

**Programs, Projects & Operations  
Subcommittee Meeting  
June 7, 2005  
7:00 p.m.  
Agenda**

**Programs, Projects & Operations:**

John Conley, Chairman  
Rich Tesar, Vice-Chairman  
Fred Conley  
Rick Kolowski  
Joe Neary

**Alternate Members:** Dorothy Lanphier  
Jim Thompson

**Staff Liaison:** Gerry Bowen  
Martin Cleveland  
Ralph Puls  
Dick Sklenar \*  
Paul Woodward

1. Meeting Called to Order – Chairperson John Conley
2. Quorum Call
3. Adoption of Agenda
4. Proof of Publication of Meeting Notice
5. Review and Recommendation on Development Agreement for Shadow Lake and Midland Lake Flood Control and Sediment Control Projects – Nancy Pridal, Lamp-Ryneearson Associates and Paul Woodward
6. Review and Recommendation on Amendments to Pigeon/Jones Watershed Site 15 Professional Services Contract with Olsson Associates – Jason Farnsworth, Olsson Associates, and Ralph Puls
7. Review and Recommendation on Draft Supplemental Watershed Plan for Rehabilitation of P.L. 566 Structures S-27, S-31 and S-32 – Chuck Leinen, NRCS, and Martin Cleveland
8. Review and Recommendation on Amendments to District's Wetland Mitigation Bank Instrument – Paul Woodward
9. Review and Recommendation on State Contract Purchase of GPS Survey Equipment – Jean Tait
10. Other Items of Interest
11. Adjourn

## Memorandum

**To:** Programs, Projects, and Operations Subcommittee  
**From:** Paul Woodward, Water Resources Engineer  
**Date:** June 3, 2005  
**Re:** Amendments to approved Agreement for Shadow Lake and Midlands Lake Flood and Sediment Control Projects

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Last month, the Board considered and approved the referenced agreement, under which the NRD would share the costs of design and construction of a flood detention structure (Shadow Lake) and a grade control structure (Midlands Lake) on Midlands and South Midlands Creek, just South of Highway 370 between 72<sup>nd</sup> and 84<sup>th</sup> Street southeast of Papillion.

Please see the attached memo from last month and attached map for further information regarding this agreement.

The agreement in the form approved by the Board was not executed by the General Manager. Subsequent to the Board's approval, several amendments to the agreement were proposed that could be viewed as substantive. Therefore the agreement in amended form is being submitted to the Board for approval.

The proposed amendments do not alter the intent of the agreement or change the responsibilities of the NRD. They include changes in terminology and changes in easement terms, and also provide that the construction that will be cost-shared by the NRD will be performed by contractors retained by SID 264 using the SID's statutory competitive bidding procedures.

In summary, the amendments do not change the intent or thrust of the agreement. The District still will provide 75% of the costs of design and construction of Shadow Lake and 100% of the cost of design and construction of Midlands Lake, for a maximum total of \$3,417,278.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the form of the agreement with the City of Papillion, 370 L.L.C., SID 267, Shadow Lake Development L.L.C., and SID 264 for the Shadow Lake and Midlands Lake Flood and Sediment Control Projects, as now presented.

**COOPERATIVE AGREEMENT**  
**AMONG**  
**THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT;**  
**THE CITY OF PAPILLION, NEBRASKA;**  
**370 LLC, A NEBRASKA LIMITED LIABILITY COMPANY;**  
**SANITARY AND IMPROVEMENT DISTRICT NO 267 OF SARPY**  
**COUNTY, NEBRASKA;**  
**SHADOW LAKE DEVELOPMENT, LLC, A NEBRASKA LIMITED**  
**LIABILITY COMPANY;**  
**AND**  
**SANITARY AND IMPROVEMENT DISTRICT NO 264 OF SARPY**  
**COUNTY, NEBRASKA**

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**SHADOW LAKE FLOOD AND SEDIMENT CONTROL PROJECTS**

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This Agreement (hereinafter referred to as “**THIS AGREEMENT**”) is made by and among the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, NEBRASKA (hereinafter referred to as “the **NRD**”); THE CITY OF PAPILLION, NEBRASKA, (hereinafter referred to as “the **CITY**”); 370 LLC, a Nebraska Limited Liability Company (hereinafter referred to as, “**370 LLC**”); SANITARY AND IMPROVEMENT DISTRICT NO. 267 OF SARPY COUNTY, NEBRASKA (hereinafter referred to as “**SID 267**”); SHADOW LAKE DEVELOPMENT, LLC, a Nebraska Limited Liability Company (hereinafter referred to as “**SLD LLC**”); and, SANITARY AND IMPROVEMENT DISTRICT NO. 264 OF SARPY COUNTY, NEBRASKA (hereinafter referred to as “**SID 264**”).

The NRD, the CITY, 370 LLC, SID 267, SLD LLC and SID 264 hereinafter are referred to separately as “a **PARTY**,” and collectively as “the **PARTIES**.”

## RECITALS

**WHEREAS**, 370 LLC is the developer of Shadow Lake Towne Center, a commercial real estate development and subdivision (hereinafter referred to as “**SHADOW LAKE TOWNE CENTER**”) as surveyed, platted and recorded in Section 2, Township 13 North, Range 12 East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska, and in Section 35 Township 14 North, Range 12 East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska; and,

**WHEREAS**, SID 267 is being or has been formed by 370 LLC for the purpose of constructing, operating and maintaining public infrastructure in SHADOW LAKE TOWNE CENTER; and

**WHEREAS**, SLD LLC is the developer of Shadow Lake, a residential real estate development and subdivision as surveyed, platted and recorded in Section 2 Township 13 North, Range 12 East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska, (hereinafter referred to as “**SHADOW LAKE**”) adjacent to SHADOW LAKE TOWNE CENTER; and,

**WHEREAS**, SID 264 has been formed by SLD LLC for the purpose of constructing, operating, repairing, and maintaining public infrastructure in SHADOW LAKE; and,

**WHEREAS**, Midlands Creek (hereinafter referred to as “**MIDLANDS CREEK**”), a hydrologically-uncontrolled tributary of the West Branch of the Papillion Creek, flows in a northerly direction through SHADOW LAKE and SHADOW LAKE TOWNE CENTER; and,

**WHEREAS**, a tract of land straddling the boundary between SHADOW LAKE and SHADOW LAKE TOWNE CENTER is the site preferred by the PARTIES for a flood control structure (hereinafter referred to as “the **SHADOW LAKE DAM**”) to detain flood waters of MIDLANDS CREEK; and,

**WHEREAS**, an additional tract of land in SHADOW LAKE forms the preferred site for a grade stabilization structure (hereinafter referred to as “the **MIDLANDS LAKE DAM**”) approximately at the location where the NRD has had long-standing plans to construct grade stabilization structure S-30, a component of the NRD’s and United States Department of Agriculture Natural Resources Conservation Service’s Public Law 566 Papillion Creek Watershed Work Plan; and,

**WHEREAS**, the PARTIES are willing to cooperate on the design, construction, operation, maintenance, repair, replacement, management and regulation of the following improvements (hereinafter referred to as “the **COOPERATIVE PROJECTS**”) that are generally depicted in the document entitled “Shadow Lake and Midlands Lake Design Report,” prepared by Lamp, Rynearson & Associates, Inc., dated April, 2005 (hereinafter referred to as “the **DESIGN REPORT**,” a copy of which is attached hereto as **Exhibit “A”** and incorporated herein by reference) to-wit:

A. The SHADOW LAKE DAM, to be designed and constructed by SLD LLC and SID 264 in and on tracts of land owned by 370 LLC and SID 267, and SLD LLC and SID 264, straddling the boundary between SHADOW LAKE and SHADOW LAKE TOWNE CENTER (such tracts of land, referred to in the DESIGN REPORT as “the Dam Footprint Easement,” “the Auxiliary Spillway Return Flow Easement,” and “the Principal Spillway Easement,” and such tracts of land hereinafter being referred to collectively as “the **SHADOW LAKE DAM COMPLEX**”), the SHADOW LAKE DAM to be permanently operated, maintained, repaired, replaced and regulated by the NRD; and,

B. The reservoir impounded by the SHADOW LAKE DAM (hereinafter referred to as “the **SHADOW LAKE RESERVOIR**”) to be designed and constructed by SLD LLC and SID 264 in and on tracts of land

owned by SLD LLC in SHADOW LAKE and on adjacent tracts of land owned by others (such tracts of land hereinafter being referred to collectively as “the **SHADOW LAKE RESERVOIR COMPLEX**”), the SHADOW LAKE RESERVOIR to be permanently operated, maintained, repaired, replaced, managed and regulated by SID 264; and,

C. The MIDLANDS LAKE DAM, to be designed and constructed by SID 264 in and on tracts of land owned by SLD LLC in SHADOW LAKE, (such tracts of land, referred to in the DESIGN REPORT as the “Dam Footprint Easement,” the “Auxiliary Spillway Return Flow Easement,” and the “Principal Spillway Easement,” and such tracts of land hereinafter being referred to collectively as “the **MIDLANDS LAKE DAM COMPLEX**”), the MIDLANDS LAKE DAM to be permanently operated, maintained, repaired, replaced, managed and regulated by the NRD; and,

D. The reservoir impounded by MIDLANDS LAKE DAM (hereinafter referred to as “the **MIDLANDS LAKE RESERVOIR**”), to be designed and constructed by SLD LLC and SID 264 in and on tracts of land owned by SLD LLC in SHADOW LAKE and on a small tract owned by Omaha Public Power District, and on adjacent tracts of land owned by others (such tracts of land hereinafter being referred to collectively as “the **MIDLANDS LAKE RESERVOIR COMPLEX**”), the MIDLANDS LAKE RESERVOIR COMPLEX to be permanently owned, operated, maintained, repaired, replaced, managed and regulated by SID 264; and,

**WHEREAS**, any public trail or other public recreation facilities (hereinafter referred to as “the **RECREATION FACILITIES**”), designed and constructed in the SHADOW LAKE DAM COMPLEX or SHADOW LAKE RESERVOIR COMPLEX or in the MIDLANDS LAKE DAM COMPLEX or MIDLANDS LAKE RESERVOIR COMPLEX, would be the responsibility of SLD

LLC and SID 264 to construct, operate, maintain, repair, replace, manage and regulate; and,

**WHEREAS**, the PARTIES hereto desire to set forth the terms of their agreement for the design, construction, operation, maintenance, repair, replacement, management, regulation and ownership of the COOPERATIVE PROJECTS,

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants of the PARTIES hereinafter expressed, the PARTIES agree as follows:

1. **PURPOSE.** The purpose of this AGREEMENT is to set forth the terms under which the COOPERATIVE PROJECTS and their components will be designed, constructed, operated, maintained, repaired, replaced, managed, regulated and owned.

2. **DUTIES OF THE PARTIES.** The design, construction, operation, maintenance, repair, replacement, management and regulation of the COOPERATIVE PROJECTS will be undertaken by the PARTIES as hereinafter provided, without any separate entity being created, and, the duties and responsibilities of the PARTIES with respect thereto shall be as defined and limited by this AGREEMENT.

3. **GENERAL BENEFITS DETERMINATION.** The parties do hereby find and determine that each and all of the COOPERATIVE PROJECTS will be of predominantly general benefit to the NRD and the other PARTIES, with only an incidental special benefit.

4. **THE ENGINEERS.** SLD LLC and SID 264 shall, by written engineering contract (hereinafter referred to as “the **ENGINEERING DESIGN CONTRACT**”), retain and compensate engineering consultants (hereinafter

referred to as “the **ENGINEERS**”), approved by the NRD (such approval to not be withheld or delayed unreasonably), to design the COOPERATIVE PROJECTS and to prepare plans and specifications and contract documents for, and administer construction of, the COOPERATIVE PROJECTS. The ENGINEERING DESIGN CONTRACT shall require that the ENGINEERS maintain separate accounting for the engineering fees and costs relating to (a) the SHADOW LAKE DAM (b) the SHADOW LAKE RESERVOIR, (c) the MIDLANDS LAKE DAM and (d) the MIDLANDS LAKE RESERVOIR.

**5. PRELIMINARY PLANS AND SPECIFICATIONS.** The ENGINEERS shall complete the preparation of proposed preliminary plans and specifications for construction of the COOPERATIVE PROJECTS (hereinafter referred to as “the **PRELIMINARY PLANS**”), subject to the following:

a) The PRELIMINARY PLANS for the SHADOW LAKE DAM shall be drawn in accordance with design criteria provided by the General Manager of the NRD, which shall be in general compliance with the DESIGN REPORT.

b) The PRELIMINARY PLANS for the SHADOW LAKE DAM shall include provisions for:

i) an auxiliary spillway wholly within the SHADOW LAKE DAM COMPLEX;

ii) a principal spillway crest elevation of 1,050.0 feet above mean sea level, referenced to the National Geodetic Vertical Datum of 1929 (hereinafter referred to as “**NGVD**”);

iii) an auxiliary spillway crest elevation of 1,059.5 feet above mean sea level, NGVD;

iv) a top-of-dam crest elevation of 1,066.0 feet above mean sea level, NGVD;



v) compacted embankment for a future concrete-paved road or street (hereinafter referred to as “the **DAM ROAD**”) such embankment to be designed in accordance with criteria provided by the General Manager of the NRD and constructed by 370 LLC and SID 267 outside the purview of this AGREEMENT, all at the sole cost and expense of 370 LLC and SID 267 or others, and sited in whole or part within the SHADOW LAKE DAM COMPLEX, generally along the northerly slope of the SHADOW LAKE DAM and with an elevation above what otherwise would have been the northerly base or toe of the embankment of the SHADOW LAKE DAM, the compacted embankment for the DAM ROAD to be designed with below-surface accommodations (approved by the NRD in writing in advance of construction, such approval to not be withheld or delayed unreasonably) for the DAM’S principal spillway discharge pipe, toe drains, pieziometers and other appurtenances; and, with surface accommodations (approved by the NRD in writing in advance of construction, such approval to not be withheld or delayed unreasonably) for the routing and passage to the centerline of the downstream channel of MIDLANDS CREEK of all water that could be discharged from the DAM’S auxiliary spillway, the DAM ROAD, and appurtenant storm water drainage facilities to be permanently operated, maintained, repaired replaced, managed and regulated by 370 LLC and SID 267 or others, in accordance with generally-accepted dam engineering practices, outside the purview of this AGREEMENT and all at the sole cost and expense of 370 LLC and SID 267 or others, with the expectation that the future DAM ROAD will constitute an integral part of the CITY’S eventual road and street system in SHADOW LAKE TOWNE CENTER; and,

c) The PRELIMINARY PLANS for the SHADOW LAKE DAM shall include preliminary operation and maintenance manuals and an emergency operations plan for the SHADOW LAKE DAM, to include, without limitation, guidelines for the regulation of the SHADOW LAKE DAM'S outlet works in order to change the level of impounded water in the SHADOW LAKE RESERVOIR from time to time for purposes of the NRD'S maintenance or repair of the SHADOW LAKE DAM, or for purposes of SID 264's periodic removal of accumulated silt from the SHADOW LAKE RESERVOIR.

d) The PRELIMINARY PLANS for the SHADOW LAKE RESERVOIR shall be drawn in accordance with design criteria provided by the General Manager of the NRD and shall include, without limitation a detailed grading plan for such excavation of earth from the reservoir pool portion of the SHADOW LAKE RESERVOIR COMPLEX, in amounts in excess of borrow used for construction of the COOPERATIVE PROJECTS, as may be necessary to insure flood storage capacity in the SHADOW LAKE RESERVOIR of at least 300 acre-feet between the elevation of the crest of the auxiliary spillway and the elevation of the crest of the SHADOW LAKE DAM (hereinafter referred to as the "**SHADOW LAKE RESERVOIR ADDITIONAL-CAPACITY EXCAVATION**").

e) The PRELIMINARY PLANS for the MIDLANDS LAKE RESERVOIR shall be drawn in accordance with design criteria provided by the General Manager of the NRD and shall include, without limitation, a detailed grading plan for such excavation of earth from the reservoir pool portion of the MIDLANDS LAKE RESERVOIR COMPLEX, in amounts in excess of borrow used for construction of the COOPERATIVE PROJECTS, as may be necessary to insure adequate capacity in the MIDLANDS LAKE RESERVOIR for silt-retention, such excavation to result in the MIDLANDS

LAKE RESERVOIR having a minimum capacity of 160.0 acre feet of storage below elevation 1,070.0 feet above mean sea level, NGVD (hereinafter referred to as the “**MIDLANDS LAKE RESERVOIR ADDITIONAL-CAPACITY EXCAVATION**”). .

f) The PRELIMINARY PLANS for the MIDLANDS LAKE DAM shall include provisions for

i) an auxiliary spillway wholly within the MIDLANDS LAKE DAM COMPLEX, extending from the northerly side of the MIDLANDS LAKE DAM;

ii) a principal spillway crest elevation of 1,070.0 feet above mean sea level, NGVD;

iii) an auxiliary spillway crest elevation of 1,078.0 feet above mean sea level, NGVD; and,

iv) a top-of-dam crest elevation of 1,086.0 feet above mean sea level.

g) The PRELIMINARY PLANS for the MIDLANDS LAKE DAM shall include operation and maintenance manuals and an emergency operations plan for the MIDLANDS LAKE DAM, to include, without limitation, guidelines for the regulation of the MIDLANDS LAKE DAM'S outlet works in order to change the level of impounded water in the MIDLANDS LAKE RESERVOIR from time to time for purposes of the NRD'S maintenance or repair of the MIDLANDS LAKE DAM, or for purposes of SID 264's periodic removal of accumulated silt from the MIDLANDS LAKE RESERVOIR.

h) The PRELIMINARY PLANS, as prepared by the ENGINEERS, shall include, without limitation, the ENGINEERS' itemized estimates of:

i) The total costs of the COOPERATIVE PROJECTS, including the costs of engineering, design, construction and construction administration (but excluding right-of-way costs) but not including the estimated costs of any enlargement or modification of the SHADOW LAKE DAM'S embankment cross-sections, spillway works or other features that, considering generally accepted dam engineering practices, exist solely to accommodate the DAM ROAD (the costs of the SHADOW LAKE DAM without the DAM ROAD hereinafter being referred to as "the **SHADOW LAKE MINIMAL DAM COSTS**"); and,

ii) The comparative separate costs, additional to the SHADOW LAKE MINIMAL DAM COSTS, including the costs of engineering, design, construction and construction administration (but excluding right-of-way costs) required for construction of the DAM ROAD as part of SHADOW LAKE DAM.

i) The RECREATIONAL FACILITIES, the DAM ROAD, the MIDLANDS LAKE RESERVOIR ADDITIONAL-CAPACITY EXCAVATION, and the MIDLANDS LAKE RESERVOIR ADDITIONAL-CAPACITY EXCAVATION shall not, for any purposes relating to this AGREEMENT, be deemed to be components or portions of the COOPERATIVE PROJECTS that are the subjects of this AGREEMENT.

6. **NRD'S ENGINEERING CONSULTANT.** The NRD will retain the firm of HDR Engineering, Inc. (hereinafter referred to as "the **NRD'S ENGINEERING CONSULTANT**") to consult with the NRD concerning the PRELIMINARY PLANS, the FINAL PLANS, and observation of construction of the COOPERATIVE PROJECTS. In all computations of engineering fees pursuant to this AGREEMENT, the fees of the NRD'S ENGINEERING

CONSULTANT shall be included. The NRD'S ENGINEERING CONSULTANT shall maintain separate accounting for the engineering fees and costs relating to the SHADOW LAKE DAM and the SHADOW LAKE RESERVOIR, on the one hand, and for the engineering fees and costs relating to the MIDLANDS LAKE DAM and the MIDLANDS LAKE RESERVOIR, on the other hand. The first \$100,000.00 of the fees and costs of the NRD'S ENGINEERING CONSULTANT shall be an attributable cost of the COOPERATIVE PROJECTS and apportioned between the SHADOW LAKE DAM and the SHADOW LAKE RESERVOIR, on the one hand, and the MIDLANDS LAKE DAM and the MIDLANDS LAKE RESERVOIR, on the other hand, as reasonably determined by the NRD'S ENGINEERING CONSULTANT. The remaining fees and costs of the NRD'S ENGINEERING CONSULTANT shall be the sole responsibility of the NRD.

**7. APPROVAL OF PRELIMINARY PLANS.** Upon the ENGINEERS' completion of the proposed PRELIMINARY PLANS, the PRELIMINARY PLANS shall be submitted to the NRD and the CITY for their separate written approvals, such approvals to not be withheld or delayed unreasonably.

**8. PREPARATION OF FINAL PLANS.** Upon receipt of the NRD'S and the CITY'S written approval of the PRELIMINARY PLANS, the ENGINEERS shall complete the preparation of proposed final plans and specifications, including costs estimates, for construction of the COOPERATIVE PROJECTS (hereinafter referred to as "the **FINAL PLANS**"), based on the elements of the PRELIMINARY PLANS and including, without limitation, proposed surveys and proposed detailed legal descriptions for the lands, easements and other rights-of-way necessary for construction, operation, maintenance, repair, replacement, management and regulation of the COOPERATIVE PROJECTS (hereinafter referred to as "the **PROJECT LAND RIGHTS**"); and including, without limitation, proposed final operation and maintenance manuals and an emergency

operations plan for the SHADOW LAKE DAM and for the MIDLANDS LAKE DAM.

**9. APPROVAL OF FINAL PLANS FOR PROJECT.** Upon the ENGINEERS' completion of the proposed FINAL PLANS, the FINAL PLANS shall be submitted to the NRD and the CITY for their separate written approvals, such separate approvals to not be withheld or delayed unreasonably. The NRD and the CITY each shall have the additional right to review and approve subsequent amendments to the FINAL PLANS, such approvals to not be withheld or delayed unreasonably.

**10. ENGINEERS INSURANCE.** The ENGINEERING DESIGN CONTRACT shall require that the ENGINEERS purchase, and maintain, until the expiration of two years after completion of construction of the COOPERATIVE PROJECTS, policies of insurance with minimum requirements stated in the schedule attached hereto as Exhibit "B" and incorporated herein by reference. Prior to commencement of such engineering and design work the ENGINEERS shall submit to the NRD insurance certificates in form acceptable to the NRD.

**11. CONSTRUCTION CONTRACT.** On or before August 1, 2006, SLD LLC and SID 264 shall deliver to the NRD copies of the proposed respective contracts between SLD LLC and SID 264 and the respective CONTRACTOR(S) for construction of the COOPERATIVE PROJECTS (such contract, together with the FINAL PLANS, hereinafter being referred to collectively as the "CONSTRUCTION CONTRACT"). The NRD shall have a period of 30 days to review the CONSTRUCTION CONTRACT and to approve or disapprove the same in writing or suggest amendments thereto, and shall have an additional period of 30 days to review and approve subsequent amendments thereto. Such approvals shall not be withheld or delayed unreasonably. The CONSTRUCTION CONTRACT shall require separate accounting for the costs of construction of (a)

the SHADOW LAKE DAM, (b) the SHADOW LAKE RESERVOIR, (c) the MIDLANDS LAKE DAM” and (d) the MIDLANDS LAKE RESERVOIR.

**12. SID 264 PROJECT CONTRACTOR.** On or before September 30, 2006, SID 264 shall use its statutory and competitive bidding procedures to retain a general contractor (hereinafter referred to as “the **CONTRACTOR**”), to construct the COOPERATIVE PROJECTS in accordance with the approved CONSTRUCTION CONTRACT. Copies of all competitive bids received by SID 264 for construction of the COOPERATIVE PROJECTS, along with the determination by SID 264 of the lowest responsible bidder, shall be furnished to the NRD, which shall have 5 days to review such determination and approve the same in writing, such approval to not be withheld or delayed unreasonably.

**13. CONTRACTOR INSURANCE AND BONDING.** The CONSTRUCTION CONTRACT shall require:

a) That the CONTRACTOR purchase, and maintain until the expiration of four years after completion of construction of the COOPERATIVE PROJECTS, policies of insurance with minimum requirements stated in the schedule attached hereto as Exhibit “C” and incorporated herein by reference. Such insurance shall name all the PARTIES as named insureds.

b) That the CONTRACTOR purchase submit to the NRD insurance certificates in form acceptable to the NRD prior to commencement of the construction work

c) That the CONTRACTOR purchase and maintain, during performance of the work, labor and material payment bonds and performance bonds, in the amount of the CONSTRUCTION CONTRACT, that shall name all the PARTIES as additional secured parties, as their respective interests may appear.

14. **CONTRACTOR'S WARRANTIES.** As the NRD may reasonably request, SID 264 shall enforce all bonds and warranties given by its CONTRACTOR and its subcontractors in the CONSTRUCTION CONTRACT.

15. **CONSTRUCTION OF COOPERATIVE PROJECTS.** Within 30 days after the NRD'S approval of the CONSTRUCTION CONTRACT, or at such other time as all the PARTIES may agree in writing, SID 264 shall sign the CONSTRUCTION CONTRACT; and, subsequent thereto, the COOPERATIVE PROJECTS shall be constructed by the CONTRACTOR in conformance with the CONSTRUCTION CONTRACT, including the FINAL PLANS, approved by the NRD and the CITY. Construction of the COOPERATIVE PROJECTS shall be finally completed on or before September 30, 2007.

16. **CONSTRUCTION OBSERVATION.** SID 264 will provide for full-time engineering observation and administration of construction of the COOPERATIVE PROJECTS by the ENGINEERS. The NRD and the NRD'S ENGINEERING CONSULTANT shall be given the opportunity to fully observe such construction at all reasonable hours and contemporaneously receive from SID 264, as the case may be, copies of all written communications issued by SID 264, the ENGINEERS or the PROJECT CONTRACTOR pertaining to construction of the COOPERATIVE PROJECTS, including without limitation statements by the ENGINEERS as to percentage of completion and substantial completion.

17. **CLOSING.** 370 LLC and SID 267 and SLD LLC and SID 264 shall respectively and timely acquire, and at a closing (hereinafter referred to as "the **CLOSING**") to be held on or before January 1, 2006, or on such other date as may be agreed upon by the PARTIES, 370 LLC and SID 267 and SLD LLC and SID 264 shall, with the consideration agreed upon by the City, 370 LLC, SID 267, SLD LLC and SID 264, grant or convey to the respective PARTY hereinafter



stated, the lands, easements and rights of way comprising the PROJECT LAND RIGHTS over the lands necessary for the construction, operation, maintenance, repair, replacement, management and regulation of the COOPERATIVE PROJECTS, the form of the PROJECT LAND RIGHTS to be as provided in the easement form attached hereto and incorporated herein by reference as Exhibit "D".

**18. NRD TITLE INSURANCE.** Within 30 days prior to the CLOSING, 370 LLC and SID 267, and SLD LLC and SID 264 shall deliver to the NRD a commitment (hereinafter referred to as "the **NRD TITLE INSURANCE BINDER**") for a title insurance policy for the PROJECT LAND RIGHTS to be granted to the NRD at the CLOSING, to-wit:

a) The NRD TITLE INSURANCE BINDER shall be issued by an authorized title insurance company in the amount of \$3,400,000 and shall show marketable fee simple title to the tract(s) of land to be encumbered by the PROJECT LAND RIGHTS to be vested in 370 LLC and SID 267, or SLD LLC and SID 264, respectively, free from any easements, restrictions, covenants of record, and other encumbrances that would prevent or retard the construction, operation, maintenance repair, replacement or regulation of the COOPERATIVE PROJECTS pursuant to this AGREEMENT, with the exception of easements and covenants found on the original, recorded plats of SHADOW LAKE or SHADOW LAKE TOWNE CENTER. The NRD TITLE INSURANCE BINDER shall be conclusive evidence of good title as therein shown as to all matters insured or to be insured by the policy, subject only to the exceptions as therein stated.

b) If the NRD TITLE INSURANCE BINDER discloses any exceptions to title, 370 LLC and SID 267, or SLD LLC and SID 264, respectively, shall have 30 days from the date of delivery of the NRD TITLE INSURANCE BINDER to the NRD to have such exceptions removed from

the NRD TITLE INSURANCE BINDER, or, at 370 LLC and SID 267, and SLD LLC and SID 264's expense, to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions, and, in such event, the time of the CLOSING shall be the day following the date of such removal of exceptions or commitment to insure, or the date for closing as provided pursuant to this AGREEMENT, whichever comes later.

c) If 370 LLC and SID 267, and SLD LLC and SID 264 fail to have such exceptions removed, or in the alternative, to obtain the commitment for title insurance specified above as to such exceptions within the specified time, the NRD may, at the NRD'S election, either terminate this AGREEMENT or accept a grant of the PROJECT LAND RIGHTS as title then exists, in either case by giving 370 LLC and SID 267, or SLD LLC and SID 264 written notice of the NRD'S election. If the NRD fails to give notice of such election within ten days after the expiration of the aforesaid 30 days, then the NRD shall be deemed to have elected to take the PROJECT LAND RIGHTS as title then exists, and this transaction shall close in accordance with the preceding provisions hereof. If the NRD shall give notice of the NRD'S election to terminate this AGREEMENT, as aforesaid, within the time provided, then this AGREEMENT shall thereupon, without further action by any party, become null and void and none of the PARTIES shall have any obligation hereunder.

d) The premium for the title insurance provided by the NRD TITLE INSURANCE BINDER shall be paid by 370 LLC and SID 267, and SLD LLC and SID 264, respectively.

**19. PERMITS.** 370 LLC and SID 267 shall have the responsibility to obtain all other permits and rights-of-way, including without limitation, zoning and subdivision approvals, licenses, easements, water rights, and permits or consents from the Corps of Engineers or other federal, state or local agencies, as

may be required or convenient for construction, and for permanent operation, and maintenance of the DAM ROAD and the portion of the MIDLANDS CREEK Channel in SHADOW LAKE TOWNE CENTER. SLD LLC and SID 264 shall have the responsibility to obtain all other permits and rights-of-way, including without limitation, zoning and subdivision approvals, licenses, easements, water rights, and permits or consents from the Corps of Engineers or other federal, state or local agencies, as may be required or convenient for construction, and for permanent operation, and maintenance of the COOPERATIVE PROJECTS.

**20. PAYMENT OF PROJECT COSTS.** Except as otherwise provided in this AGREEMENT, SLD LLC and SID 264 shall pay all the costs of design, engineering, construction and construction observation of or relating to the COOPERATIVE PROJECTS.

**21. NRD CONTRIBUTION.** As the NRD'S sole contribution and sole liability to 370 LLC and SID 267, and SLD LLC and SID 264, towards the costs of design, construction, project administration, permits and PROJECT LAND RIGHTS for the COOPERATIVE PROJECTS (hereinafter referred to as "the **NRD'S CONTRIBUTION**"), the NRD shall pay to SID 264 the lesser of the following amounts, to-wit:

a) \$3,357,278.00, such amount hereinafter being referred to as "the **NRD MAXIMUM CONTRIBUTION**") derived as the sum total of the following amounts, to-wit:

i) 75% of the currently estimated SHADOW LAKE MINIMAL DAM COSTS (without costs of land rights or legal, fiscal and interest costs) to-wit: \$2,109,968 ( $\$2,813,290 \times 75\% = \$2,109,968$ ) [ $\$2,166,218$  after the addition of HDR fees and costs in the amount of  $\$56,250$  ( $\$75,000 \times 75\% = \$56,250$ )]; and,

ii) 100% of the currently-estimated costs of engineering and construction of the MIDLANDS LAKE DAM (without costs of land rights or legal, fiscal and interest costs), to-wit: \$1,166,060 [\$1,191,060 after the addition of HDR fees and costs in the amount of \$25,000]

or,

b) The sum total of the following amounts, to-wit:

i) 75% of the total actual expenditures by SLD LLC and SID 264 for the SHADOW LAKE MINIMAL DAM COSTS (without costs of land rights and legal, fiscal and interest costs) plus 75% of actual HDR fees and costs; and,

ii) 100% of the total actual expenditures by SLD LLC and SID 264 for the costs of engineering and construction of the MIDLANDS LAKE DAM (without costs of land rights and legal, fiscal and interest costs) plus actual HDR fees and costs;

such total of such amounts hereinafter being referred to as the “**NRD ACTUAL COST CONTRIBUTION**”.

**22. PAYMENT OF THE NRD CONTRIBUTION.** The NRD shall pay the NRD’S CONTRIBUTION to SID 264 in three uneven installments, as follows:

a) For the NRD’s fiscal year 2006 (July 1, 2005-June 30, 2006), an initial installment payment of one-third (33 1/3%) of the NRD ACTUAL COST CONTRIBUTION, such initial installment payment to be due and payable by the NRD to SLD LLC and SID 264 on the later of the following dates:

- i) June 1, 2006, or
- ii) 45 days after the date of the CLOSING, or
- iii) 45 days after SLD LLC and SID 264 shall have paid the cumulative amount of \$1,500,000 towards the actual costs of the COOPERATIVE PROJECTS, as certified by the ENGINEERS.

b) For the NRD's fiscal year 2007 (July 1, 2006-June 30, 2007), a second installment payment consisting of two-thirds (66 2/3%) of the NRD ACTUAL COST CONTRIBUTION, less the amount of the NRD's fiscal year 2006 contribution, such second installment payment to be due and payable by the NRD to SLD LLC and SID 264 on the later of the following dates:

- i) June 1, 2007, or
- ii) 45 days after the date of the CLOSING, or
- iii) 45 days after the ENGINEERS shall have certified to the NRD in writing that construction of the COOPERATIVE PROJECTS in accordance with the FINAL PLANS approved by the NRD and the CITY has been substantially completed.

c) For the NRD's fiscal year 2008 (July 1, 2007-June 30, 2008), a third installment payment consisting of the lesser of the NRD MAXIMUM CONTRIBUTION or the NRD ACTUAL COST CONTRIBUTION, less the sum of the NRD'S installment payments for fiscal years 2006 and 2007, such third installment payment to be due and payable by the NRD to SLD LLC and SID 264 on the later of the following dates:

- i) June 1, 2008, or
- ii) 45 days after the date of the CLOSING, or
- iii) 45 days after the ENGINEERS shall have certified to the NRD in writing that construction of the COOPERATIVE PROJECTS,

in accordance with the FINAL PLANS approved by the NRD and the CITY, has been finally completed and as-built plans for the COOPERATIVE PROJECTS have been furnished to the NRD without any additional cost to the NRD.

**23. 370 LLC and SID 267 CONTRIBUTION.** As 370 LLC'S and SID 267's contribution towards the costs of design, construction, project administration, permits and land rights and project administration for the COOPERATIVE PROJECTS (hereinafter referred to as "the 370 LLC/SLD LLC CONTRIBUTION"), in addition to paying the costs of the DAM ROAD, 370 LLC and SID 267 shall pay to SLD LLC and SID 264 an amount equal to \$\_\_\_\_\_ (without costs of land rights and legal, fiscal and interest costs).

**24. INTEREST.** All payments called for by this AGREEMENT shall be paid without interest until due and thereafter shall be paid with interest computed from the installment due date at the rate determined by increasing by two percentage points (2.0%) the national rate charged from time-to-time by the First National Bank of Omaha, Nebraska, or at the mean rate paid by SLD LLC or SID 264, respectively, for financing its portions of the COOPERATIVE PROJECTS, whichever is the greater rate.

**25. PROJECT OPERATION AND MAINTENANCE.** After the CLOSING and final completion of construction of the COOPERATIVE PROJECTS (including the DAM ROAD), and the CITY'S and the NRD'S acceptance of the same from the PROJECT CONTRACTOR,

a) the NRD, at its sole and un-reimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the SHADOW LAKE DAM and the MIDLANDS LAKE DAM, as the NRD in its sole discretion determines necessary and in accordance with generally accepted

engineering practices and the operation and maintenance manuals prepared by the ENGINEERS for such PROJECT components; provided, however, SID 264, at its sole cost and expense, shall perform all necessary grounds keeping of the SHADOW LAKE DAM COMPLEX and the MIDLANDS LAKE DAM COMPLEX, such as mowing and maintenance of grass and other ornamental vegetation, and debris cleanup.

b) SID 267, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the DAM ROAD and the portion of the MIDLANDS CREEK in SHADOW LAKE TOWNE CENTER, all as SID 267 in its sole discretion determines necessary and in accordance with generally accepted engineering practices; and,

c) SID 264, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the remaining COOPERATIVE PROJECTS, as SID 264 in its sole discretion determines necessary and in accordance with generally accepted engineering practices.

**27. INDEMNIFICATIONS.** (a) Each of the PARTIES shall defend, indemnify, and hold the other PARTIES harmless from and against all costs and expenses, including court costs and attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the indemnifying PARTY'S negligence in the design, construction, operation, maintenance, repair, management or regulation of the COOPERATIVE PROJECTS, or components thereof, except such personal injuries or property damages as may be caused by the sole negligence of any of such other PARTIES. Except as otherwise specifically provided in this AGREEMENT, SLD LLC and SID 264 shall defend and indemnify the NRD and hold the NRD harmless (1) from and against any and all costs of the acquisition of PROJECT LAND RIGHTS, and of the design and construction of the COOPERATIVE PROJECTS; (2) from and against any and all claims, demands,

causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of SLD LLC and SID 264's construction of the COOPERATIVE PROJECTS or elements thereof; arising out of SLD LLC or SID 264's operation, maintenance, repair, replacement, management or regulation of the portions of the COOPERATIVE PROJECTS, or elements thereof, for which they have assumed responsibility under this AGREEMENT; or caused by the negligence or other actions or inactions of SLD LLC or SID 264, their employees, officers, contractors and agents in the acquisition of PROJECT LAND RIGHTS, or in the construction, operation, maintenance, repair, replacement, management or regulation of the portions of the COOPERATIVE PROJECTS, or elements thereof, for which they have assumed responsibility under this AGREEMENT (except as may be caused solely by the negligence of the NRD or its employees, officers, contractors or agents); and, (3) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising from the introduction or presence in or on any portion of the COOPERATIVE PROJECTS of asbestos or any form thereof, or any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any portion of the COOPERATIVE PROJECTS, including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination in or on any portion of the COOPERATIVE PROJECTS (except costs and expenses relating to any such substances or materials introduced by the NRD or its employees, officers, contractors or agents).



**28. PROJECT RISK OF LOSS.** After substantial completion of construction of the various components of the COOPERATIVE PROJECTS, the sole risk of loss of or damage to any such COOPERATIVE PROJECTS or component thereof shall be borne by the party that, under this AGREEMENT, has the obligation to operate and maintain such component, whether such loss or damage results from flood or other casualty whatsoever.

**29. ASSIGNMENT.** With the exception of assignments as a matter of law accompanying annexations, a PARTY may not assign any rights or duties in this AGREEMENT in whole or in part to any other person except with the prior written consent of the NRD and the CITY, excepting assignments of rights to receive NRD installment payments, called for by this AGREEMENT, to any financial institution providing financing for COOPERATIVE PROJECTS.

**30. NO SEPARATE LEGAL ENTITY.** No separate legal or administrative entity is created by this AGREEMENT.

**31. SUCCESSOR AND ASSIGNS BOUND BY COVENANTS.** All covenants, stipulations and agreements in this AGREEMENT shall extend to and bind the legal representatives, successors, and assigns of the respective PARTIES.

**32. CAPTIONS.** Captions used in this AGREEMENT are for convenience and are not used in the construction of this AGREEMENT.

**33. APPLICABLE LAW.** The PARTIES to this AGREEMENT shall conform to all existing and applicable ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this AGREEMENT.

**34. MERGER.** This AGREEMENT shall not be merged into any other oral or written agreement, lease or deed of any type.

**35. MODIFICATION.** This AGREEMENT contains the entire agreement of the PARTIES. No representations were made or relied upon by any of the PARTIES other than those that may be expressly set forth herein. No agent, employee or other representative of any PARTY is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of such respective PARTY.

**36. STRICT COMPLIANCE.** All provisions of this AGREEMENT and each and every document that shall be attached hereto shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from authorized representative.

**37. INVALID PROVISIONS.** In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of this AGREEMENT which shall in all respects remain a legally binding agreement with the invalid portion being deleted; provided that the validity of any such covenant, condition, or provision does not materially prejudice any of the PARTIES in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this AGREEMENT.

**38. NON-WAIVER.** No delay or failure by any of the PARTIES to exercise any right under this AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by any of the PARTIES shall not be deemed to extend the amount of time available to perform any other act required under this AGREEMENT.

**39. FURTHER AGREEMENTS.** Each of the PARTIES will, whenever and as often as the other may request, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all such further conveyances, assignments or other instruments and documents as the requesting PARTY may believe to be necessary, expedient or proper in order to complete any and all conveyances, transfers, and assignments herein provided and to do any and all other acts and to execute, acknowledge and deliver any other documents so requested in order to carry out the intent and purposes of this AGREEMENT.

**40. TIME IS OF THE ESSENCE.** Time is expressly declared to be of the essence of this AGREEMENT.

**41. COUNTERPARTS.** This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**42. DEFAULT.** If the any of the PARTIES fails to comply with any provision of this AGREEMENT after reasonable request for performance has been served on such party, the remaining PARTIES may seek specific performance, or may terminate this AGREEMENT upon written notice to the other PARTIES prior to the letting of the CONSTRUCTION CONTRACT. In addition, if any PARTY or any of their contractors fail to perform the work provided in this AGREEMENT with respect to constructing any of the COOPERATIVE PROJECTS, or abandon or cease work on any of the COOPERATIVE PROJECTS for a period of one year, or fail in any way to perform the conditions hereof, or fail to pay laborers, mechanics, or material suppliers when due, provided that the failure to pay is not caused by any failure on the part of the NRD, or in the event that a PARTY or any of its contractors shall become insolvent or unable to meet their obligations as they become due, or shall make any assignment for the benefit of creditors or shall commence any proceedings in

bankruptcy or if any other proceedings are commenced against them, the NRD may, and without prejudice to any other rights it may have, by giving to the other PARTIES 30 days notice of its written election, terminate this AGREEMENT; or the NRD may take over all work or any part thereof, and all tools, equipment, and supplies to finish the work by whatever method it deems expedient, including, without limitation, taking over the such PARTY'S permits, plans and specifications, and construction and engineering contracts; and, in such event the such PARTY and its contractors shall not be entitled to receive any other payments until the work is completed. If the unpaid balance of the NRD contributions to a PARTY pursuant to this AGREEMENT exceeds the NRD's expense of completing the work of such PARTY, the excess shall be paid to such PARTY or its contractors. If the expense exceeds the unpaid balance, then such PARTY shall promptly pay the difference to the NRD on demand. The NRD's expense of completion shall be established as the actual cost of construction plus 20% additional for overhead and supervision.

**43. EFFECTIVE DATE AND TERM.** This AGREEMENT shall be perpetual in its duration and shall be effective upon the occurrence of the later of the following events, to-wit:

- a) Execution of this AGREEMENT by all parties, and
- b) Execution of an agreement between the NRD and the CITY providing for CITY operation and maintenance of Walnut Creek Lake and Recreation Area (Dam Site 21) in the form as attached hereto as Exhibit "E" and incorporated herein by reference or in such other form as the NRD and the CITY determine appropriate.

**44. NOTICES.** Any notice required under the terms of this AGREEMENT shall be deemed to have been given forty-eight (48) hours after notice has been deposited in the United States mail. Notices to the CITY provided

for in this AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid, addressed to:

Mayor, City of Papillion, Nebraska  
City Hall  
Papillion, Nebraska 68046

and notices to the NRD provided for in this AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid addressed to:

General Manager  
Papio-Missouri River NRD  
8901 South 154th Street  
Omaha, Nebraska 68138-3621

and notices to 370 LLC, provided for in this AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid addressed to:

370 LLC  
c/o Salvadore Carta  
10855 W. Dodge Road, Suite 270  
Omaha, Nebraska 68154

and notices to SID 267, provided for in this AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid addressed to:

Sanitary and Improvement District No. 267  
of Sarpy County, Nebraska  
c/o Dennis P. Hogan, III  
Pansing Hogan Ernst & Bachman LLP  
10250 Regency Circle, Suite 300  
Omaha, Nebraska 68114

and notices to SLD LLC, provided for in this AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid addressed to:

Shadow Lake Development, LLC  
c/o John C. Allen  
14769 California Street  
Omaha, Nebraska 68154

and notices to SID 264, provided for in this AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid addressed to:

Sanitary and Improvement District No. 264  
of Sarpy County, Nebraska  
c/o John Q. Bachman  
Pansing Hogan Ernst & Bachman LLP  
10250 Regency Circle, Suite 300  
Omaha, Nebraska 68114

or to such other respective address(s) as the PARTIES may designate to each other from time to time in writing.

**IN WITNESS WHEREOF**

This AGREEMENT is executed by the PAPIO-MISSOURI RIVER  
NATURAL RESOURCES DISTRICT on this \_\_\_\_ day of \_\_\_\_\_,  
2005, 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 CITY OF PAPILLION, NEBRASKA  
on this \_\_\_\_ day of \_\_\_\_\_, 2005, pursuant to ordinance duly  
adopted by its City Council.

**CITY OF PAPILLION, NEBRASKA**

BY \_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

This AGREEMENT is executed by 370 LLC, A NEBRASKA LIMITED LIABILITY COMPANY on this \_\_\_\_ day of \_\_\_\_\_, 2005.

**370 LLC, A NEBRASKA LIMITED LIABILITY COMPANY**

By \_\_\_\_\_

Title \_\_\_\_\_

This AGREEMENT is executed by SANITARY AND IMPROVEMENT DISTRICT NO 267 OF SARPY COUNTY, NEBRASKA, on this \_\_\_\_ day of \_\_\_\_\_, 2005, pursuant to resolution duly adopted by its Board of Trustees.

**SANITARY AND IMPROVEMENT DISTRICT NO 267 OF  
SARPY COUNTY, NEBRASKA**

By \_\_\_\_\_

Title \_\_\_\_\_

This AGREEMENT is executed by SHADOW LAKE DEVELOPMENT, LLC, A NEBRASKA LIMITED LIABILITY COMPANY on this \_\_\_\_ day of \_\_\_\_\_, 2005.

**SHADOW LAKE DEVELOPMENT, LLC, A NEBRASKA  
LIMITED LIABILITY COMPANY**

By \_\_\_\_\_

Title \_\_\_\_\_

This AGREEMENT is executed by SANITARY AND IMPROVEMENT DISTRICT NO 264 OF SARPY COUNTY, NEBRASKA, on this \_\_\_\_ day of \_\_\_\_\_, 2005, pursuant to resolution duly adopted by its Board of Trustees.

**SANITARY AND IMPROVEMENT DISTRICT NO 264 OF  
SARPY COUNTY, NEBRASKA**

By \_\_\_\_\_  
Title \_\_\_\_\_

**[ACKNOWLEDGEMENTS]**

STATE OF NEBRASKA            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a Notary Public, personally came \_\_\_\_\_, General Manager of the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said District.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public



STATE OF NEBRASKA            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a Notary Public, personally came \_\_\_\_\_ Mayor of the CITY OF PAPILLION, NEBRASKA to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said City.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a Notary Public, personally came \_\_\_\_\_ of 370 LLC, A NEBRASKA LIMITED LIABILITY COMPANY, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said limited liability company.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a  
Notary     Public,     personally     came \_\_\_\_\_,  
\_\_\_\_\_ of SANITARY AND IMPROVEMENT DISTRICT  
NO. 267 OF SARPY COUNTY, NEBRASKA, to me personally known to be the  
identical person whose name is affixed to the above and foregoing instrument, and  
he/she acknowledged the same to be his/her voluntary act and deed and the  
voluntary act and deed of said district.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a  
Notary     Public,     personally     came \_\_\_\_\_,  
\_\_\_\_\_ of SHADOW LAKE DEVELOPMENT, LLC, A  
NEBRASKA LIMITED LIABILITY COMPANY, to me personally known to be the  
identical person whose name is affixed to the above and foregoing instrument, and  
he/she acknowledged the same to be his/her voluntary act and deed and the  
voluntary act and deed of said limited liability company.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a  
Notary Public, personally came \_\_\_\_\_,  
\_\_\_\_\_ of SANITARY AND IMPROVEMENT DISTRICT  
NO. 264 OF SARPY COUNTY, NEBRASKA, to me personally known to be the  
identical person whose name is affixed to the above and foregoing instrument, and  
he/she acknowledged the same to be his/her voluntary act and deed and the  
voluntary act and deed of said district.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public

## EXHIBIT B

The ENGINEER shall purchase, and maintain until the expiration of two years after completion of the COOPERATIVE PROJECTS the following policies of insurance with minimum requirements as shown:

- a) Workmens Compensation and Employers Liability
  - i) Workers' Compensation: statutory minimum
  - ii) Longshore and Harbor Workers' Compensation Act endorsement and Admiralty Law endorsements (required if the work involves maritime operations).
  - iii) Employer's Liability: \$100,000.00 per accident.
- b) Professional malpractice
  - i) \$1,000,000.00 each claim
  - ii) \$2,000,000.00 aggregate
- c) Commercial General Liability – ISO Occurrence Form
  - i) \$1,000,000.00 each occurrence
  - ii) \$2,000,000.00 general aggregate
  - iii) \$2,000,000.00 products – completed operations aggregate
  - iv) \$1,000,000.00 personal & advertising injury
  - v) \$300,000.00 fire damage
  - vi) \$5,000.00 medical expense
- d) Business Auto Liability - Owned, Non-Owned & Hired vehicles  
\$1,000,000.00 combined single limit
- e) General Provisions:
  - i) All policies shall be endorsed to have any annual aggregate apply on a per-project basis or, instead of obtaining such endorsements, the ENGINEER shall purchase and maintain and until the expiration of two years after completion of the COOPERATIVE PROJECTS, a policy of umbrella insurance with limits of at least \$1,000,000.
  - ii) All policies shall be endorsed to provide 30 days written notice to the NRD prior to termination or change in the coverage provided.
  - iii) The NRD reserves the right to approve the ENGINEER'S insurers.

- iv) Workers Compensation and Commercial General Liability policies shall be endorsed to provide Waiver of Subrogation in favor of the NRD.

Prior to commencement of its work on the COOPERATIVE PROJECTS and from time to time thereafter at NRD's reasonable request, the ENGINEER shall submit certificates in form acceptable to the NRD evidencing that all such insurance policies are in effect.

## EXHIBIT C

The CONTRACTOR shall purchase, and maintain until the expiration of two years after completion of the COOPERATIVE PROJECTS the following policies of insurance with minimum requirements as shown:

- a) Workmens Compensation and Employers Liability
  - i) Workers' Compensation: statutory minimum
  - ii) Longshore and Harbor Workers' Compensation Act endorsement and Admiralty Law endorsements (required if the work involves maritime operations).
  - iii) Employer's Liability: \$100,000.00 per accident.
- b) Commercial General Liability – ISO Occurrence Form
  - i) \$1,000,000.00 each occurrence
  - ii) \$2,000,000.00 general aggregate
  - iii) \$2,000,000.00 products – completed operations aggregate
  - iv) \$1,000,000.00 personal & advertising injury
  - v) \$100,000.00 fire damage
  - vi) \$5,000.00 medical expense
- c) Business Auto Liability - Owned, Non-Owned & Hired vehicles  
\$1,000,000.00 combined single limit
- d) General Provisions:
  - i) All policies shall be endorsed to have any annual aggregate apply on a per-project basis or, instead of obtaining such endorsements, the CONTRACTOR shall purchase and maintain and until the expiration of two years after completion of the COOPERATIVE PROJECTS, a policy of umbrella insurance with limits of at least \$1,000,000.
  - ii) All policies shall be endorsed to provide 30 days written notice to the NRD prior to termination or change in the coverage provided.
  - iii) The NRD reserves the right to approve the CONTRACTOR'S insurers.
  - iv) Workers Compensation and Commercial General Liability policies shall be endorsed to provide Waiver of Subrogation in favor of the NRD.

- v) The Commercial General Liability policy shall be endorsed to include the NRD as Additional Insured (form CG 20 10).

Prior to commencement of its work on the COOPERATIVE PROJECTS and from time to time thereafter at NRD's reasonable request, the CONTRACTOR shall submit certificates in form acceptable to the NRD evidencing that all such insurance policies are in effect.

### **EXHIBIT LIST**

| Exhibit No. | Reference paragraph | Item  |
|-------------|---------------------|---|
|             |                     |   |
| A           | Whereas             | Shadow Lake and Midlands Lake Dams Design Report            |
| B           | 10                  | Engineer's insurance requirements                           |
| C           | 13                  | Contractor's insurance requirements                         |
| D           | 17                  | Easements form  |
| E           | 43                  | Agreement between NRD and City of Papillion for Dam Site 21 |



**EASEMENTS**  
**SHADOW LAKE FLOOD AND SEDIMENT CONTROL PROJECTS**

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For good and valuable consideration, the receipt of which is hereby acknowledged, the following permanent and temporary easements for the above-entitled projects are hereby granted by **SANITARY AND IMPROVEMENT DISTRICT NO. 267 OF SARPY COUNTY, NEBRASKA** (hereinafter referred to as “**SID 267**”); **370 LLC**, a Nebraska Limited Liability Company (hereinafter referred to as “**370 LLC**”); **SANITARY AND IMPROVEMENT DISTRICT NO. 264 OF SARPY COUNTY, NEBRASKA** (hereinafter referred to as “**SID 264**”); and **SHADOW LAKE DEVELOPMENT, LLC**, a Nebraska Limited Liability Company (hereinafter referred to as “**SLD LLC**”), all as called for by their Cooperative Agreement with the **PAPPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, NEBRASKA** (hereinafter referred to as “the **NRD**”) and the City of Papillion, Nebraska, dated as of \_\_\_\_\_, 2005 (hereinafter referred to as “the **COOPERATIVE AGREEMENT**”).

*DEFINITIONS*

“**DAM ROAD**” – One or more concrete-paved roads or streets to be designed and constructed by 370 LLC and SID 267 outside the purview of this

AGREEMENT, and sited in whole or part within the SHADOW LAKE DAM COMPLEX, in part along the northerly slope of the SHADOW LAKE DAM and with an elevation above what otherwise would have been the northerly base or toe of the embankment of the SHADOW LAKE DAM.

**“MIDLANDS CREEK”** - A hydrologically-uncontrolled tributary of the West Branch of the Papillion Creek that flows in a northerly direction through SHADOW LAKE and SHADOW LAKE TOWNE CENTER.

**“MIDLANDS LAKE DAM”** - a grade stabilization structure to be constructed, in accordance with designs approved by the NRD, in the MIDLANDS LAKE DAM COMPLEX, approximately where the NRD has had long-standing plans to construct grade stabilization structure S-30, a component of the NRD’s and United States Department of Agriculture Natural Resources Conservation Service’s Public Law 566 Papillion Creek Watershed Work Plan.

**“MIDLANDS LAKE DAM COMPLEX”** – A parcel of land consisting of: the tracts of land in Sarpy County, Nebraska, described in the legal description attached hereto and incorporated herein by reference as **Exhibit “1”**.

**“MIDLANDS LAKE RESERVOIR”** - The reservoir impounded by MIDLANDS LAKE DAM to be constructed, in accordance with designs approved by the NRD, in the MIDLANDS LAKE RESERVOIR COMPLEX.

**“MIDLANDS LAKE RESERVOIR COMPLEX”** –A parcel of land consisting of: (a) the tract of land in SHADOW LAKE described in the legal description attached hereto and incorporated herein by reference as **Exhibit “2”**; and (b) a small tract owned by Omaha Public Power District in Section 2, Township 13 North, Range 12 East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska, described in the legal description attached hereto and incorporated herein by reference as **Exhibit “3”**.

**“NGVD”** - National Geodetic Vertical Datum of 1929.

**“GRANTORS”** - 370 LLC, SID 267, SLD LLC and SID 264.

**“SHADOW LAKE”** - SHADOW LAKE, a subdivision as surveyed, platted and recorded in Section 2, Township 13 North, Range 12 East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska

**“SHADOW LAKE DAM”** - A flood control structure to detain flood waters of MIDLANDS CREEK to be constructed, in accordance with designs approved by the NRD, in the SHADOW LAKE DAM COMPLEX.

**“SHADOW LAKE DAM COMPLEX”** – A parcel of land consisting of: (a) a tract of land in SHADOW LAKE, described in the legal description attached hereto and incorporated herein by reference as **Exhibit “4”**; (b) a tract of land in SHADOW LAKE TOWNE CENTER, described in the legal description attached hereto and incorporated herein by reference as **Exhibit “5”**; and, (c) a tract of land in Section 35, Township 14 North, Range 12 East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska, described in the legal description attached hereto and incorporated herein by reference as **Exhibit “6”**.

**“SHADOW LAKE RESERVOIR”** - The reservoir impounded by the SHADOW LAKE DAM to be constructed, in accordance with designs approved by the NRD, in the SHADOW LAKE RESERVOIR COMPLEX.

**“SHADOW LAKE RESERVOIR COMPLEX”** – A parcel of land consisting of: (a) the tract of land in SHADOW LAKE described in the legal description attached hereto and incorporated herein by reference as **Exhibit “7”**; and, (b) adjacent tracts of land in Section 1, Township 13 North, Range 12 East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska, described in the legal description attached hereto and incorporated herein by reference as **Exhibit “9”**.

**“SHADOW LAKE TOWNE CENTER”** - SHADOW LAKE TOWNE CENTER, a subdivision as surveyed, platted and recorded in Section 2, Township

13 North, Range 12 East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska, and in Section 35, Township 14 North, Range 12 East of the 6<sup>th</sup> P.M. in Sarpy County, Nebraska .

### *EASEMENTS*

a) 370 LLC and SID 267 hereby grant to SLD LLC and SID 264 a temporary easement in, on, over and across the portion of the SHADOW LAKE DAM COMPLEX lying in SHADOW LAKE TOWNE CENTER, such easement granting to SLD LLC and SID 264 the right to construct the SHADOW LAKE DAM in such portion of SHADOW LAKE TOWNE CENTER, and the right to use any portion of the SHADOW LAKE RESERVOIR COMPLEX lying in SHADOW LAKE TOWNE CENTER for the borrow of earthen material for use in construction of the SHADOW LAKE DAM.

b) 370 LLC and SID 267 hereby grant to the NRD a permanent easement in, on, over and across the portion of the SHADOW LAKE DAM COMPLEX lying in SHADOW LAKE TOWNE CENTER, such easement granting to the NRD the right to construct, operate, maintain, patrol, repair, replace, manage and regulate the SHADOW LAKE DAM in such portion of the SHADOW LAKE DAM COMPLEX.

c) SLD LLC and SID 264 hereby grant to the NRD a permanent easement in, on, over and across the portion of the SHADOW LAKE DAM COMPLEX lying in SHADOW LAKE, such easement granting to the NRD the right to construct, operate, maintain, patrol, repair, replace, manage and regulate the SHADOW LAKE DAM in such portion of the SHADOW LAKE DAM COMPLEX.

d) SLD LLC and SID 264 hereby grant to the NRD permanent easements and restrictive covenants, granting to the NRD the right to flow and back up SHADOW LAKE RESERVOIR water and sediment upon, and inundate, all that land (hereinafter referred to as “the **SHADOW LAKE**

**REGULATED FLOOD POOL”)** in SHADOW LAKE which, at once, is located within the watershed of the SHADOW LAKE DAM and, after completion of construction of the SHADOW LAKE DAM and the SHADOW LAKE RESERVOIR, in accordance with the designs approved by the NRD, will have a ground surface elevation lower than 1,061.3 feet above mean sea level, NGVD, which elevation the GRANTORS agree is intended to be approximately one foot (1.0’) above the mean sea level elevation of the 500-year flood pool of the SHADOW LAKE RESERVOIR. Such permanent easement and restrictive covenant also prohibit the placement of any earthen fill or other fill in any areas of the SHADOW LAKE REGULATED FLOOD POOL that, either now or hereafter, have a ground surface elevation lower than 1,061.3 feet above mean sea level, NGVD, and also prohibit the construction or maintenance, within such SHADOW LAKE DAM REGULATED FLOOD POOL, of structures, fixtures or other improvements; provided, however, they shall not prohibit:

- i) Dredging or other removal of silt from the SHADOW LAKE REGULATED FLOOD POOL from time to time;
- ii) Excavation or filling of earth or rock in the SHADOW LAKE REGULATED FLOOD POOL in order to construct, operate and maintain within the SHADOW LAKE REGULATED FLOOD POOL sheet-pilings, revetments or other temporary or permanent shoreline erosion prevention and bank protection devices or methods; or,
- iii) Installation in the SHADOW LAKE REGULATED FLOOD POOL of landscaping, low-voltage lighting, boat ramps, decks, docks or boat lifts.
- e) SLD LLC and SID 264 hereby grant to the NRD permanent easements and restrictive covenants granting to the NRD the right to flow and back up water and sediment upon, and inundate, all the land

(hereinafter referred to as “the **SHADOW LAKE MAXIMUM POOL**”) in SHADOW LAKE which, at once, is located within the watershed of the SHADOW LAKE DAM and, after completion of construction of the SHADOW LAKE DAM and the SHADOW LAKE RESERVOIR, in accordance with designs approved by the NRD, will have a ground surface elevation lower than 1,066.0 feet above mean sea level, NGVD. Such permanent easement and restrictive covenant also prohibit the placement of any earthen fill or other fill in any areas of the SHADOW LAKE MAXIMUM POOL that, either now or hereafter, have a ground surface elevation lower than 1,066.0 feet above mean sea level, NGVD.

f) SLD LLC and SID 264 hereby grant to the NRD a permanent easement in, on, over and across the MIDLANDS LAKE DAM COMPLEX, such easement granting to the NRD the right to construct, operate, maintain, patrol, repair, replace, manage and regulate the MIDLANDS LAKE DAM in the MIDLANDS LAKE DAM COMPLEX.

g) SLD LLC and SID 264 hereby grant to the NRD permanent easements and restrictive covenants granting to the NRD the right to flow and back up MIDLANDS LAKE RESERVOIR water and sediment upon, and inundate, all that land (hereinafter referred to as “the **MIDLANDS LAKE REGULATED FLOOD POOL**”) in SHADOW LAKE which, at once, is both located within the watershed of the MIDLANDS LAKE DAM and, after completion of construction of the MIDLANDS LAKE DAM and the MIDLANDS LAKE RESERVOIR in accordance with designs approved by the NRD, will have a ground surface elevation lower than 1,080.1 feet above mean sea level, NGVD, which elevation the GRANTORS agree is intended to be approximately one foot (1.0') above the mean sea level elevation of the 500-year flood pool of the MIDLANDS LAKE RESERVOIR. Such permanent easement and restrictive covenant also prohibit the

construction or maintenance, within the MIDLANDS LAKE REGULATED FLOOD POOL, of structures, fixtures or other improvements; provided, however, they shall not prohibit:

i) Dredging or other removal of silt from the MIDLANDS LAKE REGULATED FLOOD POOL from time to time;

ii) Excavation or filling of earth or rock in the MIDLANDS LAKE REGULATED FLOOD POOL in order to construct, operate and maintain within the MIDLANDS LAKE REGULATED FLOOD POOL sheet-pilings, revetments or other temporary or permanent shoreline erosion prevention and bank protection devices or methods; or

iii) Installation in the MIDLANDS LAKE REGULATED FLOOD POOL of landscaping, low-voltage lighting, boat ramps, decks, docks or boat lifts.

h) SLD LLC and SID 264 hereby grant to the NRD permanent easements and restrictive covenants granting to the NRD the right to flow and back up MIDLANDS LAKE RESERVOIR water and sediment upon, and inundate, all that land (hereinafter referred to as “the **MIDLANDS LAKE MAXIMUM POOL**”) in SHADOW LAKE which, at once, is located within the watershed of the MIDLANDS LAKE DAM and, after completion of construction of the MIDLANDS LAKE DAM and the MIDLANDS LAKE RESERVOIR, in accordance with the designs approved by the NRD, will have a ground surface elevation lower than 1,086.0 feet above mean sea level, NGVD. Such permanent easement and restrictive covenant also prohibit the placement of any earthen fill or other fill in any areas of the MIDLANDS LAKE MAXIMUM POOL that, either now or hereafter, have a ground surface elevation lower than 1,086.0 feet above mean sea level, NGVD.

i) 370 LLC and SID 267, and SLD LLC and SID 264 hereby grant to the NRD a temporary easement consisting of the right to enter the SHADOW LAKE DAM COMPLEX and MIDLANDS LAKE DAM COMPLEX and therein construct the SHADOW LAKE DAM and MIDLANDS LAKE DAM, respectively, such easement to be effective only in the event that the NRD determines that the NRD should take over the work of construction of the SHADOW LAKE DAM and/or MIDLANDS LAKE DAM, such easement to be operative until construction of the SHADOW LAKE DAM and MIDLANDS LAKE DAM are finally completed.

j) SLD LLC and SID 264 hereby grant to the NRD a temporary easement consisting of the right to enter the SHADOW LAKE RESERVOIR COMPLEX and use the same for borrow and spoil of earthen material, such easement to be effective only in the event that the NRD determines that the NRD should take over the work of construction of the SHADOW LAKE DAM, such easement to be operative until construction of the SHADOW LAKE DAM is finally completed.

k) 370 LLC and SID 267, and SLD LLC and SID 264, hereby grant to the NRD a permanent easement granting to the NRD the right of ingress and egress over and across and between the public streets and roads in SHADOW LAKE TOWNE CENTER and SHADOW LAKE, the SHADOW LAKE DAM and the MIDLANDS LAKE DAM.

l) 370 LLC and SID 267 hereby grant to the NRD a permanent easement in, on, over and across the DAM ROAD, the embankment thereof, and any other property of the GRANTORS downstream of the SHADOW LAKE DAM, such easement to include the right to unobstructed flowage into MIDLANDS CREEK of any waters or sediment that originate, flow, emanate, discharge, seep or spill from the SHADOW LAKE DAM, its principal or auxiliary emergency spillways, or the SHADOW LAKE



RESERVOIR, including, without limitation, water or sediment that appears as surface or subsurface flow, seepage, percolation or springs.

m) 370 LLC and SID 267 hereby grant to the NRD the permanent easement right to construct, operate, maintain, repair, replace and regulate the embankment and the principal spillway of the SHADOW LAKE DAM under the DAM ROAD. No drilling, boring or other excavations shall be performed in such embankment without the prior written consent of the NRD; provided, however, NRD approval for excavations for storm drainage, traffic control devices, barricades or signage, shall not be withheld or delayed unreasonably.

n) 370 LLC and SID 267 hereby grant to the NRD the permanent easement right to construct, operate, maintain, repair, replace and regulate the toe drains, sand filters, and other appurtenances to the SHADOW LAKE DAM within the DAM ROAD embankment.

### ***ADDITIONAL PROVISIONS***

1. The GRANTORS hereby permanently and absolutely release the NRD, and its successors and assigns, from any and all liability for loss of or damage to any property of the GRANTORS, their successors and assigns, in the SHADOW LAKE MAXIMUM POOL or the MIDLANDS LAKE MAXIMUM POOL which may be caused directly or indirectly by waters or sediment impounded, stored or detained by the SHADOW LAKE DAM or the MIDLANDS LAKE DAM.

2. The NRD, and its successors and assigns, are hereby permanently released from liability for loss of or damage to any property of the GRANTORS, their successors and assigns, which may be caused directly or indirectly by such waters or sediment that originates, flows emanates, discharges, seeps or spills from the SHADOW LAKE DAM or the MIDLANDS LAKE DAM, their principal or emergency spillways, or their reservoirs, including, without limitation, water or

sediment that appears as surface or subsurface flow, seepage, percolation or springs.

**3.** The GRANTORS shall not be responsible for operation or maintenance of the STRUCTURE.

**4.** The NRD shall have no responsibility for preventing evaporation of any waters detained by the SHADOW LAKE DAM or the MIDLANDS LAKE DAM or for dredging accumulated silt or debris from their reservoirs; and, the NRD shall have no duty or responsibility to maintain any certain water level(s) in such reservoirs.

**5.** The consideration recited herein shall constitute payment in full for any and all damages sustained by the GRANTORS by reason of the NRD's exercise of the rights or privileges herein expressly granted or reasonably implied.

**6.** The GRANTORS waive compliance by the NRD with the notice and other provisions of the Uniform Procedure for Acquiring Private Property for Public Use (Sec. 25-2501, R.R.S. 1943, et seq.)

**7.** The easements provided herein shall be deemed to run with the land and shall be binding upon the GRANTORS and their successors and assigns.

**8.** The GRANTORS, for themselves and for their successors and assigns, covenant that they, respectively, are the owners of the property over which the foregoing easements are granted, that they have the right to convey the above-described easements; that such property is free and clear of all liens and encumbrances; and, that they will warrant and defend the NRD's right to the above-described easements against the lawful claims and demands of all persons whomsoever.

**9.** The GRANTORS warrant that no verbal or written representations or inducements have been made or given by the NRD, or by any of its officers, agents or employees, other than as may be recited in this document.

**WHEREFORE:**

This AGREEMENT is executed by 370 LLC, A NEBRASKA LIMITED LIABILITY COMPANY on this \_\_\_\_ day of \_\_\_\_\_, 2005, , pursuant to resolution duly adopted by its Board of Directors.

**370 LLC, A NEBRASKA LIMITED LIABILITY COMPANY**

By \_\_\_\_\_

Title \_\_\_\_\_

This AGREEMENT is executed by SANITARY AND IMPROVEMENT DISTRICT NO 267 OF SARPY COUNTY, NEBRASKA, on this \_\_\_\_ day of \_\_\_\_\_, 2005, pursuant to resolution duly adopted by its Board of Trustees.

**SANITARY AND IMPROVEMENT DISTRICT NO 267 OF SARPY COUNTY, NEBRASKA**

By \_\_\_\_\_

Title \_\_\_\_\_

This AGREEMENT is executed by SHADOW LAKE DEVELOPMENT, LLC, A NEBRASKA LIMITED LIABILITY COMPANY on this \_\_\_\_ day of \_\_\_\_\_, 2005.

**SHADOW LAKE DEVELOPMENT, LLC, A NEBRASKA LIMITED LIABILITY COMPANY**

By \_\_\_\_\_

Title \_\_\_\_\_



COMPANY, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said limited liability company.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a  
Notary Public, personally came \_\_\_\_\_,  
\_\_\_\_\_ of SANITARY AND IMPROVEMENT DISTRICT  
NO. 267 OF SARPY COUNTY, NEBRASKA, to me personally known to be the  
identical person whose name is affixed to the above and foregoing instrument, and  
he/she acknowledged the same to be his/her voluntary act and deed and the  
voluntary act and deed of said district.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a  
Notary Public, personally came \_\_\_\_\_,  
\_\_\_\_\_ of SHADOW LAKE DEVELOPMENT, LLC, A  
NEBRASKA LIMITED LIABILITY COMPANY, to me personally known to be the  
identical person whose name is affixed to the above and foregoing instrument, and  
he/she acknowledged the same to be his/her voluntary act and deed and the  
voluntary act and deed of said limited liability company.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a  
Notary Public, personally came \_\_\_\_\_,  
\_\_\_\_\_ of SANITARY AND IMPROVEMENT DISTRICT  
NO. 264 OF SARPY COUNTY, NEBRASKA, to me personally known to be the  
identical person whose name is affixed to the above and foregoing instrument, and  
he/she acknowledged the same to be his/her voluntary act and deed and the  
voluntary act and deed of said district.

WITNESS my hand and Notarial Seal the date last aforesaid.

\_\_\_\_\_  
Notary Public

# MEMORANDUM

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

**FROM:** Ralph Puls, Land and Water Programs Coordinator

**SUBJECT:** Amendment to Professional Services Contract for Pigeon/Jones Watershed Site #15

**DATE:** May 27, 2005

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In July 2004, the District entered into a professional services contract with Olsson Associates to prepare a pre-feasibility report and funding proposal for Multi-purpose Structure Site # 15 on Jones Creek in the Pigeon/Jones Creek Watershed in Dakota County. The Board of Directors at their January 13, 2005 meeting approved the Pre-Feasibility Report and recommended that it be submitted to the Department of Natural Resources (DNR) for consideration for funding through the Nebraska Resources Development Fund (NRDF). The Natural Resources Commission (NRC) considered the Pre-Feasibility Report at their March 24, 2005 meeting and authorized the P-MRNRD to proceed with an application and feasibility report for the Project. This was followed with a letter from the NRC stating that NRD funding of 60 % to 70 % of the total eligible local project cost may be appropriate.

Since then, staff has met and negotiated with Olsson Associates for an amendment to their Professional Services Contract to complete a feasibility study and NRDF application. The study will analyze the technical, environmental and economic feasibility of the project. This study will be completed within a year.

Attached is the proposed contract amendment No. 1, a scope of services, schedule and time and cost estimate prepared by Olsson Associates for the Subcommittee's Review and Recommendation. The contract amendment totals \$228, 289.00.

**Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed amendment No. 1 to the Pigeon/Jones Creek Watershed Site #15 professional services contract with Olsson Associates, for preparation of a Nebraska Resources Development Fund Feasibility Study and Application, for a maximum fee of \$228,289.00.**

**Project Scope and Task Estimates**  
**P-MNRD Pigeon/Jones Creek Site 15**  
**Community-Based Watershed Planning and NRDF Application**  
 Hours for Professional Fee Proposal

- Name  
 1 P-MNRD  
 2 Natural Resources Conservation Service (NRCS)  
 3 Nebraska Game & Parks Commission (NGPC)  
 4 Nebraska Department of Environmental Quality (NDEQ)  
 5 OA - Resources Engineering  
 6 OA - Environmental Sciences  
 7 OA - Geotechnical  
 8 OA - Survey  
 9 OA - Transportation  
 10 OA - Marketing  
 11 Beninger Clacida Derrnell Mabrey (BCDM)  
 12 University of Nebraska - Lincoln

| Resource  | EE Type:  | Sr. Engr. | Proj. Mgr. | Registered |           | EIT  | Resources | Design | Geotech | Environ | Survey | Proj. Mgr. | LA   | Marketing | Clerical | Direct Costs | Extension | Sub-Totals |
|---|-----------|-----------|------------|------------|-----------|------|-----------|--------|---------|---------|--------|------------|------|-----------|----------|--------------|-----------|------------|
|   |           |           |            | Engineer   | Scientist |      |           |        |         |         |        |            |      |           |          |              |           |            |
| Hy Rate:  | \$143     | \$124     | \$87       | \$72       | \$69      | \$70 | \$110     | \$65   | \$90    | \$50    | \$107  | \$74       | \$50 | \$40      |          |              |           |            |
| <b>Community-Based Watershed Planning</b>                     |           |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| <b>CBWAP Management and Coordination</b>                      |           |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| Attend Watershed Advisory Committee Meetings (2)              | 1,2,3,4,5 |           | 12         |            |           | 20   |           |        |         |         |        |            |      |           |          | \$ 300       | \$ 3,168  |            |
| Attend NDEQ Coordination Meetings (2)                         | 1,2,4,5   |           | 12         |            |           | 20   |           |        |         |         |        |            |      |           |          | \$ 300       | \$ 3,168  |            |
| <b>Information Gathering</b>                                  |           |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| Gather Watershed Land Use / Land Treatment Data               | 1,2       |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| Conduct Watershed Land Treatment                              | 2         |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| Conduct Watershed Livestock Operation Inventory               | 1,2       |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| Produce Land Use / Land Treatment Info (GIS)                  | 1,2,5     |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| Conduct Water Quality Sampling                                | 1,4       |           |            |            | 10        | 10   |           |        |         |         |        |            |      |           |          |              | \$ 1,410  |            |
| <b>Watershed Analysis</b>                                     |           |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| Estimate Watershed Sediment Yield                             | 4,5       |           |            |            |           | 20   |           |        |         |         |        |            |      |           |          |              |           |            |
| Estimate Watershed Nutrient Yield                             | 4,5       |           |            |            |           | 20   |           |        |         |         |        |            |      |           |          |              | \$ 1,380  |            |
| Evaluate E. Coli & Pesticide Inflow Concentrations            | 4,5       |           |            |            |           | 10   |           |        |         |         |        |            |      |           |          |              | \$ 690    |            |
| <b>Reservoir Analysis</b>                                     |           |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| Estimate Average Annual Reservoir Trapping Eff. & Volume Loss | 4,5       |           |            |            |           | 20   |           |        |         |         |        |            |      |           |          |              | \$ 1,380  |            |
| Estimate Reservoir Trophic State Index                        | 4,5       |           |            |            |           | 20   |           |        |         |         |        |            |      |           |          |              | \$ 1,380  |            |
| Evaluate Reservoir Response to E. Coli & Pest. Loading        | 4,5       |           |            |            |           | 10   |           |        |         |         |        |            |      |           |          |              | \$ 690    |            |
| Develop Reservoir Water Budget                                | 5         |           | 2          |            | 20        |      |           |        |         |         |        |            |      |           |          |              | \$ 1,688  |            |
| <b>Water Quality Planning</b>                                 |           |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| Develop Reservoir TMDLs                                       | 4,5       |           | 2          |            | 4         | 20   |           |        |         |         |        |            |      |           |          |              | \$ 1,916  |            |
| Determine Loading Reductions to Meet TMDLs                    | 5         |           |            |            |           | 20   |           |        |         |         |        |            |      |           |          |              | \$ 1,380  |            |
| Develop In-Lake Water Quality Controls                        | 4,5       |           | 4          |            | 4         | 40   |           |        |         |         |        |            |      |           |          |              | \$ 3,544  |            |
| Develop Preliminary Opinion of Probable Construction Costs    | 5         |           | 1          |            | 4         | 10   |           |        |         |         |        |            |      |           |          |              | \$ 1,102  |            |
| <b>Deliverables</b>   |           |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| Develop Water Quality Visuals for Public Hearing              | 5         |           |            |            |           | 20   |           |        |         |         |        |            |      |           |          |              | \$ 1,380  |            |
| Draft Water Quality Discussion for Application                | 5         |           | 2          | 4          |           | 40   |           |        |         |         |        |            |      |           |          |              | \$ 3,542  |            |
| <b>Hours Sub Total=</b>                                       |           |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| 2 37 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0                          |           |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |
| <b>Task Sub Total = \$ 26,198</b>                             |           |           |            |            |           |      |           |        |         |         |        |            |      |           |          |              |           |            |





| Levee System Improvement Investigation                              |    |    |    |    |    |     |     |   |           |
|---|----|----|----|----|----|-----|-----|---|-----------|
|   | 5  | 1  | 4  | 2  | 4  |     |     |   |           |
| Quantify Maximum Levee Capacity Downstream of Entrance              | 5  | 1  | 4  | 2  | 4  |     |     |   | \$ -      |
| Identify Flood Volumes at Entrance                                  | 5  |    | 4  | 10 |    |     |     |   | \$ 1,068  |
| Identify & Investigate In-Channel Re-Off Activities                 | 5  | 10 | 10 | 10 |    |     |     |   | \$ 1,216  |
| Estimate Existing & Post-Project Levee Sedimentation                | 5  | 1  | 10 | 10 | 20 |     |     |   | \$ 4,260  |
| Fisheries Enhancement Documentation                                 | 5  |    |    |    |    |     |     |   | \$ 4,353  |
| Identify Critical Aquatic Habitat Areas for Protection              | 5  |    |    |    |    |     |     |   | \$ -      |
| Develop Preliminary Fisheries Enhancement Master Plan               | 5  |    |    |    |    |     |     |   | \$ 690    |
| Meeting with NCGPC to Review Preliminary Master Plan                | 5  |    |    |    |    |     |     |   | \$ 2,760  |
| Review Fisheries Enhancement Master Plan as Necessary               | 5  |    |    |    |    |     |     |   | \$ 514    |
| Recreation Master Planning  | 11 |    |    |    |    |     |     |   | \$ 1,380  |
| Investigate Non-Traditional Recreational Activities                 |    |    |    |    |    |     |     |   | \$ -      |
| Refine Pre Feasibility Master Plan                                  |    |    |    |    |    |     |     |   | \$ 222    |
| Preliminary Opinion of Probable Const. Cost / Phasing               |    |    |    |    |    |     |     |   | \$ 2,015  |
| Quality Control/Ready Check   |    |    |    |    |    |     |     |   | \$ 6,036  |
| Review Master Plan with Owner                                       |    |    |    |    |    |     |     |   | \$ 806    |
| Meeting to Present Recreation Master Plan to Public                 |    |    |    |    |    |     |     |   | \$ 362    |
| Refine Preliminary Master Plan as Required                          |    |    |    |    |    |     |     |   | \$ 774    |
| Update Option of Probable Construction Cost / Phasing as Required   |    |    |    |    |    |     |     |   | \$ 1,830  |
| Quality Control/Ready Check   |    |    |    |    |    |     |     |   | \$ 1,908  |
| Review Master Plan with Owner                                       |    |    |    |    |    |     |     |   | \$ 1,487  |
| Report Preparation  |    |    |    |    |    |     |     |   | \$ 362    |
| Draft Technical Feasibility Section of the Application              |    |    |    |    |    |     |     |   | \$ 362    |
| Commit NRDF Form 0271   |    |    |    |    |    |     |     |   | \$ 69     |
| Task Sub Total =  | 5  | 17 | 20 | 20 | 20 | 344 | 191 | 0 | \$ 6,350  |
| Section V - Appendix B - Economic Feasibility                       | 5  | 17 | 20 | 20 | 20 | 344 | 191 | 0 | \$ 6,350  |
| Project Costs:  |    |    |    |    |    |     |     |   |           |
| Review Recent Land Sales & Costs by Land Use Category               | 5  |    | 1  |    |    |     |     |   | \$ 814    |
| Prepare Opinion of Estimated Restoration Costs                      | 5  |    | 2  | 2  |    |     |     |   | \$ 392    |
| Prepare Opinion of Probable Dam Structure Costs                     | 5  |    | 2  | 2  |    |     |     |   | \$ 392    |
| Prepare Opinion of Probable Zone Effect Improvement Costs           | 5  |    | 2  | 2  |    |     |     |   | \$ 392    |
| Prepare Opinion of Probable Levee Elevation Improvement Costs       | 5  |    | 2  | 2  |    |     |     |   | \$ 392    |
| Prepare Opinion of Probable Fishery Enhancement Costs               | 5  |    | 2  | 2  |    |     |     |   | \$ 392    |
| Prepare Opinion of Probable Recreation Facility Costs               | 5  |    | 2  | 2  |    |     |     |   | \$ 392    |
| Crop and Pasture Flood Reduction Benefits                           |    |    |    |    |    |     |     |   | \$ -      |
| Research Crop Duration-Damage Curves for Missouri River Flood Plain | 5  |    | 1  |    |    |     |     |   | \$ 2,884  |
| Meeting with NDRR to Discuss Damage Calculation Methodology         | 5  |    | 6  |    |    |     |     |   | \$ 1,258  |
| Develop Composite Damageable Value for Cropland                     | 5  |    |    | 10 |    |     |     |   | \$ 1,410  |
| Assemble Existing Conditions HEC-EIA Economic Model                 | 5  |    |    |    |    |     |     |   | \$ 2,760  |
| Calculate Existing and Future (Site 15) Crop and Pasture Damages    | 5  |    |    | 2  |    |     |     |   | \$ 834    |
| Calculate Additional Damage Reductions for Levee Tie-Off            | 5  |    | 4  |    |    |     |     |   | \$ 1,876  |
| Develop Maps Showing Existing and Future Damages by Reach           | 5  |    |    |    |    |     |     |   | \$ 690    |
| Sedimentation Reduction Benefits                                    |    |    |    |    |    |     |     |   | \$ -      |
| Quantify Levee O&M Savings from Reduced Sedimentation               | 5  |    | 1  | 4  |    |     |     |   | \$ 639    |
| Road and Bridge Damage Reduction Benefits                           | 5  |    |    |    |    |     |     |   | \$ 552    |
| Quantify Existing and Future Food Related Road and Bridge Damages   | 5  |    |    |    |    |     |     |   | \$ -      |
| Recreation Benefits   |    |    |    |    |    |     |     |   | \$ -      |
| Calculate Projected Recreation Market Area                          | 5  |    |    |    |    |     |     |   | \$ 207    |
| Conduct Recreation Resource Inventory for Rec. Sites & Lumpy Towns  | 5  |    |    | 20 |    |     |     |   | \$ 1,716  |
| Develop Benefit Factors for Mountain Biking and Equestrian Camping  | 5  |    |    |    |    |     |     |   | \$ 1,360  |
| Submit Benefit Factors to NDRR for Review                           | 5  |    |    |    |    |     |     |   | \$ 69     |
| Determine Unmet Demand for Recreation Facilities in Master Plan     | 5  |    |    |    |    |     |     |   | \$ 138    |
| Calculate Projected Recreation Benefits                             | 5  |    |    |    |    |     |     |   | \$ 414    |
| Define Non-Dollar Quantifiable Benefits                             | 5  |    | 2  |    |    |     |     |   | \$ 938    |
| Project Internal Rate of Return                                     |    |    |    |    |    |     |     |   | \$ -      |
| Annuize Project Benefits  | 5  |    |    | 4  |    |     |     |   | \$ 288    |
| Prepare Project Cash Flow Stream                                    | 5  | *  | 4  |    |    |     |     |   | \$ 496    |
| Calculate IRR With and Without Levee Improvements                   | 5  |    | 6  |    |    |     |     |   | \$ 744    |
| Report Preparation  |    |    |    |    |    |     |     |   | \$ -      |
| Draft Economic Feasibility Section of the Application               | 5  | 1  | 10 | 20 | 20 | 68  | 220 | 0 | \$ 4,060  |
| Task Sub Total =  | 5  | 1  | 30 | 20 | 20 | 68  | 220 | 0 | \$ 26,519 |

Section VI - Appendix C - Financial Feasibility  
Complete NRDF Form 02F-1

| Completed ROW of Month 02/1                            |  |  |  |  |  |  |  |  |  |  |  |  |                  |  |  |  |  |  |  |  |  |  |  |  |  | \$ | Task Sub Total = \$ |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |
|--|--|--|--|--|--|--|--|--|--|--|--|--|------------------|--|--|--|--|--|--|--|--|--|--|--|--|----|---------------------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Section VII - Appendix D - Environmental Acceptability |  |  |  |  |  |  |  |  |  |  |  |  | Hours Sub Total= |  |  |  |  |  |  |  |  |  |  |  |  | 5  | 0                   | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| ID | Task Name  | Start        | Finish       | April | May | June | July | August | Septem | October | Novemb | Decemb | January | February |
|----|--|--------------|--------------|-------|-----|------|------|--------|--------|---------|--------|--------|---------|----------|
| 1  | Pigeon/Jones Site 15 NRDF Application                  | Tue 5/31/05  | Tue 5/31/05  |       |     | 5/31 |      |        |        |         |        |        |         |          |
| 2  | Community-Based Watershed Planning                     | Mon 5/16/05  | Mon 11/07    |       |     |      |      |        |        |         |        |        |         |          |
| 3  | Management and Coordination                            | Tue 5/2/06   | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 4  | Information Gathering                                  | Mon 5/16/05  | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 5  | Watershed Analysis                                     | Wed 8/15/05  | Fri 7/15/05  |       |     |      |      |        |        |         |        |        |         |          |
| 6  | Reservoir Analysis                                     | Fri 7/15/05  | Mon 8/1/05   |       |     |      |      |        |        |         |        |        |         |          |
| 7  | Water Quality Planning                                 | Mon 8/1/05   | Fri 12/30/05 |       |     |      |      |        |        |         |        |        |         |          |
| 8  | Deliverables   | Fri 12/30/05 | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 9  | NRDF Feasibility Study and Project Application         | Mon 5/2/05   | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 10 | Section I - NRDF Project Application                   | Thu 12/1/05  | Wed 3/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 11 | Section II - Initial Development / Project Background  | Wed 3/1/06   | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 12 | Section III - Public Support                           | Wed 3/1/06   | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 13 | Section IV - Technical Feasibility                     | Mon 5/2/05   | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 14 | Data Gathering and Review                              | Mon 5/2/05   | Fri 7/1/05   |       |     |      |      |        |        |         |        |        |         |          |
| 15 | Geotechnical Investigation                             | Mon 5/2/05   | Fri 7/1/05   |       |     |      |      |        |        |         |        |        |         |          |
| 16 | Hydrology Modeling                                     | Fri 7/1/05   | Thu 9/1/05   |       |     |      |      |        |        |         |        |        |         |          |
| 17 | Hydraulics Modeling                                    | Mon 8/1/05   | Tue 11/1/05  |       |     |      |      |        |        |         |        |        |         |          |
| 18 | Dam Structure Design                                   | Fri 7/1/05   | Fri 7/29/05  |       |     |      |      |        |        |         |        |        |         |          |
| 19 | 200th Street Improvement Design                        | Fri 7/29/05  | Tue 8/30/05  |       |     |      |      |        |        |         |        |        |         |          |
| 20 | Levee System Improvement Investigation                 | Tue 11/1/05  | Fri 12/30/05 |       |     |      |      |        |        |         |        |        |         |          |
| 21 | Fisheries Enhancement Design                           | Fri 7/29/05  | Wed 8/31/05  |       |     |      |      |        |        |         |        |        |         |          |
| 22 | Recreation Master Planning                             | Thu 8/1/05   | Fri 12/30/05 |       |     |      |      |        |        |         |        |        |         |          |
| 23 | Report Preparation                                     | Mon 12/06    | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 24 | Section V - Economic Feasibility                       | Thu 9/1/05   | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 25 | Project Costs  | Mon 1/2/06   | Wed 2/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 26 | Crop & Pasture Flood Reduction Benefits                | Wed 2/1/06   | Wed 3/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 27 | Sedimentation Reduction Benefits                       | Wed 3/1/06   | Wed 3/15/06  |       |     |      |      |        |        |         |        |        |         |          |
| 28 | Road & Bridge Damage Reduction Benefits                | Wed 3/1/06   | Wed 3/15/06  |       |     |      |      |        |        |         |        |        |         |          |
| 29 | Recreation Benefits                                    | Thu 8/1/05   | Fri 12/30/05 |       |     |      |      |        |        |         |        |        |         |          |
| 30 | Project IRR  | Wed 3/15/06  | Mon 4/3/06   |       |     |      |      |        |        |         |        |        |         |          |
| 31 | Report Preparation                                     | Mon 12/06    | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 32 | Section VI - Financial Feasibility                     | Mon 4/3/06   | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 33 | Section VII - Environmental Acceptability              | Fri 7/1/05   | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 34 | Wetlands, Native Prairies and Woodlands                | Fri 7/1/05   | Mon 8/1/05   |       |     |      |      |        |        |         |        |        |         |          |
| 35 | Farmstead Impacts                                      | Mon 8/1/05   | Mon 8/15/05  |       |     |      |      |        |        |         |        |        |         |          |
| 36 | Cultural Resources                                     | Mon 10/17/05 | Wed 11/30/05 |       |     |      |      |        |        |         |        |        |         |          |
| 37 | Threatened and Endangered Species                      | Fri 7/1/05   | Mon 8/1/05   |       |     |      |      |        |        |         |        |        |         |          |
| 38 | Miscellaneous  | Mon 8/1/05   | Mon 8/15/05  |       |     |      |      |        |        |         |        |        |         |          |
| 39 | Report Preparation                                     | Mon 12/06    | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 40 | Section VIII - Legal Data                              | Mon 12/06    | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 41 | Meetings, Presentations and Public Involvement         | Mon 12/06    | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |
| 42 | Feasibility Report and Project Application Preparation | Mon 12/06    | Mon 5/1/06   |       |     |      |      |        |        |         |        |        |         |          |

**Teer, Pat**

**From:** Puls, Ralph  
**Sent:** Tuesday, May 31, 2005 2:38 PM  
**To:** Teer, Pat  
**Subject:** Exh K Final EJCDC Rev 4 19 05

This is **EXHIBIT K**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 28 July, 2004.

**AMENDMENT 1 TO OWNER-ENGINEER AGREEMENT**

## 1. Background Data:

- a. Effective Date of Owner-Engineer Agreement: 28 July 2004
- b. Owner: Papio-Missouri River NRD
- c. Engineer: Olsson Associates
- d. Project: Pigeon-Jones Creek Watershed Site 15

2. Nature of Amendment *[Check those that are applicable and delete those that are inapplicable.]*

- ☒ Additional Services to be performed by Engineer
- ☐ Modifications to Services of Engineer
- ☐ Modifications to Responsibilities of Owner
- ☐ Modifications to Payment to Engineer
- ☐ Modifications to Time(s) for rendering Services
- ☐ Modifications to other terms and conditions of the Agreement

## 3. Description of Modifications

Attachment 1 to Exhibit K, "Modifications"  
Attachment 2 to Exhibit K, NRDF Application Proposed Schedule  
Attachment 3 to Exhibit K, NRDF Application Task Descriptions/Fee

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is 26 May 2005.

OWNER:

ENGINEER:

By: \_\_\_\_\_

By: Michael K. Sotak, P.E.

Title: \_\_\_\_\_

Title: Vice President

Date Signed: \_\_\_\_\_

Date Signed: 26 May 2005

This is **Attachment 1 to Exhibit K**, consisting of 1 page, to Amendment No. 1, dated 26 May, 2005.

#### **Modifications**

1. Engineer shall perform the following Additional Services:

Preparation of NRDF Application and related feasibility work.

2. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:

**See Attachment 2 to Exhibit K, NRDF Application Proposed Fee/Schedule and Attachment 3 to Exhibit K, NRDF Application Task Descriptions**

3. ~~The responsibilities of Owner are modified as follows:~~

4. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

**\$228,289**

5. The schedule for rendering services is modified as follows:

**See Attachment 2 to Exhibit K, NRDF Application Proposed Fee/Schedule**

6. ~~Other portions of the Agreement (including previous amendments, if any) are modified as follows:~~

# MEMORANDUM

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

**FROM:** Martin P. Cleveland

**SUBJECT:** Papio Creek Watershed PL566 Structures #S-27, 31, 32  
Rehabilitation Assistance  
Supplemental Watershed Plan and Environmental Assessment and  
Papillion Creek Watershed Agreement No. 7

**DATE:** May 26, 2005

---

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

The District owns/operates 70 dams, 50 of which were built via the PL 566 Program. The District's PL 566 dams built in the period from 1962 to 1997. In May 2003 the District initiated dam rehabilitation with NRCS on Papillion Creek Watershed PL 566 Structures S-27, S-31, and S-32 via execution of Memorandums of Understanding for rehabilitation assistance.

The NRCS has sent you a copy of Draft Supplemental Watershed Plan and Environmental Assessment (EA) for the referenced structures. This plan must be approved by local sponsor (NRD) prior to it being forwarded to NRCS headquarters in Washington, DC.

Enclosed is the Papillion Creek Watershed Supplemental Watershed Agreement No. 7 for structures S-27, S-31, and S-32 for your review. This agreement provides for rehabilitation (with cost share and estimated costs for referenced dams (S-27, S-31, S-32.) This agreement is subject to NRCS and NRD funding.

The estimated total rehabilitation project costs to be paid by sponsor (NRD) and NRCS are as follows:

| <u>Works of Improvement</u> | <u>Sponsors (NRD)</u>                 | <u>NRCS</u>                | <u>Estimated Project Costs</u> |
|-----------------------------|---------------------------------------|----------------------------|--------------------------------|
| Rehabilitation Of GSS S-27  | \$ 133,350                            | \$247,650 <sup>1/</sup>    | \$ 381,000                     |
| Rehabilitation Of GSS S-31  | \$ 245,700                            | \$456,300 <sup>2/</sup>    | \$ 702,000                     |
| Rehabilitation Of GSS S-32  | \$ 213,150                            | \$395,850 <sup>3/</sup>    | \$ 609,000                     |
| <b>Total</b>                | <b>\$592,200<sup>4/</sup><br/>35%</b> | <b>\$1,099,800<br/>65%</b> | <b>\$1,692,000<br/>100%</b>    |

1/ Estimated Project Costs exclude \$142,000 in NRCS Engineering and Project Administration costs. NRCS pays 100% of planning and engineering costs.

2/ Estimated Project Costs exclude \$216,000 in NRCS Engineering and Project Administration costs.

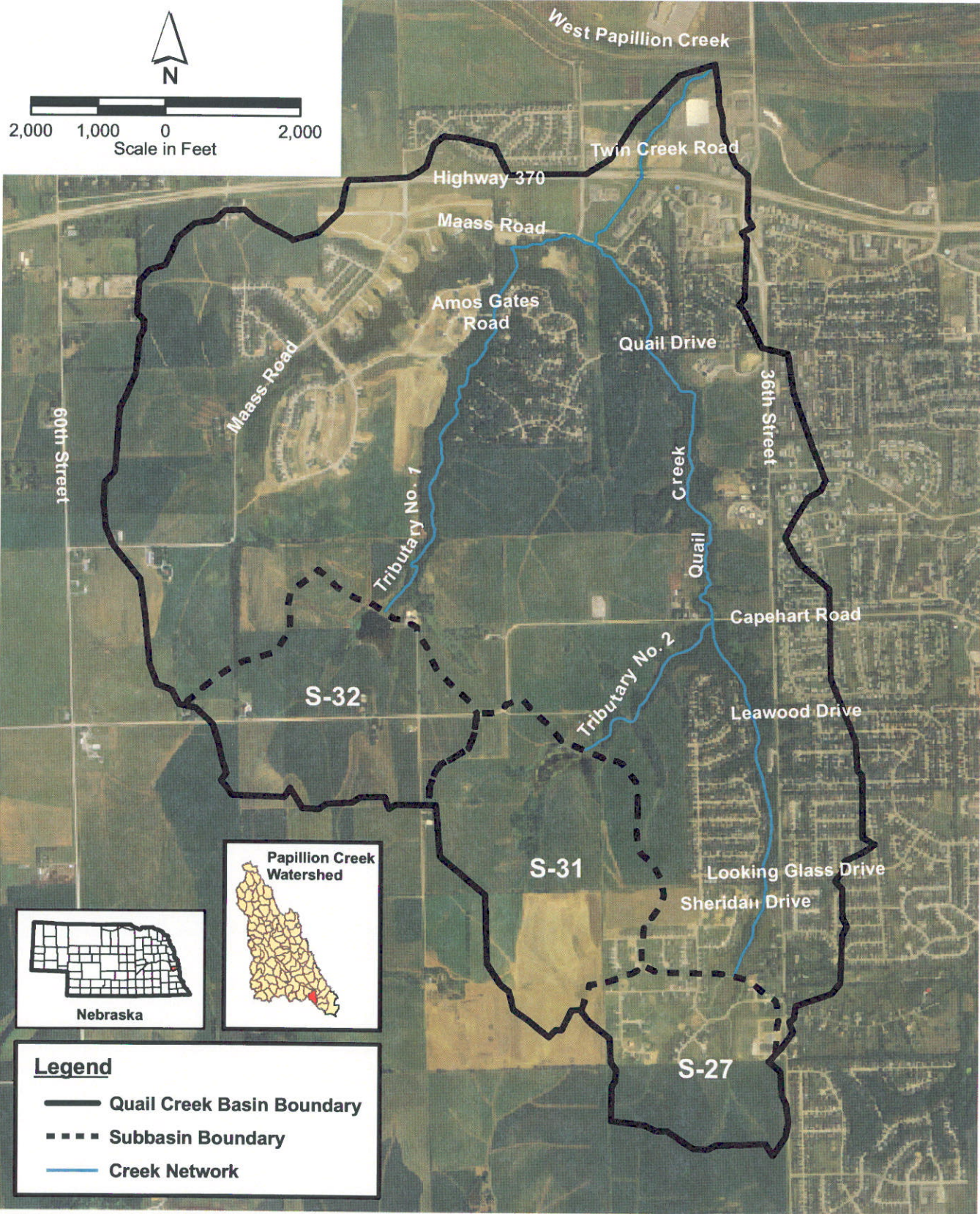
3/ Estimated Project Costs exclude \$146,000 in NRCS Engineering and Project Administration costs.

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

It is Management's recommendation that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Papillion Creek Watershed Supplemental Agreement No. 7 with NRCS rehabilitation for PL 566 Grade Stabilization Structures S-27, S-31, and S-32, subject to changes deemed necessary by the General Manager and approved to as to form by District Legal Counsel.

Enclosures





Source: Farm Service Agency, 2003 (Aerial Photography)



## General Location Map Quail Creek Basin

Papio Creek Watershed Structures S-27, S-31, and S-32  
NRCS Watershed Rehabilitation Program

DATE

October 2004

FIGURE

1



**PAPILLION CREEK WATERSHED**  
Supplemental Watershed Agreement No. 7

For Grade Stabilization Structures (GSS) No.s S-27, S-31, and S-32

Between the

Papio-Missouri River Natural Resources District  
(Referred to herein as sponsor)

State of Nebraska

And the

Natural Resources Conservation Service  
(Referred to herein as NRCS)  
United States Department of Agriculture

Whereas, the watershed plan for Papillion Creek Watershed, State of Nebraska, executed by the sponsor named therein and NRCS, became effective on the twenty-second day of March, 1967; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and the NRCS became effective on the eighteenth day of November, 1969, to remove the Papio Watershed Board as the contracting agency and to provide that contracting be entered into on an ad hoc basis with the local governing body as contracting officer for those improvements within its boundaries; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and the NRCS became effective on the twelfth day of March, 1970, to provide that the Soil Conservation Service administer all construction contracts; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and the NRCS became effective on the first day of October, 1971, to provide assistance and funds as needed to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - Public Law 91 - 646 (34 Stat. 1894); and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and the NRCS became effective on the twenty-third day of January, 1973, to name the Papio Natural Resources District as Sponsor; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and the NRCS became effective on the twelfth day of November, 1991, to move Grade Stabilization Structure W-42 approximately 400 feet upstream on to the road; and

Whereas, a supplemental agreement for said watershed, executed by the Sponsor named therein and the NRCS became effective on the sixth day of April, 1995, to delete grade stabilization structures D-15, D-23, D-49, D-50, D-65, S-9, S-15, S-16 and W-20 from the plan; and

Whereas, the responsibility for administration of the Watershed Protection and Flood Prevention Act of 1954 (Public Law 83-566), as amended by the Small Watershed Rehabilitation Amendments of 2000 (Public Law 106-472) has been assigned by the Secretary of Agriculture to the NRCS; and

Whereas, a Supplemental Watershed Plan which modifies the watershed plan as supplemented dated on the twenty-second day of March, 1967 has been developed through cooperative efforts of the sponsor and NRCS;

Now, therefore, the Secretary of Agriculture, through NRCS and the sponsor hereby agree upon the following modifications of the terms, conditions, and stipulations provided for in this Watershed Agreement and including the following:

1. Rehabilitation of GSS No.s 27, 31 and 32 of the Papillion Creek Watershed, State of Nebraska
2. The percentages of total rehabilitation project costs to be paid by the sponsor and by the NRCS are as follows:

| <u>Works of Improvement</u>       | <u>Sponsor</u>                          | <u>NRCS</u>                               | <u>Total Eligible Project Costs</u> |
|-----------------------------------|---|---|-------------------------------------|
| <b>Rehabilitation Of GSS S-27</b> | <b>\$133,300<br/>35.0%</b>              | <b>\$ 247,700<br/>65.0%</b>               | <b>\$ 381,000<sup>1/</sup></b>      |
| <b>Rehabilitation Of GSS S-31</b> | <b>\$245,700<br/>35.0%</b>              | <b>\$ 456,300<br/>65.0%</b>               | <b>\$ 702,000<sup>2/</sup></b>      |
| <b>Rehabilitation Of GSS S-32</b> | <b>\$244,000<br/>40.1%</b>              | <b>\$ 365,000<br/>59.9%</b>               | <b>\$ 609,000<sup>3/</sup></b>      |
| <b>Total</b>                      | <b>\$623,000<br/>36.8%<sup>4/</sup></b> | <b>\$1,069,000<br/>63.2%<sup>4/</sup></b> | <b>\$1,692,000</b>                  |

1/ Estimated Project Costs exclude \$142,000 in NRCS Engineering and Project Administration costs.

2/ Estimated Project Costs exclude \$216,000 in NRCS Engineering and Project Administration costs.

3/ Estimated Project Costs exclude \$146,000 in NRCS Engineering and Project Administration costs.

4/ The cost-share percentages are computed for and administered during construction for each individual site. The percentages shown for the total of the three sites is for information only.

Total project costs include construction, land rights, relocation, project administration, and engineering services provided by the sponsor. Not included is technical assistance provided by NRCS or cost of permitting and ordinance.

### 3. Certification Regarding Drug-Free Workplace Requirements (7CFT 3017, Subpart F).

By signing this watershed agreement, the sponsor is providing the certification set out below. If it is later determined that the sponsor knowingly rendered a false certification, or otherwise violated the requirements of the Drug-Free Workplace Act, the NRCS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

*Controlled substance* means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

*Conviction* means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

*Employee* means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) all direct charge employees; (ii) all indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance or work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantees' payroll; or employees of sub recipients or subcontractors in covered workplaces).

A. The sponsor certifies that they will or will continue to provide a drug-free workplace by:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(2) Establishing an ongoing drug-free awareness program to inform employees about –

(a) The danger of drug abuse in the workplace;

(b) The grantee's policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);

(4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee would --

(a) Abide by the terms of the statement; and

(b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

(5) Notifying the NRCS in writing, within ten calendar days after receiving notice under paragraph (4) (b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(6) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (4) (b), with respect to any employee who is so convicted --

(a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring such employee to participate satisfactorily in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6)

B. The sponsor may provide a list of the site(s) for the performance or work done in connection with a specific project or other agreement.

C. Agencies shall keep the original of all disclosure reports in the official files of the agency.

4. Certification Regarding Lobbying (7 CFR 3018)  
(applicable if this agreement exceeds \$100,000).

A. The sponsor certify to the best of their knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the sponsor, to any person for influencing or attempting to influence an officer or employee of an agency, 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 sponsor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

B. 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.

5. Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions (7 CFR 3017).

A. The sponsor certify to the best of their knowledge and belief, that they and their principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department of agency.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contact under a public transaction;

violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for the cause of default.

B. Where the primary sponsors are unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

6. The term of this Watershed Agreement will be for a period of 100-years beginning with the completion of the structural measures proposed in this Watershed Agreement. The agreement may be amended at any time by mutual consent of all parties.

The sponsors and NRCS further agree to all other terms, conditions, and stipulations of said watershed agreement not modified herein.

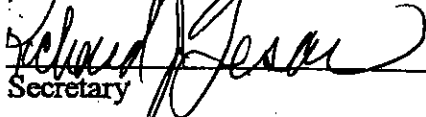
Papio-Missouri River Natural Resources District  
8901 South 154 Street  
Omaha, Nebraska 68138-3621

BY 

Title GENERAL MANAGER

Date June 10, 2005

The signing of this Watershed agreement was authorized by a resolution of governing body of the Papio-Missouri River Natural Resources District adopted at a meeting held on June 9, 2005 (Date).

 Secretary      P-MNRD, 8901 S. 154 St., Omaha NE 68138 Address      7E68138 Zip Code

Natural Resources Conservation Service  
United States Department of Agriculture

Approved by:

  
State Conservationist

6/11/05  
Date

# Memorandum

**To:** PPO Subcommittee  
**From:** Paul Woodward, Water Resources Engineer  
**Date:** May 31, 2005  
**Re:** Amendments to Wetland Mitigation Banking Instrument

---

The District's Wetland Mitigation Bank Program was formed under an umbrella banking instrument that was dated April 2000 and approved by the US Army Corps of Engineers (USACE) in concurrence with the Mitigation Bank Review Team (MBRT) in December 2000. This instrument establishes guidelines for the establishment, use, operation, and maintenance of Wetland Mitigation Bank sites.

The District's first Wetland Mitigation Bank Site under these guidelines was the Rumsey Station Wetland Mitigation Bank located directly south of the West Papillion Creek between Papillion and Bellevue, approximately 54<sup>th</sup> to 62<sup>nd</sup> Street (see attached map). The enclosed site plan is designed to create 11 acres of Wetland Bank credit that can be sold to parties that need to mitigate for disturbed wetlands. To date, the bank has been approved for 5.31 acres of credit. Of these 5.31 acres, 2.13 acres has been debited for various projects including developments, a City of Omaha street, and the District's West Papio Channel (see attached ledger). In accordance with the Board's direction in February 2003, 1.77 of these acres have been sold to developers and Omaha at a cost of \$52,500 per acre, amounting to a total income of about \$93,000.

While investigating the possibility of creating wetland bank sites in conjunction with structures planned in the Silver Creek Watershed in Burt County, District staff meet with the USACE, and they noted that revisions to the District's Wetland Mitigation Banking Instrument are needed in order to be consistent with the Corps of Engineers Omaha District Mitigation Banking Guidance effective February 2005. These suggested amendments will change the effective service areas where wetland credits can be established and debited and the success criteria of bank sites, as well as the crediting ratios and monitoring provisions. These proposed amendments along with a map of the different service areas within the District are enclosed for your consideration. However, please note that these changes apply only to future bank sites and the Rumsey Station Wetland Mitigation Bank will continue to operate under the guidance of the previous instrument.

In conclusion, staff agrees that these proposed amendments required by the USACE are necessary, but also acknowledges that the establishment and operation of the Rumsey Station Wetland Mitigation Bank will be grandfathered under the previous Wetland Banking Instrument.

**Management recommends that the subcommittee recommend to the Board that the General Manager be authorized to incorporate the proposed Amendments into the District's Wetland Mitigation Banking Instrument, subject to approval by the US Army Corps of Engineers, Omaha District.**



# Wetland Mitigation Bank

**PAPIO-MISSOURI RIVER  
NATURAL  
RESOURCES  
DISTRICT**



**April 2000**



**Final Banking Instrument**

**HDR**

HDR Engineering, Inc.

**FINAL  
BANKING INSTRUMENT**

**PAPIO-MISSOURI RIVER NATURAL RESOURCES  
DISTRICT  
WETLAND MITIGATION BANK**

**April 2000**

**Prepared by**

**Papio-Missouri River Natural Resources District  
Omaha, Nebraska**

**and**

**HDR Engineering, Inc.  
Omaha, Nebraska**

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## *Part I, Preamble*

This Banking Instrument pertains to the establishment, use, operation, and maintenance of the Papio-Missouri River Natural Resources District (PMRNRD) wetland mitigation bank (the Bank). A mitigation bank is defined as “a site where the wetland and/or other aquatic resources are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.”<sup>1</sup> In this case, the Bank will consist of multiple wetland mitigation sites added to the Bank successively under this umbrella type of Banking Instrument as described herein.

This Banking Instrument is made and entered into by and among:

- The PMRNRD (the Bank Sponsor),
- The U.S. Army Corps of Engineers (Corps),
- The Natural Resources Conservation Service (NRCS),
- The Nebraska Department of Environmental Quality (NDEQ),
- The Nebraska Game and Parks Commission (NGPC),
- The U.S. Environmental Protection Agency (EPA),
- The U.S. Fish and Wildlife Service (FWS), and
- The Federal Highway Administration (FHWA).

with reference to the following:

### **I. PREAMBLE**

**A. Purpose:** The purpose of this Banking Instrument is to establish guidelines and responsibilities for the establishment, use, operation, and maintenance of the Bank. The Bank will be used for compensatory mitigation for unavoidable adverse impacts to waters of the United States, including activities authorized under:

- Section 404 of the Clean Water Act,
- Section 10 of the Rivers and Harbors Act,
- The “Swampbuster” provisions of the Food Security Act,
- Other Federal programs, and
- State wetland regulatory programs,

provided such use has met all applicable requirements and is authorized by the appropriate authority.

The Federal Guidelines for Establishment, Use, and Operation of Mitigation Banks in the November 28, 1995 Federal Register state: The “overall goal of a mitigation bank is to provide economically efficient and flexible mitigation opportunities while fully compensating for wetland and other aquatic resource losses in a manner which contributes to the long-term ecological functioning of the watershed within which the bank is to be located.”

The PMRNRD has four goals for the proposed Bank:

- To provide mitigation opportunities, alternatives, and flexibility for the public;

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<sup>1</sup> Federal Guidelines for Establishment, Use, and Operation of Mitigation Banks, Federal Register, Nov. 28, 1995.

## *Part I, Preamble*

- To support the national goal of “no net loss” of wetlands by providing wetland mitigation sites;
- To enhance the natural resource values of PMRNRD projects; and
- To provide an opportunity to leverage part of PMRNRD project funds to maximize wetland creation.

**B. Location and Ownership of Parcels:** Whereas, the PMRNRD has several potential projects that incorporate wetland features and therefore could be used to develop mitigation credits for the Bank. The Bank will consist of several actual, on-the-ground wetland mitigation sites that will be added to the Bank on a case-by-case basis. The properties established under this Banking Instrument will be owned or managed by the PMRNRD. After each Bank site has been developed, the long-term site management will be the responsibility of the PMRNRD.

The Bank sites will be located within the geographic boundaries of the PMRNRD. There will be two service areas, which are roughly consistent with the jurisdictional area of the PMRNRD and the Nebraska Department of Roads wetland banking service areas (see Exhibit A, Service Areas).<sup>2</sup> The PMRNRD will attempt to establish sites as close to the area of impact as is feasible.

The Bank will operate by geographic service area, each of which will have its own wetland mitigation credits available. The procedures followed will be identical for both service areas; neither service area will have primacy over the other. This umbrella type of Banking Instrument will cover sites developed in both service areas.

The service areas include both rural and urban areas. The PMRNRD is sensitive to the value of wetland areas in an urban environment and has a track record of protecting and restoring wetlands within the urbanizing areas. PMRNRD's tradition of identifying wetland restoration opportunities in the urban areas will be expanded upon as part of the Bank.

**C. Project Description:** Whereas, under this Banking Instrument, the PMRNRD will establish and maintain wetland habitat in accordance with the provisions of this Banking Instrument, and then shall maintain the Bank in such condition for the operational life of the Bank. The PMRNRD will develop compensatory mitigation credits for the Bank through restoration, creation, enhancement, and/or preservation of wetland areas. This generally will occur in conjunction with other PMRNRD-sponsored projects. The PMRNRD intends this to be a general public-use wetland mitigation Bank that provides a service to property owners within the geographic service areas.

As a natural resources agency, the PMRNRD plans to develop a Bank that allows for the establishment of contiguous wetland areas able to serve several functions and values of lost wetlands. The Bank sites will be of manageably large size, with a target size of at least 10 acres per site plus a buffer zone.<sup>3</sup> The PMRNRD considers an accumulation of aggregated wetlands to

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<sup>2</sup> These service areas consist essentially of the PMRNRD overlaid on parts of Nebraska Department of Roads service areas 107, 106 and 102B. The latter two are combined here into 106.

<sup>3</sup> Since each Bank site will be subject to the review and approval of the MBRT before being added to the Bank, the PMRNRD may seek approval of a site with less than 10 acres when, from an ecological standpoint, deviation from the 10-acre minimum is appropriate.

## *Part I, Preamble*

be more practical, from a management and maintenance standpoint, than small “patchy” wetland mitigation sites, and potentially also more desirable for wildlife habitat or floodwater retention.

In view of the umbrella type of banking philosophy underlying this Banking Instrument, there are multiple potential sites for the Bank rather than one existing, established site. Therefore, this Banking Instrument does not present site-specific information such as wetland types. Instead, such information will be included in the Site Development Plan that the PMRNRD will prepare for each site it submits to the Mitigation Bank Review Team (MBRT) for review. The PMRNRD intends to incorporate wetland functions as an integral part of the site development. (See Exhibit B, Technical Specifications for Wetland Bank Mitigation Sites, for the kinds of information to be included in each Site Development Plan.)

**D. Baseline Conditions:** Whereas, the Site Development Plan for each mitigation site to be added to the Bank will include the baseline conditions at the site with respect to vegetation, soils and hydrology. A wetland site assessment, including a wetland delineation, will be the means of establishing the baseline conditions. (See Exhibit B, Technical Specifications for Wetland Bank Mitigation Sites.)

**E. Establishment and Use of Credits:** Whereas, in accordance with the provisions of this Banking Instrument, wetland mitigation sites shall be added to the Bank as approved by the MBRT on a site-by-site basis. The MBRT shall base its decision on information provided in the Bank site application, which shall include a wetland delineation and a Site Development Plan (see Exhibit B, Technical Specifications for Wetland Bank Mitigation Sites).

Part of the cost of developing the mitigation projects will be recovered by selling compensatory credits. The PMRNRD will develop the credits, which will become available as mitigation in accordance with all applicable requirements. The Bank credits will be used to offset wetland resource impacts, subject to the Section 404 permitting process. The Corps shall determine, on a case-by-case basis, when compensatory mitigation is appropriate.<sup>4</sup>

Before 100 percent of the credits for a wetland mitigation site can be entered into the Bank and sold, resulting in a debit (withdrawal of credits) from the Bank, the PMRNRD intends that on-the-ground site development will be essentially complete in accordance with the Site Development Plan. That is, the PMRNRD does not intend to establish an in-lieu-fee arrangement.<sup>5</sup> Given the time required for site development and the need to be responsive to constituents with projects requiring mitigation, however, credits will become available, on a specific ratio and percentage basis, at established project milestones (see Part IV, Section F). Crediting will occur with approval of the MBRT on a case-by-case basis

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<sup>4</sup> The MBRT envisions that the Bank will be used to offset losses permitted by the Corps under Section 404 of the Clean Water Act. The possibility exists, however, that the Bank could be used to offset a loss approved by the NRCS under a minimal effects agreement subject to the Food Security Act.

<sup>5</sup> In in-lieu-fee systems, “fees are charged in lieu of the direct implementation of individual mitigation projects by permittees and the fee-funded mitigation projects typically have not yet broken ground or may be incomplete.” (U.S. Army Corps of Engineers, *National Wetland Mitigation Banking Study—Wetland Mitigation Banking: Resource Document*, IWR Report 94-WMB-2 Jan. 1994, p. 95.)

## *Part I, Preamble*

The PMRNRD will have one accounting system for all sites included in the Bank, as established in this umbrella type of Banking Instrument. The accounting system will remain unchanged for each physical site that the PMRNRD applies as wetland credits and debits. The accounting procedure for the use of credits to the Bank and debits for wetland losses is presented in Exhibit C, Crediting and Debiting Procedure for the Bank. Also included in Exhibit C is a sample ledger. The Bank will maintain a positive credit balance (that is, it will have more credits than debits) except when debits temporarily exceed credits as crediting percentages are applied as described in Part IV, Section F. If a deficit develops for some other, unforeseen reason, the Bank shall be temporarily suspended until a positive balance is attained.

The operational life of the Bank will begin when:

- The PMRNRD has established the initial wetland mitigation site for the Bank (see Part IV, Section E); and
- The MBRT has determined the amount of credit available for sale and has applied that amount as credit to the Bank.

The operational life of each individual Bank site will end when:

- Banking activity is voluntarily terminated with written notice from the PMRNRD, or
- Compensatory mitigation credits have been exhausted, and
- The MBRT has determined that the Bank is functionally mature and/or self-sustaining to the degree specified in this Banking Instrument and the Site Development Plans.

**F. Mitigation Bank Review Team:** Whereas, an MBRT will be established. Its members will be representatives from:

1. The Corps,
2. The NRCS,
3. The NDEQ,
4. The NGPC,
5. The EPA,
6. The FWS, and
7. The FHWA.

The MBRT will review and seek consensus on the Banking Instrument and final plans for the restoration, creation, enhancement, and/or preservation of wetlands. When the procedures established in this Banking Instrument are in place, the primary role of the MBRT will be to oversee the management of the Bank, including the crediting and debiting of wetland mitigation sites.

The Chair of the MBRT will be responsible for making final decisions regarding the terms and conditions of the Banking Instrument where consensus cannot otherwise be reached in a reasonable time frame. A representative of the Corps, the authorizing agency, will serve as the Chair for actions under the Clean Water Act. A representative of the NRCS will serve as the Chair for actions under the Food Security Act.



*Part I, Preamble*

**G. Disclaimer:** Whereas, this Banking Instrument does not in any manner affect statutory authorities and responsibilities of the signatory parties.

**H. Exhibits:** Whereas, the following exhibits are incorporated as appendices to this Banking Instrument:

1. Exhibit A, Service Areas
2. Exhibit B, Technical Specifications for Wetland Bank Mitigation Sites
3. Exhibit C, Crediting and Debiting Procedure for the Bank
4. Exhibit D, Financial Assurance
5. Exhibit E, Nebraska Wetland Subclasses
6. Exhibit F, Bank Closure Plan
7. Exhibit G, Monitoring Report Transect Data Sheet

## **II. AUTHORITIES**

### **A. Federal:**

1. Clean Water Act, Section 404 (33 U.S.C. 1251 et seq.)
2. Rivers and Harbors Act of 1899, Section 10 (33 U.S.C. 403)
3. Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.)
4. "Swampbuster" provisions of the Food Security Act of 1985 as amended
5. Endangered Species Act (16 U.S.C. 1531 et seq.)
6. National Environmental Policy Act (42 U.S.C. 4321 et seq.)
7. National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.)
8. Intermodal Surface Transportation Efficiency Act of 1991, Wetland Mitigation Banks, Sections 1006-1007, 23 U.S.C. 103, 133 (P.L. 102-240, 105 STAT 1914)
9. Final Rule for Regulatory Programs of the Corps of Engineers (33 CFR Parts 320-330)
10. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230) (Section 404(b)(1) Guidelines)
11. Memorandum of Agreement between the U.S. Environmental Protection Agency and the U.S. Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, Section 404 (b)(1) Guidelines, 1990
12. Federal Guidance for the Establishment, Use, Operation of Mitigation Banks (60 F.R. 58605 et seq.), effective December 1995
13. Revised NRCS Wetland Technical Assistance Policy (7 CFR Part 650, Nov. 7, 1997)

### **B. State:**

1. Nebraska Department of Environmental Quality Certification pursuant to Section 401 of the Federal Clean Water Act
2. Title 117, Nebraska Administrative Code, Nebraska Water Quality Standards for Surface Waters of the State
3. Laws enacted by the Nebraska Legislature in 1972 to combine 154 special-purpose entities into 23 Natural Resources Districts

### **C. Tribal:**

1. Authorities of the Winnebago and Omaha Tribes

NOW, THEREFORE, the parties agree to the following:

### **III. ESTABLISHMENT OF THE BANK**

**A. Work to Be Done:** The PMRNRD agrees to perform all necessary work, in accordance with the provisions of this Banking Instrument and the individual Site Development Plans. Further, the PMRNRD agrees to establish and/or maintain the aquatic habitat at the wetland mitigation sites until it is demonstrated to the satisfaction of the agencies represented on the MBRT (acting through the Chair) that the sites comply with all conditions contained herein, or until all credits are sold, whichever is later. The Bank sites shall be planned and designed to be self-sustaining over time to the extent possible.

**B. Documentation and Authorizations:** The PMRNRD will obtain all appropriate environmental documentation, permits, or other authorizations needed to establish and maintain the Bank. This Banking Instrument does not fulfill or substitute for such authorization.

**C. Bank Sites:** Potential properties will be evaluated for inclusion in the Bank on a site-by-site basis, using the following criteria:

- Suitability of the site to meet Bank goals and objectives;
- Physical, chemical, and biological characteristics (ability to support desired wetland resources and functions);
- Source and adequacy of hydrologic sources;
- Compatibility with adjacent land uses (both existing and in the foreseeable future);
- Presence and/or protection of cultural resources and threatened and endangered species;<sup>6</sup>
- Technical feasibility;
- Method of establishing the site (restoration, creation, enhancement, and/or preservation); and
- Potential inclusion of upland areas to act as buffer zones and to enhance overall ecological functioning of the site.<sup>7</sup>

For each site proposed for inclusion in the Bank, the Bank Site Application shall include the following information (see Exhibit B, Technical Specifications for Wetland Bank Mitigation Sites):

- Project location, including the geographic service area and a site map;
- Project description;
- Baseline evaluation of existing site conditions, including vegetation, soils, and hydrology;
- Potential environmental impacts;

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<sup>6</sup> The FWS has determined that the following species, which are Federally listed as threatened or endangered, occur in the PMRNRD area: peregrine falcon, bald eagle, interior least tern, piping plover, pallid sturgeon, American burying beetle, and Western prairie fringed orchid. Also, the FWS states that "any impacts of the project on the sturgeon chub should also be considered" because the FWS has been petitioned to list it as endangered. (Letter from FWS to Corps, May 19, 1999.)

<sup>7</sup> The percentage of buffer required will vary with the specific site and therefore will be determined on a site-specific basis. In some cases, upland buffer may be critical and should be included in the credits; in others, it may not be appropriate to include the upland buffer as part of the credits.

### *Part III, Establishment of the Bank*

- Site Development Plan, including Bank site goals and objectives; wetland size, type and function; engineering design and vegetative plans; success criteria; maintenance plan; monitoring plan; contingency plan; and long-term management provisions; and
- Other site-specific comments.

For the procedure for modifying a Site Development Plan, see Part V, Section A.

Credits will become available as the need arises and as sites developed by the PMRNRD reach the project milestones and achieve the success criteria discussed in Part IV, Sections E and F).

**D. Financial Assurance Requirements:** The PMRNRD, as the Bank Sponsor, will own, or be in full control of, the Bank sites and will be responsible for management of the Bank and long-term maintenance of the Bank sites. The PMRNRD will be responsible for securing adequate funding for operation and maintenance of the Bank during its operational life, as well as for the long-term management of the wetlands and/or other aquatic resources, as necessary.

The PMRNRD is a governmental unit with taxing authority and the financial capability to implement mitigation banking. As such, the PMRNRD has access to the necessary financial resources to cover Bank needs, including long-term management and unforeseen events as determined by the MBRT. (See Exhibit D, Financial Assurance.)

**E. Real Estate Provisions:** For each site included in the Bank, the PMRNRD shall make real estate provisions as necessary to preserve the Bank land as wetlands and wildlife habitat in perpetuity. The PMRNRD shall submit draft documents to the Corps, shall record these provisions regarding the Bank land, and shall provide copies of the recorded documents to the Corps prior to authorization of any credits.

**F. As-Built Reports:** The PMRNRD agrees to submit an as-built report for each wetland mitigation site added to the Bank within 90 days following completion of the site. The as-built report will describe any deviation from the individual Site Development Plan and will include a plan showing finished grades and surface and groundwater elevations, as appropriate.

#### **IV. OPERATION OF THE BANK**

**A. Service Areas:** The Bank is established to provide mitigation to compensate for impacts on the waters of the United States that are within the two geographic service areas (NRCS Major Land Resource Areas 106 and 107) of the Bank (see Exhibit A, Service Areas.) As stated above in the Preamble, the Bank will operate by service area, each of which will have its own wetland mitigation credits and credit-accounting ledgers available.

**B. Access to Sites:** The PMRNRD will allow, or otherwise provide for, access to the sites by all signatory parties, as necessary, for the purpose of inspection and compliance monitoring consistent with the terms and conditions of this Banking Instrument. Inspecting parties shall provide reasonable notice, of not less than 24 hours, to the PMRNRD, prior to inspection of the Bank sites.

**C. Projects Eligible to Use the Bank:** For projects requiring authorization under Section 404 and Section 10, the Corps, in consultation with the other regulatory and resource agencies, will determine the eligibility of projects to use the Bank on a case-by-case basis. For projects it deems eligible, the Corps will issue the appropriate permits. To the extent that the Bank is authorized for use under other Federal, State, and tribal programs, the appropriate entity will determine the eligibility.

The activities typically eligible to use the Bank will include transportation-related development, watershed improvements, flood protection projects, and other types of projects generally subject to the permitting provisions of Section 404. The Corps, as the permitting authority, is responsible for determining that a project has met the proper application of sequencing (see Part IV, Section G) and that mitigation through the use of the Bank is appropriate.

**D. Assessment Methodology and Compensation Ratios:** Potential sites shall be assessed as follows:

- Bank credits – In the case of potential project sites to add to the Bank, the PMRNRD shall be responsible for a site assessment, including a wetland delineation performed in accordance with the Corps of Engineers 1987 Wetland Delineation Manual.
- Bank debits – In the case of impact sites that may be compensated through the Bank, the applicant, as directed by the Corps, shall be responsible for the site assessment. Generally, an application for a Section 404 permit will include a wetland delineation performed in accordance with the Corps 1987 Wetland Delineation Manual.

The Corps, in cooperation with the MBRT, will determine whether sites can be credited or debited to the Bank, and the MBRT will adjust the Bank balance accordingly.<sup>8</sup>

Compensation ratios will reflect one-for-one replacement of lost functions. Functions will be identified according to the list of Nebraska wetland subclasses in Exhibit E. It will be

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<sup>8</sup> If the Bank is used to offset a wetland loss under a minimal effects determination, the NRCS will be responsible for the decision.

## *Part V, Operation of the Bank*

assumed that the creation, restoration, enhancement, or preservation of any given wetland subclass will result in the replacement of functions of impacted wetlands in the same subclass. In the absence of quantitative information on the functions of specific wetland sites, a minimum of one-to-one acreage replacement will be reasonable. For example, impacts may be identified as 5 acres of riverine vegetated channel and wetland fringe along unvegetated channels (Subclass 1).

The amount of credit must meet or exceed the amount of debit based on Section 404 permit requirements, except when debits temporarily exceed credits as crediting percentages are applied (see Part IV, Section F). A ratio of no less than 1:1 will be allowable for wetland restoration and creation, but the ratio may increase if a wetland demonstrates critical wildlife habitat functions. Compensation ratios will be determined either by the Corps during the Section 404 permitting process or by the MBRT at the time of a withdrawal from the Bank.

An applicant wanting to take credits from the Bank will be required to negotiate the amount on a site-by-site basis. The Corps will have final approval of the withdrawal of credits for individual projects.

**E. Success Criteria:** The PMRNRD will be responsible for evaluating the success of the restoration, creation, enhancement, and/or preservation activities at the Bank on a site-by-site basis. Sites will be evaluated on an ongoing basis, beginning at the application stage and thereafter every year through annual monitoring.

The following performance standards will apply for all Bank sites:

1. Meet the Corps of Engineers Wetlands Delineation Manual criteria.
2. Achieve 80 percent canopy cover for emergent plant species.
3. Not exceed 25 percent of total canopy cover with any given species.
4. Monitor emergent wetlands for a minimum of three growing seasons prior to submission for approval of full credit.
5. Monitor forested wetlands for a minimum of five growing seasons prior to submission for approval of full credit.
6. Achieve in-kind replacement of functions according to the wetland subclasses described in Exhibit E, Nebraska Wetland Subclasses.
7. Control state-listed noxious weeds and pest species, as identified in individual Site Development Plans, to less than 1 percent of total canopy cover.
8. Achieve 80 percent survival of woody species after three years.

In cases where authorization under Section 10 or 404 is necessary to establish the Bank, the Corps permit will be conditioned to ensure that the provisions of the Banking Instrument are enforceable by the appropriate agencies.

The Bank provides for contingency plans and remedial actions in the event that a site at some point fails to function within the performance standards. These actions will be taken promptly to correct the situation and allow the site to satisfy the success criteria (see Section V, E, below).

## *Part V, Operation of the Bank*

**F. Credit Availability:** Credits will be developed by the PMRNRD as opportunities arise. To enhance Bank flexibility, the credits will become available for debiting (that is, for use by the PMRNRD or for transfer to a third party) based on the stage and success of project development. Debiting will occur only after submittal of all appropriate documentation by the PMRNRD and subsequent approval by the Corps, in consultation with the other MBRT members.

Table 1, Crediting Ratios and Percentages, shows the ratios and credit percentages that will apply at certain stages of site development. These ratios and percentages will apply to mitigation of in-kind impacts after sequencing (see the discussion of sequencing in Part IV, Section G, Conditions on Debiting). The crediting ratios and percentages, as well as the project milestones, will vary with the type of project (wetland restoration versus creation). As Table 1 indicates, 100 percent of the Bank credits will not be available for use until a compensatory mitigation site is fully functioning and has achieved the success criteria. Using this gradational approach, the credit percentage will depend on the amount of risk involved.

**TABLE 1. Crediting Ratios and Percentages**

| Status   | Ratio | Percentage<br>(Cumulative) |
|--|-------|----------------------------|
| <i>Full Hydrologic Restoration</i>   |       |                            |
| Instrument signed  | 1.5:1 | 5                          |
| Construction completed   | 1.5:1 | 15                         |
| Site meets Corps of Engineers 1987 Delineation Manual criteria for hydrology and vegetation after at least one complete growing season | 1:1   | 30                         |
| Site meets success criteria  | 1:1   | 100                        |
| <i>Creation</i>  |       |                            |
| Instrument signed  | 1.5:1 | 5                          |
| Construction completed   | 1.5:1 | 15                         |
| Site meets success criteria  | 1:1   | 100                        |

**G. Conditions on Debiting:** In accordance with the Clean Water Act Section 404 Guidelines (40 CFR 230.10[a]), a mitigation sequence must be followed when a wetland is impacted. A project should “avoid, minimize, rectify, reduce, or compensate” for wetland losses. Unless this sequencing has been properly followed, no compensation of project wetland losses will be allowed through the Bank. The Corps is responsible for determining whether the sequencing has been followed.

**H. Provisions for Uses of the Mitigation Bank Sites:** The PMRNRD shall:

1. Grant additional easements, right of way, or any other property interest in or to the project sites only for public benefit activities and only with the written consent of the Corps, in consultation with the MBRT;
2. Use or authorize Bank sites only for purposes specified in the Site Development Plan; and
3. Not authorize or use Bank sites for any purpose that interferes with its conservation purposes.

## **V. MAINTENANCE AND MONITORING OF THE BANK**

**A. Maintenance Provisions:** The PMRNRD agrees to perform all necessary work to maintain the Bank consistent with the maintenance criteria established in the individual Site Development Plans, which may include provisions for particular maintenance activities such as removal of invasive species and prescribed burning. The PMRNRD shall continue with such maintenance activities until closure of the Bank. Upon closure of the Bank, the PMRNRD shall implement the management requirements established in Part V, Section F. (See Exhibit F, Bank Closure Plan.)

Deviation from the approved individual Site Development Plans is subject to review and written approval by the MBRT (acting through the Chair). The procedure for modifying a Site Development Plan, if necessary, is as follows:

- The PMRNRD, on its own initiative or at the request of the MBRT, will submit a modification to an approved Site Development Plan. The request will include a justification and a revised Site Development Plan; and
- The MBRT will decide whether or not to approve the modification.

**B. Monitoring Provisions:** The PMRNRD agrees to perform all necessary work to monitor the Bank in order to demonstrate compliance with the success criteria established in this Banking Instrument. Monitoring will begin during the first growing season after completion of the site. The monitoring will be conducted at time intervals specified in the Site Development Plan and appropriate for the particular project type. It shall continue until the Corps, in consultation with the MBRT, is confident that the success criteria are being met. Typically, monitoring will occur over a minimum period of five years. (See Exhibit G, Monitoring Report Transect Data Sheet.)

**C. Monitoring Reports:** The PMRNRD shall submit to the Corps, for distribution to the other members of the MBRT, annual monitoring reports describing the conditions of the Bank sites and relating those conditions to the success criteria (that is, the attainment of prescribed performance standards). The reports may contain information such as the following:

1. A U.S. Geological Survey map showing the Bank site locations;
2. A narrative summarizing the condition of the Bank sites and all regular maintenance activities;
3. Appropriate topographic maps showing such information as the location of sampling plots, permanent photo points, and location of transects;
4. Hydrological survey results; and
5. Results of other surveys, as identified in the Site Development Plan.

Because the information needed by the MBRT for review will differ by site, restoration method, and technique, each Site Development Plan will specify the information to be included in the monitoring report.



## *Part V, Maintenance and Monitoring of the Bank*

**D. Accounting Procedure:** The PMRNRD shall maintain an accounting procedure that documents the activity of all mitigation Bank accounts. Each time an approved debit/credit transaction occurs, the PMRNRD will submit a statement to the Corps. For all Bank accounts, the PMRNRD will also generate an annual ledger report, which will be submitted to the MBRT Chair for distribution. The annual ledger will contain the following information:

1. Name and permit number of the applicant utilizing compensatory mitigation from the Bank;
2. Number of mitigation acres withdrawn for each transaction;
3. Transaction date;
4. Number of mitigation acres remaining in the Bank; and
5. Total number of wetland acres used in the Bank as of the date of these transactions.

As stated in Part I, Section E, the Bank will maintain a positive balance, except when debits temporarily exceed credits as crediting percentages are applied in accordance with Part IV, Section F.

**E. Contingency Plans/Remedial Actions:** The individual site plans shall include general contingency plans in the event that remediation should become necessary. The need for remediation will be determined by the Corps in consultation with the MBRT and PMRNRD. In the event a Bank site fails to achieve the success criteria, the PMRNRD shall develop plans for appropriate remedial actions and shall implement the plans in coordination with the MBRT. The remedial actions will be based on information contained in the monitoring reports, as well as site inspections by the MBRT.

The Bank will not operate at a deficit, except when debits temporarily exceed credits as site development milestones are met and crediting percentages are applied (see Part IV, Section F). If the Corps determines that the Bank has incurred a deficit apart from adherence to this schedule, debiting of credits will immediately cease. The Corps, in consultation with the MBRT and the PMRNRD, will determine what remedial actions are necessary to correct the situation, and the PMRNRD will undertake those corrective measures.

At the PMRNRD's request, the MBRT will perform a final compliance visit to determine whether all success criteria have been satisfied. This compliance inspection will occur within six months of completion of the remedial actions.

In the event the PMRNRD fails to implement necessary remedial actions within 30 days calendar days after notification by the Corps or other authorizing agency, or within an established time frame agreed upon by the Corps, the MBRT (acting through the Chair) will notify the PMRNRD and the appropriate authorizing agency(ies) and will recommend appropriate remedial actions.

**F. Long-Term Management:** The PMRNRD will be the responsible agency and the source of funds for long-term management of the Bank sites. The wetlands and/or other aquatic resources in the Bank will be protected in perpetuity, and activities harmful to the Bank (incompatible uses) will be restricted. Protection of the Bank sites will extend beyond the duration of project impacts being compensated within the Bank.

## **VI. RESPONSIBILITIES OF THE MBRT**

The agencies represented on the MBRT commit to the following responsibilities:

**A. Oversight:** Provide appropriate oversight in carrying out provisions of this Banking Instrument;

**B. Review:** Comment on all project plans, annual monitoring reports, credit review reports, contingency plans, and necessary permits for the Bank in a timely manner;

**C. Confirmation:** Review and confirm reports on the evaluation of sites for their achievement of the development milestones and success criteria prior to approving credits within the Bank;

**D. Compliance Inspections:** Conduct inspections, as necessary, as determined by the Corps in consultation with the PMRNRD, to verify credits available in the Bank and to recommend corrective measures (if any), until conditions of the individual Site Development Plans have been determined to be fully satisfied or until all credits have been sold, whichever is later; and

**E. Auditing:** Audit the Bank ledger on an annual basis.

## **VII. OTHER PROVISIONS**

**A. Force Majeure:** The PMRNRD will not be responsible for Bank failure that is attributed to natural catastrophes such as flood, drought, disease, regional pest infestation, etc. that the MBRT, acting through the Chair, determines is beyond the control of the PMRNRD to prevent or mitigate.

**B. Dispute Resolution:** Resolution of disputes concerning the application of this Banking Instrument shall be in accordance with those stated in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 F.R. 58605 et seq., 1995).

**C. Validity, Modification, and Termination of the Banking Instrument:** This Banking Instrument will become valid on the date of the last signatory's signature. This Banking Instrument may be amended or modified with the written approval of all signatory parties. Any of the MBRT members may terminate their participation upon written notification to all signatory parties. Participation of the MBRT members will terminate 30 days after written notification.

**D. Controlling Language:** To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into this Banking Instrument by reference, and that are not legally binding, the specific language within the Banking Instrument shall be controlling.

## VIII. DEFINITION OF TERMS

### A. Abbreviations and Acronyms

|        |   |
|--------|---|
| CFR    | Code of Federal Regulations                     |
| F.R.   | Federal Register                                |
| EPA    | U.S. Environmental Protection Agency            |
| FHWA   | Federal Highway Administration                  |
| FWS    | U.S. Fish and Wildlife Service                  |
| MBRT   | Mitigation Review Team                          |
| NDEQ   | Nebraska Department of Environmental Quality    |
| NDOR   | Nebraska Department of Roads                    |
| NGPC   | Nebraska Game and Parks Commission              |
| NRCS   | Natural Resources Conservation Service          |
| NWR    | National Wildlife Refuge                        |
| P.L.   | Public Law                                      |
| PMRNRD | Papio-Missouri River Natural Resources District |
| U.S.C. | U.S. Code                                       |
| WPA    | Wildlife Production Area                        |

### B. Glossary

|                  |  |
|------------------|--|
| Applicant        | Developer of a project that would potentially impact a wetland.  |
| Avoidance        | Prevention of an impact by not taking a certain action or parts of an action.  |
| Bank             | The wetland mitigation bank established by this Banking Instrument.  |
| Bank management  | The process of determining whether produced credits and proposed debiting projects meet the conditions established for use of the Bank.  |
| Chair            | The Chair of the MBRT.   |
| Compensation     | Creation, restoration, enhancement, and in some cases preservation of wetlands to compensate for any and all impacts that cannot be avoided or minimized.  |
| Corps            | U.S. Army Corps of Engineers.  |
| Creation         | Establishment of a functional wetland in an upland (non-wetland) site.   |
| Credits          | Physical wetlands commodity whose value is traded or sold by the Bank. These unit values may be used for compensation upon Corps authorization of a Section 404 permit and Corps determination that the Bank is functioning.             |
| Credit valuation | The determination of the value of credits proffered to and impacts mitigated by the Bank.  |
| Debits           | Loss of wetland functions at a development (project) site; withdrawal of credits. These unit values can, as determined by the Corps, be withdrawn from the Bank for compensation of unavoidable wetland impacts at the development site. |


## *Part VIII, Definition of Terms*

|                      |  |
|----------------------|--|
| Enhancement          | Alteration of an existing wetland to add, or increase, particular wetland values and functions to levels not present under previous natural conditions, or to slow the natural impairment of existing values and functions.  |
| Functions            | Ecological (physical, biological, or chemical) processes or attributes of a wetland without consideration of societal importance (values). Examples include ecosystem diversity, flood-flow alteration, groundwater recharge and discharge, food chain support, water quality improvement, and soil stabilization. |
| In-kind mitigation   | Provision of similar wetland types to replace (compensate) functional values of wetlands lost, where such substitute wetlands are physically, biologically, and chemically the same as or a close approximation of the impacted wetland.   |
| In-lieu-fee system   | Program in which a regulatory agency collects fees in lieu of requiring a developer to compensate for wetland losses through on-site mitigation or acquiring credits generated by a mitigation bank. The fees are accumulated for use in future mitigation projects by the agency.                                 |
| Incompatible use     | Activities that are harmful to the Bank and will be restricted during long-term management of Bank sites.  |
| Ledger               | Document used in the accounting of credits and debits, maintained by the Bank Sponsor, and reviewed by the Corps.  |
| Minimization         | Limitation of the degree or magnitude of an impact associated with an action and its implementation.   |
| Mitigation Bank      | System in which the creation, enhancement, restoration, and/or preservation of wetlands is recognized by a regulatory agency as generating compensation credits allowing the future development of other wetland sites.  |
| Mitigation Bank site | Wetland compensation site containing wetland credit acres and types from Bank-developed wetland projects.  |
| Off-site mitigation  | Action taken on another tract of land or outside the property boundaries of the site where a wetland is being adversely affected.  |
| On-site mitigation   | Creation, enhancement, or restoration of wetlands on the same tract of land or within the property boundaries of the site where a wetland is being adversely affected.   |
| Operational life     | Period during which the terms and conditions of the Banking Instrument that relate to the banking transactions are in effect.  |
| Preservation         | Provision of legal protection to natural wetlands that would otherwise be lost to lawful activities.   |
| Restoration          | Reestablishment of a wetland on a site that was once a wetland or rehabilitation of a degraded wetland.  |

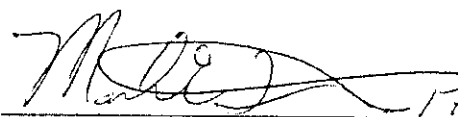
## *Part VIII, Definition of Terms*

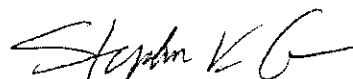
|                       |   |
|-----------------------|---|
| Section 10            | Section 10 of the Rivers and Harbors Act of 1899, which prohibits the creation of any obstruction or alteration in a “navigable water of the United States” unless authorized by Congress or a Department of the Army permit.   |
| Section 404           | Section 404 of the Clean Water Act, as amended in 1977, which established a permit program to be administered by the Corps to regulate the point source discharges of dredged or fill material into waters of the United States.  |
| Site Development Plan | The engineering design, vegetation plans, success criteria, maintenance and monitoring plans, and other information that the PMRNRD prepares for each potential wetland mitigation it submits to the MBRT for review.   |
| Sponsor               | Sponsor of the Bank (the PMRNRD).   |
| Unavoidable Impact    | An impact for which a practicable alternative cannot be found and which has been minimized to the extent appropriate and practicable.   |
| Values                | Wetland processes or attributes that provide societal values or benefits. Examples include support of commercial and sport fish and wildlife species, protection from flooding, water quality improvement, groundwater recharge and discharge, recreation, education, and aesthetic enhancement.        |
| Watershed             | A drainage area or basin that contributes surface and groundwater to a stream, river, lake or isolated wetland basin.   |
| Wetlands              | “... those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions” (Corps regulations, 33 CFR 323.2[c]). |


IX. SIGNATURE PAGE


  
General Manager, Papio-Missouri River Natural Resources District  
April 25/2000  
Date

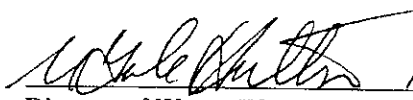
MITIGATION BANK REVIEW TEAM CONCURRENCE


  
District Engineer  
U.S. Army Corps of Engineers  
17 DEC 00  
Date

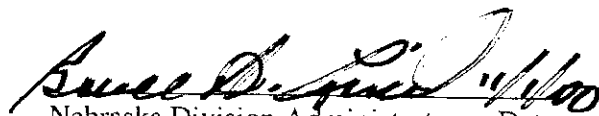
  
State Conservationist  
Natural Resources Conservation Service  
OCT 27 2000  
Date

  
Director  
Nebraska Department of  
Environmental Quality  
10-26-2000  
Date

  
Director  
Nebraska Game and Parks Commission  
9/14/2000  
Date

  
Director of Water, Wetlands  
and Pesticides  
U.S. Environmental Protection Agency  
11-8-00  
Date

  
for Regional Director  
U.S. Fish and Wildlife Service  
6 Sept 00  
Date

  
Nebraska Division Administrator  
Federal Highway Administration  
11/1/00  
Date

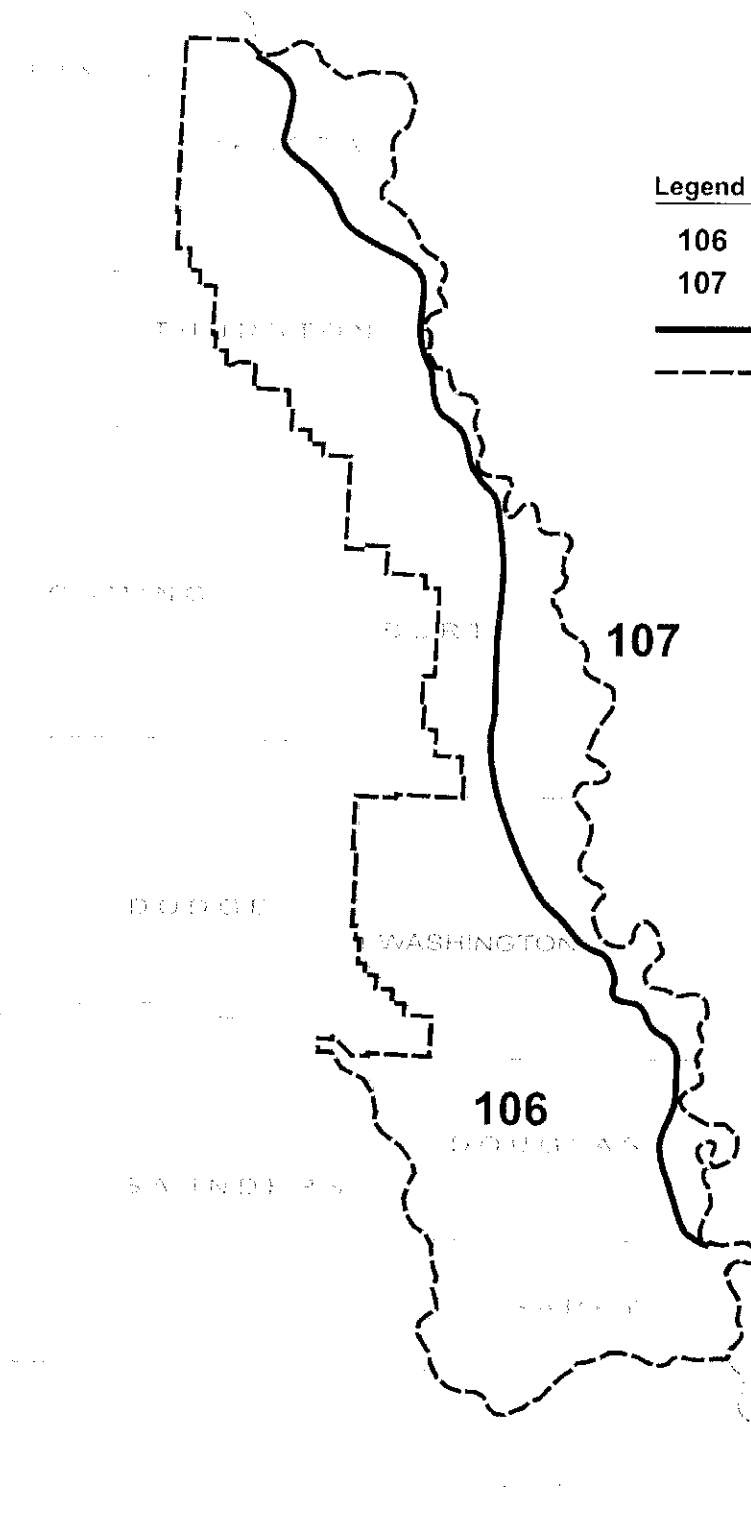
## APPENDICES





#### Legend

- 106** Nebraska and Kansas Loess Drift Hills
- 107** Iowa and Missouri Deep Loess Hills
- Wetland Mitigation Bank Service Area
- - -** Papio-Missouri River Natural Resources District



HDR Engineering, Inc.

### Exhibit A - Wetland Mitigation Bank Service Areas

Papio-Missouri River  
Natural Resources District

Date

Apr. 2000

Exhibit

A

## **Exhibit B**

### **Technical Specifications for Wetland Bank Mitigation Sites**

The following<sup>1, 2</sup> outlines the information to be submitted for each potential mitigation Bank site to the extent that it is relevant to the individual site.

#### **1. Initial Information**

##### **A. Project Overview**

1. Project location
2. Project summary
3. Goals and objectives – habitat types and functions to be restored or enhanced
4. Pre- and postconstruction weighted area at mitigation site
5. Establishment and operation
6. Schedule and milestones

##### **B. Preconstruction Description of Mitigation Site (narrative and mapping data)**

###### **1. Map and Photo Data**

- a. U.S. Geological Survey (USGS) 7.5-foot quad map (indicate site location and area of hydrologic influence)
- b. Soil survey map
- c. National Wetland Inventory (NWI) map
- d. City/county blue line aerial photographs and/or Farm Services Agency (FSA) photographs (previous 5 years)

###### **2. Site Map**

- a. Physical features
  - i. Current dimensions (acreage, length, etc.) of wetland and other aquatic resources as described by the Cowardin et al. classification system<sup>3</sup>
  - ii. Topographic map with 1.0-foot contour lines on a 100 x 100-foot grid
  - iii. Groundwater elevations
  - iv. Natural hydrologic features (for example, spring seeps)
  - v. Seasonal pool elevation
  - vi. Potential pollutant sources
- b. Cultural features
  - i. Power lines
  - ii. Roads
  - iii. Fences, gates
  - iv. Houses, buildings
  - v. Drainage ditches, culverts, tile lines

<sup>1</sup> Kusler, J.A. and M.E. Kentula, eds. 1989 *Wetland Creation and Restoration: The Status of the Science. Vol. 1.* Environmental Research Laboratory, Corvallis, OR. EPA 600/3-89/038a. 473 pages.

<sup>2</sup> Kusler, J.A. and M.E. Kentula, eds. 1989. *Wetland Creation and Restoration: The Status of the Science. Vol. 2.* Environmental Research Laboratory, Corvallis, OR. EPA 600/3-89/038b. 172 pages.

<sup>3</sup> Cowardin, L.M., V. Carter, F.G. Golet, and E.T. LaRoe. 1979. *Classification of Wetlands and Deepwater Habitats of the United States.* U.S. Fish and Wildlife Services. Washington, D.C. FWS/OBS-79/31. 103 pages.

## *Exhibit B*

3. Vegetation/soil data (indicate baseline sampling transects/points on site map)
  - a. Vegetation data
    - i. Gross community characterization
    - ii. Species list
    - iii. Relative abundance
  - b. Soil analysis – type and profile

*Note: After completion and submittal of Part I, the Corps certifies the preconstruction weighted area for within Bank mitigation.*

## II. Wetland Mitigation Site Plan

- A. Mapping data/site analysis
  1. Anticipated postconstruction dimensions (acreage, length, etc.) of wetland and other aquatic resources and class as described by the Cowardin et al. (1979) classification system to the species dominant/codominant level
  2. Plans with 1.0-foot contour lines in 100 x 100-foot grid
  3. Buffer size (acreage), type of habitat
  4. Hydrologic alterations
  5. Anticipated seasonal pool elevations
  6. Access roads, fencing
  7. Present and known proposed uses of all surrounding property
- B. Site construction activities
  1. Water control measures
  2. Erosion control measures during and after construction
  3. Grading plan
  4. Plantings
  5. Schedule
- C. Site management
  1. Vegetation management techniques
    - a. Restoration of failed plantings
    - b. Removal of nontarget species (that is, exotics, pest species)
    - c. Grazing/mowing
    - d. Prescribed burning
  2. Hydrologic manipulation
    - a. Water control structures
    - b. Weirs
    - c. Spring seep maintenance
- D. Monitoring plan
  1. Vegetation
    - a. Permanent plots/transects (reference to baseline sampling)
    - b. Species composition and vegetative cover
  2. Soils – permanent sampling points (for example, along vegetation transects)
  3. Hydrology
    - a. Seasonal pool elevations
    - b. Seasonal groundwater levels (permanent piezometer sampling points)
    - c. Water quality
  4. Monitoring schedule

## *Exhibit B*

5. Photographs
6. Reporting schedule

*Note: At this point, the Bank sponsor submits the Site Plan (Part II) to the Corps.*

### III. Actual Postconstruction Activities

- A. Compliance report of as-built conditions (submit to the Corps)
  1. Deviations from original design
  2. Corrective measures, as needed
  3. Basin topography using 1.0 foot contour lines on a 100 x 100-foot grid
  4. Location of constructed features (for example, water control structures)
  5. Photographic record and descriptive narrative
    - a. Condition of wetland, buffer area, and surrounding land use
    - b. Additional written information as a benchmark for future comparisons.
- B. Routine monitoring

This is to begin the first full growing season after the project is completed (year 1) and continue annually until the project proponent or Bank sponsor requests approval or certification, respectively (for example, a minimum of 3 years).
- C. Comprehensive assessment and determination of approval or credit

This is to be conducted just prior to the project proponent's or sponsor's request for approval of mitigation units or bank certification, respectively.

  1. Vegetation
    - a. Permanent plots and transects (reference to baseline sampling)
    - b. Species composition and vegetative cover
  2. Soils
  3. Hydrology
    - a. Seasonal pool elevations
    - b. Seasonal groundwater elevations (permanent piezometer sampling points)
    - c. Water quality
  4. Photographic record and descriptive narrative
    - a. Condition of wetland and surrounding land use
    - b. Additional written information as a benchmark for future comparisons
  5. Written report and request to the Corps for mitigation unit approval or credit certification

*Note: At this point, the Corps may provide certification of credits.*

- D. Certified Bank monitoring

This is to begin after credit certification and end at Bank closure (that is, when Bank credits are exhausted).

  1. Vegetation
    - a. Gross community characterization
    - b. Species list
    - c. Relative abundance
  2. Soils
  3. Hydrology
    - a. Seasonal pool elevations
    - b. Seasonal groundwater elevations
    - c. Water quality

*Exhibit B*

4. Photographic record and descriptive narrative
  - a. Condition of wetland and surrounding land use
  - b. Additional written information as a benchmark for future comparisons
5. Monitoring schedule
6. Annual report to Corps

## Exhibit C

### Crediting and Debiting Procedure for the Bank

The wetland mitigation Bank will function essentially like an account at a conventional bank, with transactions posting to and deducted from it.<sup>9</sup> Key elements of the banking procedure are as follows:

- The MBRT will assess the credits and debits for potential Bank sites on a case-by-case basis (see Part IV, Section D). Upon completion of the assessment process, the mitigation credits will be “sold” to and deposited in the Bank. The mitigation credits are the “currency” in which the Bank will trade.
- The PMRNRD will produce credits in the form of restoration, creation, enhancement, and/or preservation of wetland sites.
- Bank clients will withdraw credits from the Bank, as approved, resulting in a debit. The Bank clients will be those “entities whose activities will create a wetlands impact for which mitigation is being sought through the [B]ank.” They can be “any private or public development entity whose project meets the permit requirements [and] any additional requirements for use of the . . . Bank.”
- The MBRT will be responsible for Bank management, defined as “the process of determining whether produced credits and proposed debiting projects meet the conditions established for use of the [B]ank.”

Credit valuation is “basic to the implementation of this banking system. It determines the value of credits proffered to and impacts mitigated by the Bank.” Potential sites will be assessed on a case-by-case basis using best scientific methods, analogously to the appraisal of properties in the commercial banking context.

This system is designed to ensure that total debits do not exceed total credits except in special situations where a precredit arrangement is allowed. The PMRNRD will keep a ledger to record each transaction and update the balance accordingly. The sample ledger on the following page illustrates how credits will be tracked.

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<sup>9</sup> This exhibit draws on information and text (as quoted) contained in U.S. Army Corps of Engineers, *National Wetland Mitigation Banking Study: Wetland Mitigation Banking*, IWR Report 94-WMB-6, Feb. 1994.

## **Exhibit D**

### **Financial Assurance**

The Papio-Missouri River Natural Resources District is one of 23 independent Natural Resources Districts formed by laws enacted by the Nebraska Legislature in 1972. The PMRNRD is a local governmental unit and is governed by an elected board of directors. Like the other Natural Resource Districts in Nebraska, the PMRNRD has broad responsibilities to protect natural resources within its district. As such, it has taxing authority (much of its funding comes from local property taxes), the authority to spend revenues, and the capability to carry out programs.

The program to be established with this enabling instrument is consistent with the PMRNRD's mandate and authority. Consequently, the mitigation Bank can be funded as a valid PMRNRD natural resources program. The establishment, operation, and long-term maintenance of this program, as well as response to potential unforeseen events, will be backed by the financial assurance of this state-established unit of government.



General Manager, Papio-Missouri River Natural Resources District

01-08-2001

Date

## Exhibit E

### Nebraska Wetland Subclasses

| Wetland Subclass  | Example(s)   |
|---|--|
| Riverine vegetated channel and wetland fringe along unvegetated channels                | Miracle Farms intermittent stream, Buffalo County<br>Oak Creek, Lancaster County   |
| "Slope" wetlands (springs, seeps, and headwaters) with an aquatard, e.g. till over clay | Wet, springy waterways in N.E. Nebraska,<br>e.g. Pierce County   |
| "Depressional playas," episaturated with short- or long-duration ponding                | Hultine WPA, Clay County;<br>Boyd County site; depressions on interfluvium between N. and S. Platte Rivers, Keith County                                       |
| Depressions on floodplains, most with long-duration ponding                             | Natural oxbows in Elkhorn River, Stanton County;<br>natural oxbows in Pumpkin Creek, Morrill County;<br>remnant meanders, channelized Logan Creek, Burt County |
| Riverine floodplains, endosaturated wet meadow with minimal out-of-bank flooding        | Crane meadows, Hall County   |
| Riverine floodplains, episaturated heavy soils  | Missouri River bottomlands   |
| Riverine floodplains, endosaturated wet meadow with regular out-of-bank flooding        |  |
| Fringe, lacustrine and lakes  | Branched Oak Lake headwaters, Pelican Lake,<br>Valentine NWR   |

Notes: WPA – Wildlife Production Area  
NWR – Wildlife Production Area



## **Exhibit F**

### **Bank Closure Plan**

Bank closure will occur in two phases:

1. Closure of the crediting and debiting procedure established by this enabling instrument itself. The PMRNRD retains the option to close the Bank and stop selling credits. At such time, the PMRNRD will notify the MBRT that it is no longer providing credits and will finalize the accounting on the existing Bank balance books.
2. Closure of the sites. Once the mitigation credits in the Bank have been exhausted and/or it has been determined that the Bank is functionally mature and/or self-sustaining to the degree specified in this Banking Instrument, the operational life of the Bank will cease, with the exception of arrangements for long-term maintenance.

After Bank closure, the mitigation properties will remain PMRNRD's and PMRNRD will be responsible for them.

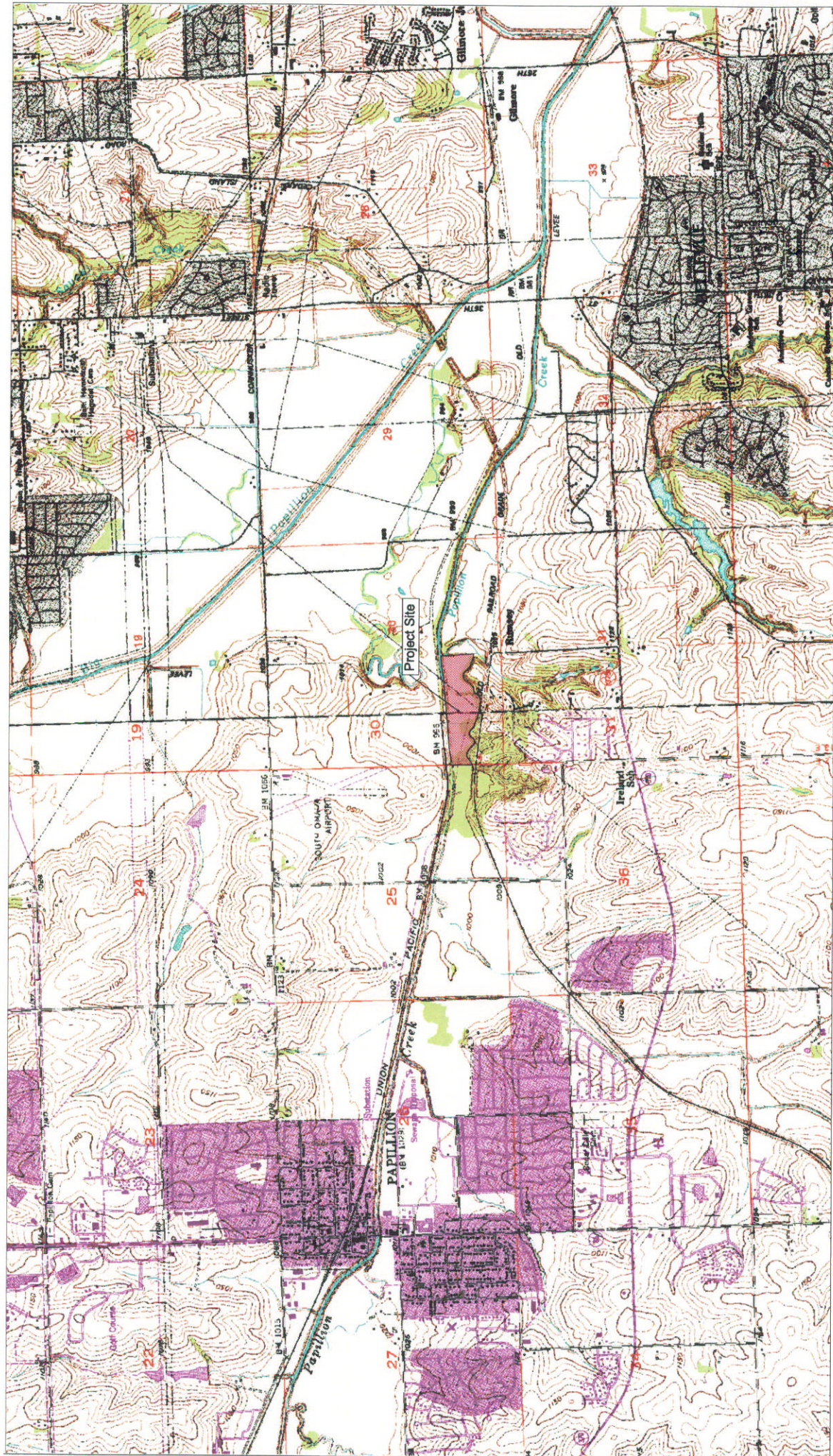
DATE: \_\_\_\_\_ INVESTIGATORS: \_\_\_\_\_  
 MAPPED SOIL SERIES: \_\_\_\_\_  
 TRANSECT: \_\_\_\_\_  
 SITE NAME/PERMIT NO. \_\_\_\_\_  
 TRANSECT PROFILE: \_\_\_\_\_ indicating topography, observation points, distinctive features, vegetation changes.

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\*  
\*  
\*  
\*  
\*  
\*

OTHER OBSERVATIONS:

Page G-1  
April 21, 2000





Source: USGS Ralston and Omaha South Quads

Date  
Sept 2004  
Figure  
1

## Project Location



Rumsey Station Wetland Mitigation Bank Site



**HDR**

ONE COMPANY | Many Solutions™





|  |  |  |   |
|--|--|--|---|
|  <b>PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT</b> | <b>TITLE</b><br>RUMSEY STATION<br>WETLAND MITIGATION | DESIGNED BY: H&H INC.<br>DRAWN BY: MM<br>CHECKED BY: PW<br>APP'D BY: KLP | PROJECT NO.: 272<br>DATE: 2/21/2003<br>SCALE: 1" = 100'<br>SHEET NO. 1 OF 1 |
|  |  |  |   |
|  |  |  |   |
|  |  |  |   |

**PMNRD Wetland Mitigation Bank  
Ledger**

| C R E D I T S |                |            |       |             |          |       |                |           |        | D E B I T S    |            |                |       |             |          |       |                |                  |                 |
|---------------|----------------|------------|-------|-------------|----------|-------|----------------|-----------|--------|----------------|------------|----------------|-------|-------------|----------|-------|----------------|------------------|-----------------|
| ID No.        | Location Site  | Serv. Area | Acres | Description | Classif. | Other | Date Completed | Credited  | ID No. | Location Site  | Serv. Area | Entity Name*   | Acres | Description | Classif. | Other | Date Debited   | Compens. Ratio** | Balance (acres) |
| 1C            | Runsey Station | 107        | 0.5   | PEMC        |          |       | 7/3/2002       | 7/3/2002  | 1D     | Runsey Station | 107        | Clarke Stevens | 0.42  | PEMC        |          |       | 6/11/2003      | 1.00             | 0.08            |
| 2C            | Runsey Station | 107        | 1.15  | PEMC        |          |       | 3/19/2003      | 3/19/2003 | 2D     | Runsey Station | 107        | City of Omaha  | 0.16  | PEMC        |          |       | 12/12/2004     | 1.00             | 0.87            |
| 3C            | Runsey Station | 107        | 3.66  | PEMC        |          |       | 9/28/2004      |           | 3D     | Runsey Station | 107        | Pacific Point  | 0.66  | PEMC        |          |       | 2/24/2004      | 1.00             | 3.99            |
| 4C            |                | 107        |       |             |          |       |                |           | 4D     | Runsey Station | 107        | KDI Omaha L.P. | 0.51  | PEMC        |          |       | 4/12/2005      | 1.00             | -0.51           |
| 5C            |                | 107        |       |             |          |       |                |           | 5D     | Runsey Station | 107        | P-MRNRD        | 0.36  | PEMC        |          |       | 5/31/2005      | 1                | -0.36           |
| 6C            |                | 107        |       |             |          |       |                |           | 6D     |                | 107        |                |       |             |          |       |                |                  |                 |
| 7C            |                | 107        |       |             |          |       |                |           | 7D     |                | 107        |                |       |             |          |       |                |                  |                 |
| 8C            |                | 107        |       |             |          |       |                |           | 8D     |                | 107        |                |       |             |          |       |                |                  |                 |
| 9C            |                | 107        |       |             |          |       |                |           | 9D     |                | 107        |                |       |             |          |       |                |                  |                 |
| 10C           |                | 107        |       |             |          |       |                |           | 10D    |                | 107        |                |       |             |          |       |                |                  |                 |
|               |                | 107        | 5.31  |             |          |       |                |           |        |                | 107        |                | 2.13  |             |          |       | Subtotal       |                  | 3.18            |
| 11C           |                | 106        |       |             |          |       |                |           | 11D    |                | 106        |                |       |             |          |       |                |                  |                 |
| 12C           |                | 106        |       |             |          |       |                |           | 12D    |                | 106        |                |       |             |          |       |                |                  |                 |
| 13C           |                | 106        |       |             |          |       |                |           | 13D    |                | 106        |                |       |             |          |       |                |                  |                 |
| 14C           |                | 106        |       |             |          |       |                |           | 14D    |                | 106        |                |       |             |          |       |                |                  |                 |
| 15C           |                | 106        |       |             |          |       |                |           | 15D    |                | 106        |                |       |             |          |       |                |                  |                 |
| 16C           |                | 106        |       |             |          |       |                |           | 16D    |                | 106        |                |       |             |          |       |                |                  |                 |
| 17C           |                | 106        |       |             |          |       |                |           | 17D    |                | 106        |                |       |             |          |       |                |                  |                 |
| 18C           |                | 106        |       |             |          |       |                |           | 18D    |                | 106        |                |       |             |          |       |                |                  |                 |
| 19C           |                | 106        |       |             |          |       |                |           | 19D    |                | 106        |                |       |             |          |       |                |                  |                 |
| 20C           |                | 106        |       |             |          |       |                |           | 20D    |                | 106        |                |       |             |          |       |                |                  |                 |
|               |                | 106        |       |             |          |       |                |           |        |                | 106        |                |       |             |          |       | Subtotal       | 0                |                 |
|               |                |            |       |             |          |       |                |           |        |                |            |                |       |             |          |       | Subtotal Total |                  | 3.18            |

- Notes:
- The entity that incurred the debit.
  - The ratio of credits to debits (for example, 1 acre of created wetland for every acre of wetlands lost).
  - PEMC = palustrine emergent seasonally flooded
  - PEMA = palustrine emergent temporarily flooded
  - PUBFX = palustrine unconsolidated bottom semipermanently flooded, excavated
  - PSSA = palustrine scrub-shrub temporarily flooded

# Amendments to Papio Missouri River NRD Final Banking Instrument

4-20-05

Changes to the umbrella banking instrument that are detailed below apply only to bank sites established after the date of execution of this amendment. The Rumsey Station Wetland Mitigation Bank will continue to operate under the terms and conditions of the Site Development Plan and Final Banking Instrument Dated April 21, 2000 and executed by the Corps on December 17, 2000.

## **Page 9: A. Service Areas:**

Following the execution of this amendment, service areas for the bank sites are to be defined by 8-digit HUC boundaries within the PMNRN boundaries (see Exhibit A-1). As stated in the Preamble, the Bank will operate by service area, each of which will have its own wetland mitigation credits and credit accounting ledgers available. Mitigation outside of the HUC service area will be considered on a case-by-case basis, with higher mitigation ratios likely.

The Rumsey Station Wetland Mitigation Bank will continue to operate with service area defined by NRCS Major Land Resource Area 106 (see Exhibit A).

## **Page 10: E. Success Criteria:**

The following performance standards will apply:

1. Meet the Corps of Engineers Wetlands Delineation Manual criteria.
2. Achieve 80 percent canopy cover for emergent plant species.
3. Not exceed 25 percent of total canopy cover with any given species.
4. Monitor emergent wetlands for a minimum of three growing seasons prior to submission of approval of full credit.
5. Monitor forested wetlands for a minimum of seven growing seasons prior to submission for approval of full credit.
6. Achieve in-kind replacement of functions according to the wetland subclasses described in Exhibit E, Nebraska Wetland Subclasses.
7. Control state-listed noxious weeds and pest species, as identified in individual Site Development Plans, to less than 1 percent of total canopy cover.
8. Achieve 80 percent survival of woody species after three years.
9. Not exceed 10 percent of total canopy cover by any given state listed ~~invasive~~invasive species (see Exhibit H).

## **Page 11: F. Credit Availability and Table 1. Crediting Ratios and Percentages**

(Crediting ratios will be consistent with the Corps of Engineers Omaha District Mitigation Banking Guidance (February 2005) Part C Mitigation Banking, IV Credits and Accounting. More specifically, Table 1 shall be replaced by the following revised table and associated text)

**Table 1. Crediting Ratios**

| <u>Wetlands</u>   |  |                |
|---|--|----------------|
| <u>Ratio A</u>  |  | <u>Ratio B</u> |
| <u>1:1</u>  | <u>Restoration (re-establishment)</u>              | <u>1.5:1</u>   |
| <u>1:1</u>  | <u>Restoration (rehabilitation)</u>                | <u>2:1</u>     |
| <u>3:1</u>  | <u>Enhancement</u>                                 | <u>4:1</u>     |
| <u>1:1</u>  | <u>Establishment</u>                               | <u>2:1</u>     |
| <u>10:1</u>   | <u>Protection/Maintenance</u>                      | <u>10:1</u>    |
| <u>4:1</u>  | <u>Buffer</u>                                      | <u>4:1</u>     |
| <u>Stream/linear corridor mitigation banks (500 feet equals one credit)</u> |  |                |
| <u>1:1</u>  | <u>Restoration (re-establishment/day-lighting)</u> | <u>1.5:1</u>   |
| <u>1:1</u>  | <u>Restoration (rehabilitation)</u>                | <u>1.5:1</u>   |
| <u>3:1</u>  | <u>Enhancement</u>                                 | <u>4:1</u>     |
| <u>1:1</u>  | <u>Establishment</u>                               | <u>2:1</u>     |
| <u>10:1</u>   | <u>Protection/Maintenance</u>                      | <u>10:1</u>    |
| <u>4:1</u>  | <u>Buffer</u>                                      | <u>4:1</u>     |

\* Several studies (see applicable literature appendix) have suggested that riparian buffers are very important for functions such as water quality protection, stream stabilization and riparian habitat. Therefore it will be offered at the discretion of the MBRT that banks may have the opportunity to exchange or reduce their ratio for having a more ecologically stable buffer. For every 10 meters (32.8 feet) of appropriate buffer one (1) ratio point can be reduced from the buffer ratio down to the ratio given to the remainder of the bank. (i.e. If the restoration ratio is 1.5:1 then a sponsor could only be able to request an exchange or reduction of 2.5 points in exchange for an additional 25 meters of buffer. Then for the entire bank the ratio to determine credits would be 1.5:1).

\*\* Within this ratio the stream/linear portion must be at least the same length and width as the impacted stream/linear area with the remaining portion of the ratio for riparian corridor.

Typically ratio determinations should be based on the following conditions:

**Condition 1 (Ratio A)**

- a. The Bank has met its success criteria (see Part B II for minimum evaluation criteria).
- b. The bank, in its entirety, can demonstrate overall watershed benefits.

**Condition 2 (Ratio B)** (for pre-credits, out-of-kind or approved out of primary service area. Ratio is slightly higher to account for temporal loss except for Protection/Maintenance and buffer ratios).

- a. Bank has not met success criteria but MBRT has approved the release of pre-credits (no more than 30% of the total bank).
- b. Primary function of the bank's wetland is less or significantly different than impacted wetlands (i.e. out-of-kind or diminished functional capacity)

**Page 12: B. Monitoring Provisions**

The PMRNRD agrees to perform all necessary work to monitor the Bank in order to demonstrate compliance with the success criteria established in this Banking Instrument. Monitoring will begin during the first growing season after completion of the site construction. The monitoring will be conducted at time intervals specified in the Site Development Plan and appropriate for the particular project type. It shall continue until the Corps, in consultation with the MBRT, is confident that the success criteria are being met. Typically, sites with forested wetlands will be monitored for a minimum period of ten years and other wetlands, including emergent and scrub-shrub wetlands will be monitored for a minimum period of five years. (See Exhibit G, Monitoring Report Transect Data Sheet).

If in agreement with the above amendments, please sign below.

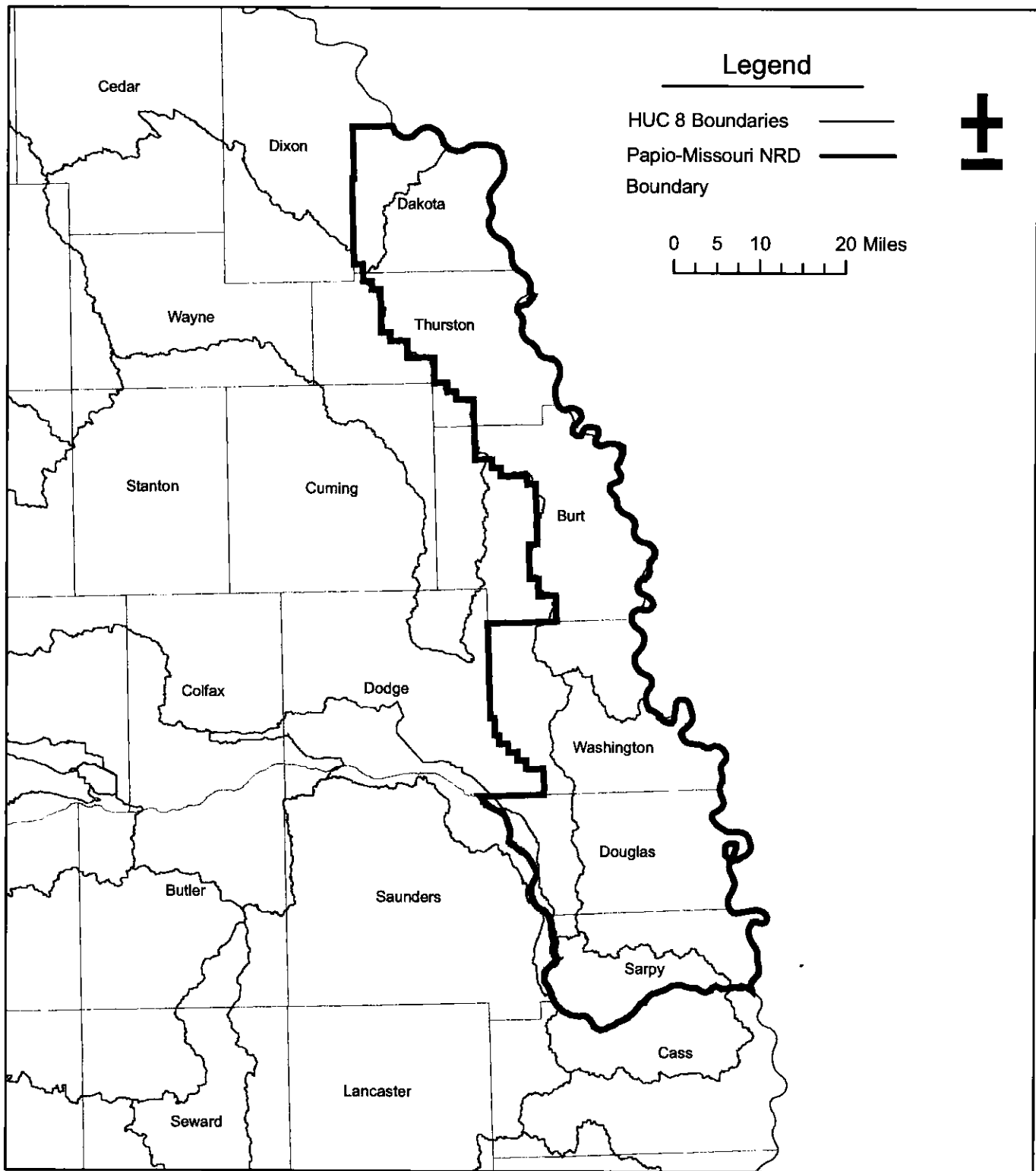
General Manager, Pacific Missouri River Natural Resource District

Date

U.S. Army Corps of Engineers

Date





**OLSSON ASSOCIATES**  
ENGINEERS • PLANNERS • SCIENTISTS • SURVEYORS

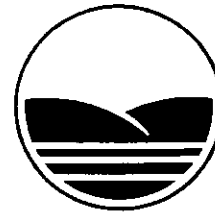


## Wetland Mitigation Bank Service Areas

Papio-Missouri River NRD

Exhibit A -1

# PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT



MEMORANDUM TO: Programs, Projects and Operations Subcommittee  
SUBJECT: State Contract Purchase of the GPS Survey Equipment  
DATE: June 2, 2005  
FROM: Jean Friends Tait, Purchasing Agent

8901 S. 154TH ST.  
OMAHA, NE 68138-3621  
(402) 444-6222  
FAX (402) 895-6543  
www.papionrd.org

On May 10<sup>th</sup>, 2005 the Equipment Committee briefed the PPO Subcommittee the 2006 Equipment Requirements List. GPS Survey Equipment was on this list with an estimated purchase price of \$40,000. In December of 2004, District staff members researched prices for the GPS survey equipment for possible purchase in the 2006 fiscal year; but District projects and timelines necessitated the rental of said equipment. The District's need to extend the rental of this equipment include levee system surveys, survey of the Dam Site 13 conservation pool, additional floodplain remapping, to name a few.

The Nebraska Purchasing Department awarded the state contract for this equipment to A&D Technical Supply, contract number CA-6212, for the period of April 22, 2004 through April 30, 2006 as low bidder. The District contacted A&D Technical Supply for equipment rental (identifying the state contract) and was able to convince A&D to apply 80% of the rental fee towards the purchase price of this equipment *if* the Board approved the purchase of this item. The monthly rental fee for this equipment is \$2,800 per month. Having rented this equipment since December allows the District to reduce the purchase price of the GPS Survey Equipment from \$40,000 to \$25,077.51.

Some of the jobs that have been completed or are affected by the use of this GPS equipment follows.

| <b>Jobs affected by the use of GPS</b> |                                 |                      |                                     |                                      |  |
|--|---------------------------------|----------------------|-------------------------------------|--------------------------------------|--|
| <b>Firm or Agency</b>                  | <b>Project</b>                  | <b>Cost with GPS</b> | <b>Cost without GPS</b>             | <b>Approximate Cost to Outsource</b> | <b>\$ Savings using GPS VS outsourcing</b> |
| C.O.E.                                 | Vencils Island layout           | \$152.00             | Needed GPS to meet job deadline     | \$1000.00                            | \$848.00                                   |
| NRD                                    | Decatur Bend                    | \$5,191.31           | 15,574.50                           | \$28,000                             | \$22,808.69                                |
| HDR                                    | Floodplain remapping x-sections | \$5,320              | GPS needed to complete this project | \$15,000                             | \$9,680.00                                 |

|     |  |                              |   |  |          |
|-----|--|------------------------------|---|--|----------|
| NRD | Dam Site 13 conservation pool layout ASAP            | \$400.00                     | Not enough lead time to complete without GPS  | \$1,200  | \$800.00 |
| NRD | Walnut Creek Amphitheater                            | \$115.00                     | Due to other ongoing projects, the survey crew would not have had time to complete this job w/o GPS | Not enough lead time to outsource as survey control was already set by NRD Surveyors | N/A      |
| NRD | West Branch ROW with property pins and legal surveys | \$8,000                      | \$15,000  | \$40,000-\$50,000  | \$32,000 |
| NRD | Sloderbeck ALTA survey                               | No GPS at the time of survey | Other project deadlines, required us to out-source this job   | Actual cost: \$4,500   |          |

I contacted the Nebraska Purchasing Department on Tuesday, May 17, 2005, to verify the bid process for State Contracted items. The State of Nebraska does not advertise or formally bid any items that are covered by State Contract as the State has already negotiated the lowest price for contracted items. As purchasing agent, I use the State Contracts whenever it is in the best interest of the District. As in this case, the lowest price for the GPS survey equipment.

**It is staff's recommendation to follow the State policy to NOT advertise and directly purchase the GPS Survey Equipment under State Contract number CA-6212, for a cost of \$25,077.51 from A&D Technical Supply.**

CONTRACT AWARD

STATE OF NEBRASKA

State Purchasing Bureau  
301 Centennial Mall South  
P.O. Box 94847  
Lincoln, Nebraska 68509  
Phone: (402) 471-2401

**Vendor:**  
A & D Technical Supply  
4320 South 89th Street  
Omaha, NE 68127

**Date:** April 22, 2004

**Contract Number:** CA-6212  
NIS-10867 (OC)

**General Classification:** Leica Brand Digital Level Instruments

**Contact:** Daniel Kahm  
**Phone:** 800-228-2753 Ext 1009  
**Fax:** 402-592-9302

AN AWARD HAS BEEN MADE TO THE VENDOR NAMED ABOVE FOR THE FURNISHING OF EQUIPMENT, MATERIAL, OR SUPPLIES AS LISTED BELOW FOR THE PERIOD:

**April 22, 2004 through April 30, 2006**

NO ACTION ON THE PART OF THE VENDOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE EQUIPMENT OR SUPPLIES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE EQUIPMENT OR SUPPLIES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR ITEMS FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE VENDOR AND THE STATE OF NEBRASKA.

Contract to supply and deliver LEICA BRAND DIGITAL LEVEL INSTRUMENTS F.O.B Destination as per the attached terms and conditions for a two (2) year period beginning April 22, 2004 through April 30, 2006, renewable for additional twelve (12) month periods at the option of both parties. The contract may be extended if agreeable to both parties.

Prices will remain firm for the first year of the contract period.

LK:drh

  
BUYER

  
STATE PURCHASING AGENT

**STATE OF NEBRASKA  
D.A.S. - MATERIEL DIVISION  
TERMS AND CONDITIONS  
CA-6212**

The vendor shall supply and deliver **Leica Brand Digital Level Instruments F.O.B.** Destination as required by the Nebraska Department of Roads per the attached terms and conditions for a two (2) year period beginning approximately May 1, 2004 through April 30, 2006, renewable for additional twelve (12) month periods at the option of both parties. The contract may be extended if agreeable to both parties.

Prices will remain firm for the first one-year period.

Prices may be subject to revision at the end of this period. Such changes shall be based on general industry changes as evidenced by revised printed price lists or notices. Revisions may be either increases or decreases. Requests for price changes shall be received in writing at least thirty (30) days prior to their effective date and are subject to written acceptance before becoming effective. In the event new price proposals are not acceptable, the contract may be canceled.

It is understood and agreed that in the event of a reduction in the manufacturer's price, the State of Nebraska will be given the full benefit of such decline in price immediately.

**F.O.B. Destination**

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the seller.

**Invitation to Bid Form**

The vendor is to list prices as indicated on the quotation form.

**Estimated Usages**

Expected annual usage is listed on the quotation form. This is to be considered an estimate of best usage, and neither a minimum nor maximum commitment level. Equipment to be ordered on an "as needed" basis with no minimum order requirement.

**Delivery**

Delivery is expected within thirty (30) days after receipt of order. Delivery may be a factor in the award of the bid.

**Default**

Any vendor who defaults as defined in the bid specifications may, at the discretion of the State, be barred from bidding on future requirements.

### Usage Report

The vendor shall provide annual usage of this contract by state agencies. Information will include agency name, item, and dollar amount. Information is to be provided to State Purchasing at the end of the contract period or upon renewal of the contract.

### Acceptable Brands

Leica - No Substitute

### Revisions/Additions

In the event the equipment is discontinued or replaced with a newer version during the contract period, the State of Nebraska reserves the right to amend this contract to include the new model. The State also reserves the right to add products in response to agency needs.

### REFERENCE CHECKS

Information to be requested and evaluated from references may include, but is not limited to, some or all of the following: ability, capacity, and skill of the bidder to perform the contract required; character, integrity, judgment, experience and efficiency of the bidder; whether the bidder can perform the contract within the time specified; the quality of performance of previous contracts; the previous and existing compliance by the bidder with laws relating to the contract; communication skills and timeliness; cost and schedule estimates and accuracy; problems (poor quality deliverables, contract disputes, work stoppages, et cetera); overall performance; whether or not the reference would rehire the firm or individual; any such other information as may be secured having a bearing on the decision to award the contract. Reference checks may be limited to top scoring bidders and negative references may eliminate vendors from consideration for award.

The State reserves the right to check any reference(s), regardless of the source of the reference information, including but not limited to, those that are identified by the company in the bid, those indicated through explicitly specified contacts, those that are identified during the review of the bid, or those that result from communication with other entities involved with similar projects.

### References

Please list three or more government agencies/firms within the United States with whom you have contracts or long-term business relationships. References may be utilized in the award.

1. Name Corps of Engineers  
Address 106 So 15<sup>th</sup>  
City and State Omaha NE 68102  
Contact Person/Phone Number Bryan Hunter 402-221-4668  
Don Holmes 402-697-2665

2. Name Nebraska Natural Resource District  
Address 301 Centennial Mall South  
City and State Lincoln Ne  
Contact Person/Phone Number Al Ruge 402-471-3925
3. Name Nebraska Public Power District  
Address 1414 15th Street  
City and State Columbus Ne 68601  
Contact Person/Phone Number Jim Eicher 402-563-5693

**Customer Service**

The vendor shall list the name and phone number of the customer service representative who will be assigned to service the State of Nebraska's account:

Customer Service Rep Dan Kahn / Donna Caldwell  
Phone Number 400-228-2753 Dan Ext 1009 Donna Ext 1003

**Cancellation Clause**

This contract may be terminated by either party or parties within thirty (30) days of written notice.

**Award**

The State of Nebraska reserves the right to reject any or all bids in whole or in part as it is deemed in the best interest of the State.

**QUOTATION FORM**

| Item No. | Description  | Est. Usage | Unit | Price             | Extended Price      |
|----------|--|------------|------|-------------------|---------------------|
| 1.       | DNA10 (726540)<br>includes the following:<br>CD-ROM DNA 03/10,<br>all Languages<br>(727291); User<br>Manual DNA03/10<br>(726203), Quick Start<br>Guide DNA/03/10<br>(726208) | 10         | Each | \$ <u>3311.70</u> | \$ <u>33,117.00</u> |
| 2.       | GEB111 plug-in<br>battery 1.8Ah<br>(667318)  | 20         | Each | \$ <u>70.40</u>   | \$ <u>1408.00</u>   |
| 3.       | GKL111-1 Battery<br>Charger 110v & Car<br>(667318)   | 10         | Each | \$ <u>70.40</u>   | \$ <u>704.00</u>    |
| 4.       | RS232 Data Transfer<br>Cable (563625)  | 10         | Each | \$ <u>88.00</u>   | \$ <u>880.00</u>    |
| 5.       | ATA Flash card 16Mb<br>-20/+75C (667746)   | 10         | Each | \$ <u>202.40</u>  | \$ <u>2024.00</u>   |
| 6.       | GKNLAF Dual Face<br>Bar Code Leveling<br>Rod (522793)  | 10         | Each | \$ <u>277.20</u>  | \$ <u>2772.00</u>   |
| 7.       | Level pack Pro<br>Software (727236)  | 10         | Each | \$ <u>523.60</u>  | \$ <u>5236.00</u>   |
| 8.       | Adjustment Module<br>for Level Pack Pro<br>(734768)  | 6          | Each | \$ <u>454.75</u>  | \$ <u>2728.50</u>   |

Delivery can be made within 30 days ARO Yes ☒ No ☐