

MEMORANDUM

To: Board of Directors
 Date: July 7, 2008
 Subject: Interlocal Cooperation Act agreement for demonstration project to eradicate and control *Phragmites australis*

Attached is a draft proposed Interlocal Cooperation Act agreement for a demonstration project to eradicate and control *Phragmites australis* in the reach of the lower Platte River extending from the Burlington Northern Railroad bridge (downstream of Nebraska State Highway 77) to the confluence of the Platte and Elkhorn Rivers.

Following is a draft proposed resolution that would authorize you to negotiate and execute such an Interlocal Cooperation Act agreement for such a project, essentially using the attached draft agreement as a pattern.

Resolution

Whereas, the lower Platte River corridor has become subject to serious infestation by *Phragmites australis*, that tends to deplete water in a channel, and, after growing copiously in dry river channels, tends to bond with winter ice formations and impede the natural discharge of broken ice floes from such channels, aggravating spring flooding; and,

Whereas, Neb. Rev. Stat. § 2-3229, authorizes natural resources districts to “develop and execute plans, facilities, works, and programs relating to . . . (2) prevention of damages from flood water and sediment, (3) flood prevention and control, . . . [and] (6) development, management, utilization, and conservation of ground water and surface water”; and,

Whereas, it has been proposed that the Papio-Missouri River Natural Resources District, the Lower Platte North Natural Resources District, the Lower Platte South Natural Resources District and the Nebraska counties of Douglas, Lancaster, Sarpy and Saunders, enter into an Interlocal Cooperation Act agreement, with parties and terms to be negotiated by the General Manager, providing for the initiation, implementation and financing of an inter-jurisdictional demonstration project, administered by the District, to evaluate the feasibility of employing aerial application of herbicide as a method of eradicating and controlling *Phragmites* and other invasive vegetation in the streambed and banks of the lower Platte River; in the reach of the lower Platte River southerly of Nebraska State Highway 77 and northerly of the north boundary line of Sarpy County; and,

Whereas, this Board finds that such a project would be for general benefit of the District, with only an incidental special benefit, and that the District should enter into such an agreement providing for such a project,

NOW, THEREFORE, be it resolved by the Board of Directors of the Papio-Missouri River Natural Resources District that the General Manager of the District should be, and hereby is, authorized to negotiate and execute for and on behalf of the District an Interlocal Cooperation Act agreement with those natural resources districts and counties along the lower Platte River corridor who are willing to cooperate with the District in the initiation, implementation and financing of a project substantially as described in the draft proposed agreement presented to this meeting, containing such amendments thereto as the General Manager of the District determines necessary and District legal counsel approves as to form; and that the General Manager of the District should be, and hereby is, further authorized to negotiate and execute for and on behalf of the District such other and further documents as the General Manager determines necessary to effect such agreement and expeditiously advance such project; all such authorities to be subject to and on condition that such agreement shall provide that the District's ultimate share of the cost of such project shall not exceed the budgeted amount.

Management recommends to the Board of Directors that the attached resolution be adopted to grant the Papio Missouri River NRD the authority to enter into an interlocal agreement in order to execute the Platte River Riparian Vegetative Management Plan

INTERLOCAL COOPERATION ACT AGREEMENT
LOWER PLATTE RIVER WEED MANAGEMENT PROJECT

THIS AGREEMENT (“THIS AGREEMENT”) is made by and among the following parties (collectively, “the CONTRACTING PARTIES”), to-wit:

- a) The Papio-Missouri River Natural Resources District (“P-MRNRD”),
 - b) The Lower Platte North Natural Resources District (“LPNNRD”),
 - c) The Lower Platte South Natural Resources District (“LPSNRD”),
 - d) The County of Cass; State of Nebraska (“CASS”),
 - e) The County of Douglas; State of Nebraska (“DOUGLAS”),
 - f) The County of Lancaster, State of Nebraska (“LANCASTER”),
 - g) The County of Sarpy, State of Nebraska (“SARPY”), and,
 - h) The County of Saunders, State of Nebraska (“SAUNDERS”)
- (CASS, DOUGLAS, LANCASTER, SARPY AND SAUNDERS are collectively referred to as “the CONTRACTING COUNTIES”).

Authority: THIS AGREEMENT is made pursuant to authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.), without any separate legal entity being created to conduct the joint and cooperative undertaking contemplated herein, and, whenever possible, THIS AGREEMENT shall be construed in conformity therewith.

Purpose: THIS AGREEMENT is intended to provide for the initiation, implementation and financing of an inter-jurisdictional demonstration project (“the PROJECT”) to evaluate the feasibility of employing aerial application of herbicide as a method of eradicating and controlling Phragmites and other

invasive vegetation in the streambed and banks of the lower Platte River (“the PROJECT WORK”). The PROJECT WORK is expected to be performed in the reach of the lower Platte River (“the “PROJECT REACH”) extending from the Burlington Northern Railroad bridge (downstream of Nebraska State Highway 77) to the confluence of the Platte and Elkhorn Rivers.

Project Plan: The CONTRACTING PARTIES do hereby adopt the following plan for administering the PROJECT:

a) With the assistance of consultants employed for such purpose by the P-MRNRD, the P-MRNRD shall prepare written plans and specifications, including a proposed contract, for the performance of the PROJECT WORK (collectively, “the PLANS AND SPECIFICATIONS”) by one or more independent contractors, and shall submit the PLANS AND SPECIFICATIONS to each of the other CONTRACTING PARTIES for their written approvals, such approvals to not be withheld or delayed unreasonably.

b) With the assistance of consultants employed for such purpose by the P-MRNRD, the P-MRNRD shall delineate on appropriate maps, and provide to each of the CONTRACTING COUNTIES, written descriptions of the parcels of land lying within and on either side of the channel of the lower Platte River in the PROJECT REACH that are proposed to be included in or affected by the PROJECT WORK (“the PROJECT ROW”).

c) Each of the CONTRACTING COUNTIES shall search the records of such county for the purpose of determining the ownership of the lands delineated and described by the P-MRNRD, comprising the PROJECT ROW within such county, and report such findings and determinations to the P-MRNRD in writing.

d) With the assistance of consultants employed for such purpose by the P-MRNRD, and utilizing the ownership information prepared by the CONTRACTING COUNTIES, the P-MRNRD shall prepare forms of

releases describing the rights to be acquired over the PROJECT ROW necessary to authorize the PROJECT to be conducted on the PROJECT ROW (collectively, "the ROW RELEASES"), and deliver the ROW RELEASES to the respective CONTRACTING COUNTIES.

e) Upon receipt from the P-MRNRD of the ROW RELEASES, the CONTRACTING COUNTIES, each at their own and sole respective cost and expense, shall obtain the due execution of all of the ROW RELEASES over the PROJECT ROW in their respective counties, and shall deliver such executed ROW RELEASES to the P-MRNRD.

f) After receipt by P-MRNRD of the approvals of the PLANS AND SPECIFICATIONS by the other CONTRACTING PARTIES, and after receipt by P-MRNRD of the executed ROW RELEASES, with the assistance of consultants, P-MRNRD shall advertise for, and provide for the receipt and opening of, sealed bids by contractors interested in performing the PROJECT WORK.

g) After receiving sealed bids for performance of the PROJECT WORK, and with the assistance of consultants, the P-MRNRD shall open and tabulate such bids and determine the lowest responsive bid; and communicate such determination to the other CONTRACTING PARTIES for their approvals.

h) After receipt of the approvals by the other CONTRACTING PARTIES of its bid determinations, the P-MRNRD shall execute a contract ("the PROJECT CONTRACT") with such lowest responsive bidder ("the PROJECT CONTRACTOR"), for performance of the PROJECT WORK in accordance with the PLANS AND SPECIFICATIONS, and the Administrator shall administer the PROJECT CONTRACT to conclusion and final acceptance.

Cost Sharing: The total actual costs incurred by the P-MRNRD and its consultants for preparation of PLANS AND SPECIFICATIONS for the

PROJECT, for delineating the PROJECT ROW, for preparing PROJECT RELEASES, for administering the PROJECT CONTRACT, for compensating the PROJECT CONTRACTOR, and such other actual and reasonable costs incurred by the P-MRNRD to advance the PROJECT (collectively, the “SHARED PROJECT COSTS”), shall be shared by the CONTRACTING PARTIES and reimbursed to the P-MRNRD in the respective proportions shown opposite the names of the CONTRACTING PARTIES in the following table, to-wit:

CONTRACTING PARTIES

Lower Platte North Natural Resources District	_____%
Lower Platte South Natural Resources District	_____%
Papio-Missouri River Natural Resources District	_____%
County of Cass	_____%
County of Douglas	_____%
County of Lancaster	_____%
County of Sarpy	_____%
County of Saunders	_____%
Total	100.0%

As used in THIS AGREEMENT, the term “actual costs” shall include but shall not be limited to insurance premiums, increases or surcharges, and other ordinary and reasonable costs and expenses, which P-MRNRD determines necessary or is required to pay or assume as a result of duties undertaken by P-MRNRD pursuant to this AGREEMENT.

Contributions: Contributions and other payments towards the cost of the PROJECT, received by one of the CONTRACTING COUNTIES from an owner of PROJECT ROW within the boundaries of such county, may be applied by such county towards such county’s share of the SHARED PROJECT COSTS computed in accordance with THIS AGREEMENT.

Indemnifications. Each of the parties agrees to indemnify and hold harmless the other CONTRACTING PARTIES from and against any and all claims, demands and causes of action for damages to the person or property of third persons arising out of the comparative negligence of the indemnifying party in its performance of any of the covenants of THIS AGREEMENT.

Effective Date of Agreement: This AGREEMENT shall become effective upon execution by all CONTRACTING PARTIES.

Duration of Agreement: This AGREEMENT shall have permanent duration, unless or until terminated by any of the CONTRACTING PARTIES.

Termination. Upon accomplishment of the aforesaid purposes of the PROJECT, THIS AGREEMENT may be terminated by any of the CONTRACTING PARTIES upon 90 days notice to the other CONTRACTING PARTIES. Such termination shall not affect any rights of reimbursement under this AGREEMENT for actions taken or responsibilities assumed by another of the CONTRACTING PARTIES pursuant to this AGREEMENT.

Disposal of Property: Upon termination of THIS AGREEMENT, any marketable property remaining in the hands of any of the CONTRACTING PARTIES, that was acquired by the application of shared funds contributed by the CONTRACTING PARTIES, shall be sold at public sale and the proceeds thereof distributed to the CONTRACTING PARTIES in the proportions provided by THIS AGREEMENT for their contributions towards the SHARED PROJECT COSTS.

Administrator: Except as may be otherwise provided herein, the General Manager of the P-MRNRD shall be the administrator of the PROJECT, on behalf and subject to the direction of the Board of Directors of the P-MRNRD.

IN WITNESS WHEREOF,

This Agreement is executed by the Lower Platte North Natural Resources District on this ____ day of _____, 2008 pursuant to resolution duly adopted by its Board of Directors.

LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT

By

General Manager

This Agreement is executed by the Lower Platte South Natural Resources District on this ____ day of _____, 2008 pursuant to resolution duly adopted by its Board of Directors.

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT

By

General Manager

This AGREEMENT is executed by the Papio-Missouri River Natural Resources District on this ____ day of _____, 2008 pursuant to resolution duly adopted by its Board of Directors.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By

General Manager

This Agreement is executed by the County of Cass, State of Nebraska on this ____ day of _____, 2008 pursuant to resolution duly adopted by its County Board.

THE COUNTY OF CASS

By

Chairperson, County Board

This Agreement is executed by the County of Douglas, State of Nebraska on this ____ day of _____, 2008 pursuant to resolution duly adopted by its County Board.

THE COUNTY OF DOUGLAS

By

Chairperson, County Board

This Agreement is executed by the County of Lancaster, State of Nebraska on this ____ day of _____, 2008 pursuant to resolution duly adopted by its County Board.

THE COUNTY OF LANCASTER

By

Chairperson, County Board

This Agreement is executed by the County of Sarpy, State of Nebraska on this ____ day of _____, 2008 pursuant to resolution duly adopted by its County Board.

THE COUNTY OF SARPY

By

Chairperson, County Board

This Agreement is executed by the County of Saunders, Nebraska on this _____ day of _____, 2008 pursuant to resolution duly adopted by its governing board.

THE COUNTY OF SAUNDERS

By

Chairperson, County Board