAVILLON, KENTON COUNTY, KY
 L.L. ARNET ENGINEERING DISTRICT

SHEET IDENTIFICATION
GI-102



4. THE CONTRACTOR SHALL NOT UTILIZE THE LEVEE OR LEVEE CREST FOR ACCESS OR HAULING DURING RAINY OR MUDDY CONDITIONS. THE CONTRACTOR SHALL REPAIR ALL DAMAGE TO THE LEVEE CREST CAUSED BY CONTRACTOR ACTIVITIES AT HIS EXPENSE.

- NOTES:**
1. THE LEVEE CREST SHALL BE UTILIZED AS THE HAUL ROUTE. GATE ACCESS POINTS ARE LOCATED ON EACH END OF THE HAUL ROUTE AS SHOWN. REMOVAL AND REINSTALLATION OF EXISTING GATES AND GRADING MAY BE NECESSARY FOR FULL UTILIZATION OF HAUL ROUTES.
 2. VEGETATED AREAS THAT ARE DISTURBED DURING CONSTRUCTION SHALL BE GRADED TO PRE-CONSTRUCTION GRADE LINES AND RE-SEEDED ACCORDING TO THE BEEDING SPECIFICATION SECTION 32.02.01.
 3. THE CONTRACTOR SHALL PRESERVE AND PROTECT ALL EXISTING PRIVATE ACCESS ROAD, HAUL ROADS, AND/OR RIGHT-OF-WAY ROADS. AT THE COMPLETION OF THE WORK AND PRIOR TO CONTRACTOR DEMOBILIZATION, ALL SUCH ROADS UTILIZED AS HAUL ROUTES OR FOR OTHER PURPOSES SHALL BE REGRADED TO ORIGINAL FINISH GRADE TO PROVIDE A SMOOTH, UNIFORM TRAVEL SURFACE. ALL RUTS, WHEELBAR PRESS IMPRESSIONS AND AS REQUIRED BY THE CONTRACTOR, SHALL BE REPAIRED IN ACCORDANCE WITH THE SPECIFICATIONS AND AS REQUIRED BY THE CONTRACTOR'S EXPENSE. RESTORATION SHALL INCLUDE REPLACEMENT OF BASE ROCK AND/OR SURFACE TREATMENT AS REQUIRED.

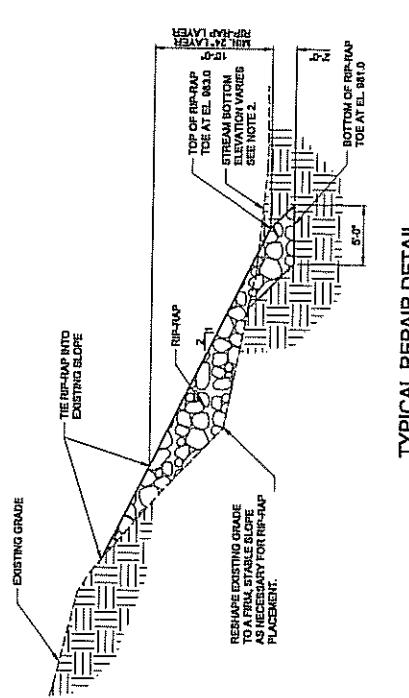


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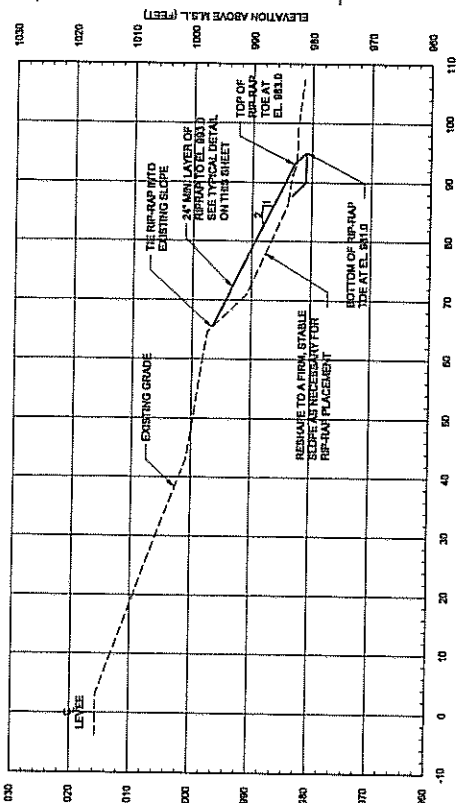
DATE	DESCRIPTION	BY	CHECKED

WEST BRANCH PULLICH CREEK LEVEE REPAIR
 PACIFIC REGION
 CORPS OF ENGINEERS
 CANVA, HAWAII
 U. S. ARMY ENGINEER DISTRICT

SHEET
 NUMBER
CG-301

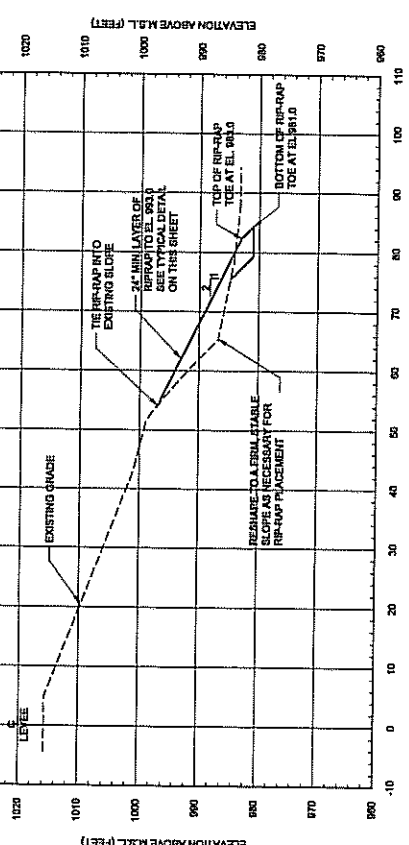


TYPICAL REPAIR DETAIL
NO SCALE

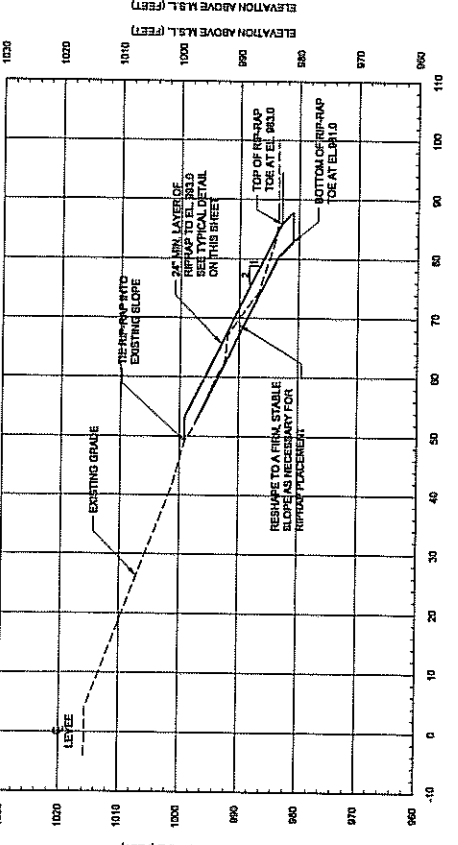


SECTION 1
1:400.00
CG-101 CG-301

NOTE:
 1. WATER SURFACE (W.S.) ELEVATIONS ARE APPROXIMATE AND VARY WITH SEASONAL AND YEARLY VARIATIONS. WATER SURFACE ELEVATIONS AS HIGH AS THE TOP OF LEVEE DURING CONSTRUCTION.
 2. EXISTING 30" CONCRETE PIPE SHALL REMAIN AND BE PROTECTED FROM DAMAGE DURING CONSTRUCTION. CONTRACTOR IS RESPONSIBLE FOR ANY DAMAGE TO PIPE.



SECTION 2
1:400.00
CG-101 CG-301



SECTION 3
1:400.00
CG-101 CG-301

**COOPERATION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
and
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
for
REHABILITATION OF A NON-FEDERAL FLOOD CONTROL WORK**

THIS AGREEMENT, entered into this ___th day of _____, 2008, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") acting by and through the District Engineer, Omaha District, U.S. Army Corps of Engineers, and the Papio-Missouri River Natural Resources District (hereinafter referred to as the "Public Sponsor").

WITNESSETH THAT:

WHEREAS, pursuant to 33 U.S.C. 701n, the Government is authorized to assist in the repair or restoration of flood control improvements threatened or destroyed by flood;

WHEREAS, via written correspondence, the Public Sponsor has requested the Government to repair or restore a certain flood control work damaged by recent flooding or coastal storms in accordance with 33 U.S.C. 701n and established policies of the U.S. Army Corps of Engineers; and,

WHEREAS, the Public Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the rehabilitation effort in accordance with the terms of this Agreement;

NOW, THEREFORE, the Government and the Public Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean the restoration of the levee to the original design grade and cross sections that existed prior to the flood event and shall include a levee setback as generally described in a report entitled, "Project Information Report, Rehabilitation of Damaged Flood Control Works, Papio-Missouri River Natural Resources District, West Branch Papillion Creek", prepared by the District Engineer, U.S. Army Engineer District Omaha, dated 17 October 2008, and approved by the Division Engineer, U.S. Army Engineer Division Northwest on 29 October 2008. See attached Exhibit "A" for a complete listing of damages to be repaired.

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the

Public Sponsor and the Government, in accordance with the terms of this Agreement, directly related to implementation of the Rehabilitation Effort. The term shall include, but is not necessarily limited to, actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XIIA. The term shall not include any costs for operation and maintenance; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Public Sponsor preferred alternatives; or the costs of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas required for the Rehabilitation Effort.

C. The term "betterment" shall mean the design and construction of a Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Public Sponsor in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using those funds and funds provided by the Public Sponsor, shall expeditiously implement the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Public Sponsor shall be afforded the opportunity to review and comment on solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The Contracting Officer will, in good faith, consider the comments of the Public Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Public Sponsor shall provide all lands, easements, and rights-of-way and suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Rehabilitation Effort and the Project.

C. As further specified in Article IV, the Public Sponsor shall contribute in cash, in-kind services, or a combination thereof, a contribution toward construction of the Rehabilitation Effort in an amount equal to 20 percent of total Rehabilitation Effort costs.

D. The Public Sponsor shall not use Federal funds to meet its share of total Rehabilitation Effort costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

E. The Public Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

F. The Public Sponsor agrees to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program.

G. The Public Sponsor may request the Government to accomplish betterments. The Public Sponsor shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Public Sponsor in accordance with Article IV.

ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government shall provide the Public Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Public Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Rehabilitation Effort. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the solicitation of that construction contract.

B. The Public Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, and performing relocations for construction, operation, and maintenance of the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged and excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - METHOD OF PAYMENT

A. The Public Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Public Sponsor's obligations under Article II of the Agreement. Rehabilitation Effort costs are currently estimated to be \$00.00 and the Public Sponsor's share (cash and services in kind) of total Rehabilitation Effort costs is currently estimated to be \$00.00. In order to meet Public Sponsor's cash payment requirements, the Public Sponsor must provide a cash contribution estimated to be \$_____.00. The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Public Sponsor. See attached Exhibit "B", Sponsor Cost Share Emergency Levee Repair Cost Estimate, for the levee repair estimate and estimated Public Sponsor cost share amount.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Public Sponsor of the Public Sponsor's estimated share of the total Rehabilitation Effort costs including the Public Sponsor's estimated share of the costs attributable to the Rehabilitation Effort incurred prior to the initiation of construction. Within five calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the required contribution by wire transfer, Electronic Funds Transfer, or by delivering a check payable to "FAO, USAED-Omaha". The Government shall draw on the funds provided by the Public Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Rehabilitation Effort as they are incurred, as well as Rehabilitation Effort costs incurred by the Government. In the event that Rehabilitation Effort costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Public Sponsor of the additional contribution the Public Sponsor will be required to make to meet the Public Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total Rehabilitation Effort costs and status of contributions made by the Public Sponsor. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall compute the total Rehabilitation Effort costs and tender to the Public Sponsor a final accounting of the Public Sponsor's required share of total Rehabilitation Effort costs.

1. In the event the total contribution by the Public Sponsor is less than the Public Sponsor's required share of total Rehabilitation Effort costs, the Public Sponsor

shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Public Sponsor's required share of the total Rehabilitation Effort costs.

2. In the event total contribution by the Public Sponsor is more than the Public Sponsor's required share of Rehabilitation Effort costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Public Sponsor; however, the Public Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Public Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Public Sponsor for excess contributions provided.

ARTICLE V - OPERATION AND MAINTENANCE

A. After the Contracting Officer has determined that construction of the Rehabilitation Effort is complete and provided the Public Sponsor with written notice of such determination, the Public Sponsor shall operate and maintain the Project, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto.

B. The Public Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsor owns or controls for access to the Project for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the Project. If an inspection shows the Public Sponsor for any reason is failing to fulfill the Public Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsor. If, after 30 calendar days from receipt of such notice, the Public Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsor owns or controls for access to the Project for the purposes of completing, operating, and maintaining the Project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Public Sponsor of responsibility to meet the Public Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE VI - FEDERAL AND STATE LAWS

In the exercise of the Public Sponsor's rights and obligations hereunder, the Public Sponsor agrees to comply with all applicable Federal and state laws and regulations.

ARTICLE VII - RELATIONSHIP OF PARTIES

The Government and the Public Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

ARTICLE VIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE IX - COVENANT AGAINST CONTINGENT FEES

The Public Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Public Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE X - TERMINATION OR SUSPENSION

If at any time the Public Sponsor fails to carry out its obligations under this Agreement, the District Engineer shall terminate or suspend work on the Rehabilitation Effort, unless the District Engineer determines that continuation of work on the Rehabilitation Effort is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Rehabilitation Effort and Project. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Public Sponsor elects to proceed with further construction or terminates this Agreement.

ARTICLE XI - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the Contracting Officer, the Public Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the Public Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands necessary to Rehabilitation Effort construction, operation, and maintenance. All actual costs incurred by the Public Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total Rehabilitation Effort costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Public Sponsor and the Government shall provide prompt notice to each other, and the Public Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Public Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort. Should the Government and the Public Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Public Sponsor shall be responsible, as between the Government and the Public Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Public Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Public Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article XI of this Agreement.

D. The Public Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsor, the Public Sponsor

shall be considered the operator of the Project (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsor shall operate and maintain the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XII - NOTICES

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Public Sponsor:
Papio-Missouri River Natural Resources District
Attention: Martin Cleveland
8901 South 154th Street
Omaha, NE 68138-3621

If to the Government:
District Engineer
Omaha District, Corps of Engineers
1616 Capitol Avenue
Omaha, NE 68102-9000

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

IN WITNESS HEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

PUBLIC SPONSOR

BY: _____
David C. Press.
Colonel, Corps of Engineers
District Commander

BY: _____
John Winkler
Papio-Missouri River Natural Resources District
General Manager

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the Papio-Missouri River Natural Resources District and it is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Papio-Missouri River Natural Resources District in connection with the Rehabilitation Effort, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Agreement on behalf of the Papio-Missouri River Natural Resources District have acted within their statutory authority.

IN WITNESS HEREOF, I have made and executed this certification this _____ day of _____, 2008.

Attorney

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATED this ____ day of _____, 2008.

Papio-Missouri River Natural Resources District
General Manager