

**Programs, Projects & Operations
Subcommittee Meeting
June 10, 2003
6:00 p.m.
Agenda**



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

Programs, Projects & Operations

John Conley, Chairperson
Rich Jansen, Vice-Chairperson
Tim Fowler
Joe Neary
Rich Tesar

Alternate Members: Dick Connealy
Pete Rubin

Staff Liaison: Gerry Bowen
Jerry Herbster *
Ralph Puls
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 P-MRNRD Contribution to Lewis and Clark Signature Site at Fort Atkinson, Fort Calhoun, NE – David Genoways, Chairman of the Washington County Historical Association; Dan Hunt, Chair of the Lewis and Clark Monument Committee; Jim Becic and Steve Oltmans
6. Review and Recommendation on Lower Platte River Projects:
 - a. Update on Pallid Sturgeon/Sturgeon Chub Task Force and Action on Cumulative Impact Study – Frank Albrecht, Nebraska Game and Parks Commission and Gerry Bowen
 - b. Lower Platte River Corridor Alliance Budget – Rodney Verhoeff, LPRCA Coordinator and Gerry Bowen
 - c. Western Sarpy/Clear Creek Project Professional/Construction Services for Cabin Raise-Voluntary Buyout – Martin Cleveland
 - (1) Design/Build – The Schemmer Associates and W. Boyd Jones Construction Co. – Ron Woracek and Todd Ericson
 - (2) Appraisals – Valuation Services – Kevin Kroeger
 - (3) ROW Services – Midwest ROW Services – Jack Borgemeyer
7. Review and Recommendation of Professional Services Contract with HDR Engineering, Inc., for Papillion Creek Watershed, Stage II Study – Lyle Christensen, HDR Engineering, Inc., and Paul Woodward

8. Review and Recommendation on Amendment to Nebraska Wildlife Rehab, Inc., Rumsey Station Wetlands Agreement – Margaret Lehning, President, NWRI, and Jim Becic
9. Review and Recommendation on Flood Mitigation and Mapping Assistance Program Policy – Paul Woodward
10. Review and Recommendation of Amendment to Dam Site 6 Agreement – Paul Woodward
11. Review and Recommendation on Water Purchase Agreement with Ft. Calhoun – Dick Sklenar
12. Review and Recommendation on Awarding Contract for Water Main Addition on the Washington County Rural Water System – Dick Sklenar
13. Other Items of Interest
14. Adjourn

Memo to the Programs, Projects and Operations Subcommittee

Subject: Lower Platte River Corridor Alliance (LPRCA) – Cumulative Impact Study

Date: March 24, 2003

From: Gerry Bowen

The Nebraska Game and Parks Commission (GPC) has raised concerns about the impacts to habitat, **and** water quality and quantity in the Lower Platte River (Columbus to the mouth) of the numerous projects that have occurred on this stretch of river over time. In particular, they are concerned about levee projects such as Western Sarpy and Union Dikes, plus bank stabilization, diversions and bridge projects.

To address these concerns, the GPC has approached the Corps of Engineers (COE) about conducting a study of these cumulative impacts under the Corps' Section **22** Planning assistance to states. The first phase would be to prepare the scope of services for the overall Cumulative Impacts Study. This scope would define additional studies to be completed in the future.

GPC has approached the NRDs in this reach about contributing to the Phase 1 study costs. The attached interlocal agreement and addendum addresses this cost share arrangement. The Section **22** study is estimated to cost \$20,000, with the local match being \$10,000. It is proposed that this match be equally provided by the Lower Platte North, Lower Platte South, and Papio-Missouri River NRDs, GPC, and the Department of Roads. Each partner's cash contribution would be \$2,000.00. The Department of Natural Resources would contribute \$1,000 of "in-kind" services to the project.

It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute an interlocal agreement on behalf of the District for Phase I the Lower Platte River Cumulative Impact Study, subject to approval as to form by the District Legal Counsel.

INTERLOCAL COOPERATION ACT AGREEMENT LOWER PLATTE CUMULATIVE IMPACT STUDY

This Agreement (hereinafter named "agreement") made and entered into this _____ day of _____ 2003, by the following Parties, hereafter referred to as "Partners":

Lower Platte North Natural Resources District (LPNNRD)
Lower Platte South Natural Resources District (LPSNRD)
Papio-Missouri River NRD (PMRNRD)
Nebraska Game and Parks Commission (NGPC)
Nebraska Department of Natural Resources (NDNR)
Nebraska Department of Roads (NDOR)

Where as:

The Platte River has experienced many changes over the years due to development in and adjacent to the flood plain. Inventories of various development or modifications associated with these changes have been addressed in specific reports generated by multiple agencies and stakeholders within the basin, however this information has not been combined to determine cumulative effects of these changes.

Recently the Nebraska Game and Parks Commission (NGPC) and the U.S. Fish and Wildlife Service (USFWS) have expressed interest in forming a committee to develop and execute a study to determine the effects of the cumulative impacts along the Lower Platte River.

In addition, the U.S. Army Corps of Engineers (USACE) is currently performing Flood Damage Reduction (FDR) studies at various locations in the study reach (Lower Platte General Investigation, Schuyler, Fremont and Union Dike). Recent comments submitted to the USACE by the NGPC and USFWS on several of these studies indicate a hesitancy to allow the USACE to move forward on any project construction on the river until cumulative impacts related to structures specifically related to the study are addressed.

The United States Army Corps of Engineers (COE) is willing to complete a study to determine the effects of the cumulative impacts along the Lower Platte River and provide fifty (50) percent assistance on the total study costs.

The Partners desire to join together and cooperate by providing the required fifty (50) percent non-federal share of the costs associated with the cumulative impact study.

Therefore, in consideration of the foregoing recitals and their mutual covenants hereinafter expressed, the Partners agree as follows:

1. Authority: This agreement is made pursuant to authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. **13-801**, R.R.S., **1943**, et seq.), without a separate entity being created, and whenever possible, this agreement shall be construed in conformity therewith.
2. Purposes: The purpose of this agreement is to study the cumulative effects of to the Lower Platte River which include construction of new levees, strengthening existing levees, construction of new bridges, replacement of existing bridges, stream bank stabilization, habitat mitigation, and other such projects as outlined on "Attachment I" to this Agreement.
3. Costs: he costs associated with the various components of study Will Le outlined and approved in the form of Addendums to this Interlocal Agreement.
4. Contracts: The partners authorize the Nebraska Game and Parks Commission to enter into contracts on behalf of the Partners for completion of the USACE studies.
5. Payments: The Nebraska Game and Parks Commission will bill all Partners for their share of the non-federal study costs as payment requests are received.
6. Additional duties of parties: Each Partner will designate a contact person to assist the Committee for completion of the study and other required work.
7. Effective Date: This agreement becomes effective upon execution by all partners.
8. Duration of Agreement: This agreement shall remain in effect for an indefinite period of time until the completion and acceptance of the study or termination by one or more partners. It may be terminated at any time by any partner by giving the other partners **30** days notice in writing.
9. Execution of Agreement : Separate copies of this Agreement Will Le executed by the partners with the understanding that when the partners all have executed separate copies of the documents, all of the partners shall Le bound by this Agreement to the same extent as though all of the partners had simultaneously signed a single master copy. The original copy of this agreement Will Le maintained as part of the records of the Nebraska Game and Parks Commission, with copies being mailed to all parties

IN WITNESS WHEREOF,

**This Agreement is executed by the Lower Platte North Natural Resources District on
this __ day of _____, 2003.**

Lower Platte North Natural Resources District

By _____

Title _____

Designated Contact Person: _____

Mailing Address: _____

Telephone Number: _____

This Agreement is executed by the Lower Platte South Natural Resources District on this __day of _____,2003.

Lower Platte South Natural Resources District

By_____

Title_____

Designated Contact Person: _____

Mailing Address: _____

Telephone Number: _____

**This Agreement is executed by the Papio-Missouri River Natural Resources District on
this _____ day of _____, 2003.**

Papio-Missouri River Natural Resources District

By _____

Title _____

Designated Contact Person: _____

Mailing Address: _____

Telephone Number: _____

This Agreement is executed by the Nebraska Game and Parks Commission on this ____ day of _____,2003.

Nebraska Game and Parks Commission

By_____

Title_____

Designated Contact Person: _____

Mailing Address: _____

Telephone Number: _____

This Agreement is executed by the Nebraska Department of Natural Resources on this _____ day of _____, 2003.

Nebraska Department of Natural Resources

By _____

Title _____

Designated Contact Person: _____

Mailing Address: _____

Telephone Number: _____

This Agreement is executed by the Nebraska Department of Roads on this _day of _____,2003.

Nebraska Department of Roads

By_____

Title_____

Designated Contact Person: _____

Mailing Address: _____

Telephone Number: _____

INTERLOCAL COOPERATION ACT AGREEMENT
LOWER PLATTE CUMULATIVE IMPACT STUDY- PHASE I
ADDENDUM "A"

This Addendum to the agreement made and entered into this _____ day of 2003, by the following Parties, hereafter referred to as "Partners":

Lower Platte North Natural Resources District (LPNNRD)
Lower Platte South Natural Resources District (LPSNRD)
Papio-Missouri River NRD (PMRNRD)
Nebraska Game and Parks Commission (NGPC)
Nebraska Department of Natural Resources (NDNR)
Nebraska Department of Roads (NDOR)

Where as: This Addendum is entered into pursuant to number three (3) of the Interlocal Cooperation Act Agreement for the Lower Platte Cumulative Impact Study dated _____, 2003, for the purpose of studying the cumulative effects of changes to the Lower Platte River which include construction of new levees, strengthening existing levees, construction of new bridges, replacement of existing bridges, stream bank stabilization, habitat mitigation and other such projects.

Therefore, it is agreed by the above partners to participate in a Phase I "scoping" study with the United States Army Corp's of Engineers (USACE) to study the cumulative effect or changes to the Lower Platte River. The Partners agree to the following for this initial study phase:

1. costs: The total non-federal cash and in-kind service contributions of \$10,000 each will be collected from the partners as follows:

	<u>Cash</u>	<u>In-Kind</u>
Lower Platte North Natural Resources District	\$ 2,000	\$ 1,500
Lower Platte South Natural Resources District	\$2,000	\$ 500
Papio-Missouri River NRD	\$2,000	\$ 500
Nebraska Game and Parks Commission	\$ 2,000	\$ 6,500
Nebraska Department of Natural Resources		\$ 1,000
Nebraska Department of Roads	\$2,000	
Totals:	\$10,000	\$ 10,000

2. Purpose: The purpose of this Addendum "A" is complete a "scoping" study which will include collecting data from past Lower Platte River studies and geo-reference that data to a Geographic Information System (GIS). This study phase will also define the "scopes" for Phase II and subsequent study phases.
3. Contracts: The partners authorize the Nebraska Game and Parks Commission to enter into a contract on behalf of the Partners for completion of the USACE Phase I study.

4. Payments: The Nebraska Game and Parks Commission will disburse funds as needed and bill each Partner for their share of the study costs as payments are made.
5. Effective date: This addendum becomes effective upon execution by all partners and will extend until completion of the Phase I study.

IN WITNESS WHEREOF,

This Addendum "A" is executed by the Lower Platte North Natural Resources District on this _____ day of _____, 2003.

Lower Platte North Natural Resources District

By: _____

Title: _____

**This Addendum " Ais executed by the Lower Platte South Natural Resources District
on this ____day of _____,2003.**

Lower Platte South Natural Resources District

By:_____

Title:_____

**This Addendum " Ais executed by the Papio-Missouri River Natural Resources District
on this
_____day of _____,2003.**

Papio-Missouri River Natural Resources District

By:_____

Title:_____

This Addendum " Ais executed by the Nebraska Game and Parks Commission on this
____-day of _____,2003.

Nebraska Game and Parks Commission

By:_____

Title:_____

This Addendum "A" is executed by the Nebraska Department of Natural Resources on this _____ day of _____, 2003.

Nebraska Department of Natural Resources

By: _____

Title: _____

This Addendum "A" is executed by the Nebraska Department of Roads on this ____ day of _____, 2003.

Nebraska Department of Roads

By: _____

Title: _____

Memo to the Programs, Projects and Operations Subcommittee

Subject: FY 2004 Lower Platte River Corridor Alliance Budget

Date: May 27, 2003

From: Gerry Bowen

The FY 2004 Budget for the Lower Platte River Corridor Alliance (LPRC.) is attached for your review and action. The District's share of the budget request is **\$27,700**. The FY 03 Budget for the Alliance was \$31,000. The specific budget items are shown on the attached spreadsheet.

Administration: According to the current agreement, the District's share of the Alliance's administrative expenses is **\$12,500**.

Coordinator Contingency: This is a contingency fund that may be necessary if some of the state agencies are unable to meet their financial obligations due to budget cuts. The District's share of this fund is **\$5,500**.

Public Relations: In order to better tell the message of the Alliance, an informational video/CD ROM and brochure will be developed. In addition, the Alliance's current newsletter will be continued. The District's share of these items is **\$3,000**.

Water Resources Programs: The Alliance, in cooperation with UN-L Cooperative Extension, intends to conduct a series of water quality informational meetings throughout the Lower Platte Valley. These meetings would be conducted much like the Water Wellness Workshops done in FY 2001, and would report the findings of the water sampling done by the Alliance over the past several years. The District's share of these meeting expenses is **\$1,000**.

Tours and Meetings: The Alliance intends to conduct the annual Airboat Tour of the Lower Platte River again this summer. The District's share of these expenses is estimated to be **\$1,200**. The annual Water Quality Open (golf tournament) will also be held without any financial support from the NRDs.

Floodplain Management Programs: The Alliance plans to hold a series of workshops on floodplain management and non-structural flood mitigation in an effort to educate the public on floodproofing techniques encourage uniform enforcement of regulations throughout the corridor. It is envisioned that the workshops would be conducted much like the twelve Water Wellness Workshops put on throughout the corridor in FY 2001. The District's share of the miscellaneous costs to conduct these workshops is **\$1,000**.

Planning: It is proposed that the Alliance develop a master plan for the corridor. The District's share of the costs to initiate the planning process in FY 2004 is **\$3,500**.

It is recommended that the Subcommittee recommend to the Board that the Lower Platte River Corridor Alliance's FY 2004 Budget request be approved in the amount of \$27,700.

Lower Platte River Corridor Alliance - Fiscal Year 2004 Budget

May 20, 2003

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MEMORANDUM TO THE PROGRAMS, PROJECTS AND OPERATIONS SUBCOMMITTEE:

SUBJECT: Western Sarpy/Clear Creek (WS/CC) Flood Reduction Project
Cabin Raise Design/Build (Revised) and Surveying Proposals

DATE: June 9, 2003

BY: Martin P. Cleveland, P.E.
Construction Engineer

This memo updates information sent to the Subcommittee on June 3, 2003. The design/build scope of services has been revised to be more explicit. The standard form of agreement between Owner and Design/Builder has been changed from the Associated General Contractors of America (AGC) version to the Engineers Joint Contract Documents Committee (EJCDC) version, as it appeared to better fit this project. The before mentioned documents are enclosed for your review. In addition, a surveying proposal for preparing flowage (right to flood land riverward of levee) and cabin raise construction easement legal descriptions is attached for your consideration. The summary of these documents is as follows:

1. Design/Build Contract for Cabin Raise and Construction Activity: W. Boyd Jones (Contractor)
 - Contractor will be the lead on this task and will subcontract with The Schemmer Associates (survey/engineering consultant).
 - See attached flowchart for Design/Build process
 - Phase I: Preliminary Study and Report - Contract fee is **\$47,500**
 - Phase II: Design (Technical Exhibits) – Contract fee to be determined later
 - Phase III: Construction - Contract fee to be determined later
2. Land Surveying Services: The Schemmer Associates
 - Survey and prepare flowage easement legal descriptions for land riverward of dike. This only applies if full buyout is not taken.
 - Survey prepare construction easement legal descriptions for land riverward of dike for Cabin Raise activity.
 - Contract fee (Maximum) for this effort is **\$12,047**
3. ROW/Cabin Appraisals: Valuation Services
 - Contract fee (Maximum) is **\$49,400**
4. ROW/Cabin Raise Negotiation Services: Midwest ROW Services Inc.
 - Contract fee (Maximum) is **\$60,630**
5. Tentative Schedule of Activities:
 - Phase I of Design-Build – June to August 2003
 - Easement legal description preparation - July to August 2003
 - Appraisals - July to October 2003
 - ROW Negotiation – November, 2003 to March 2004
 - Phase II of Design-Build – April to May 2004
 - Phase III of Design-Build – June 2004+

The revised motion for the cabin raise activity proposals is as follows:

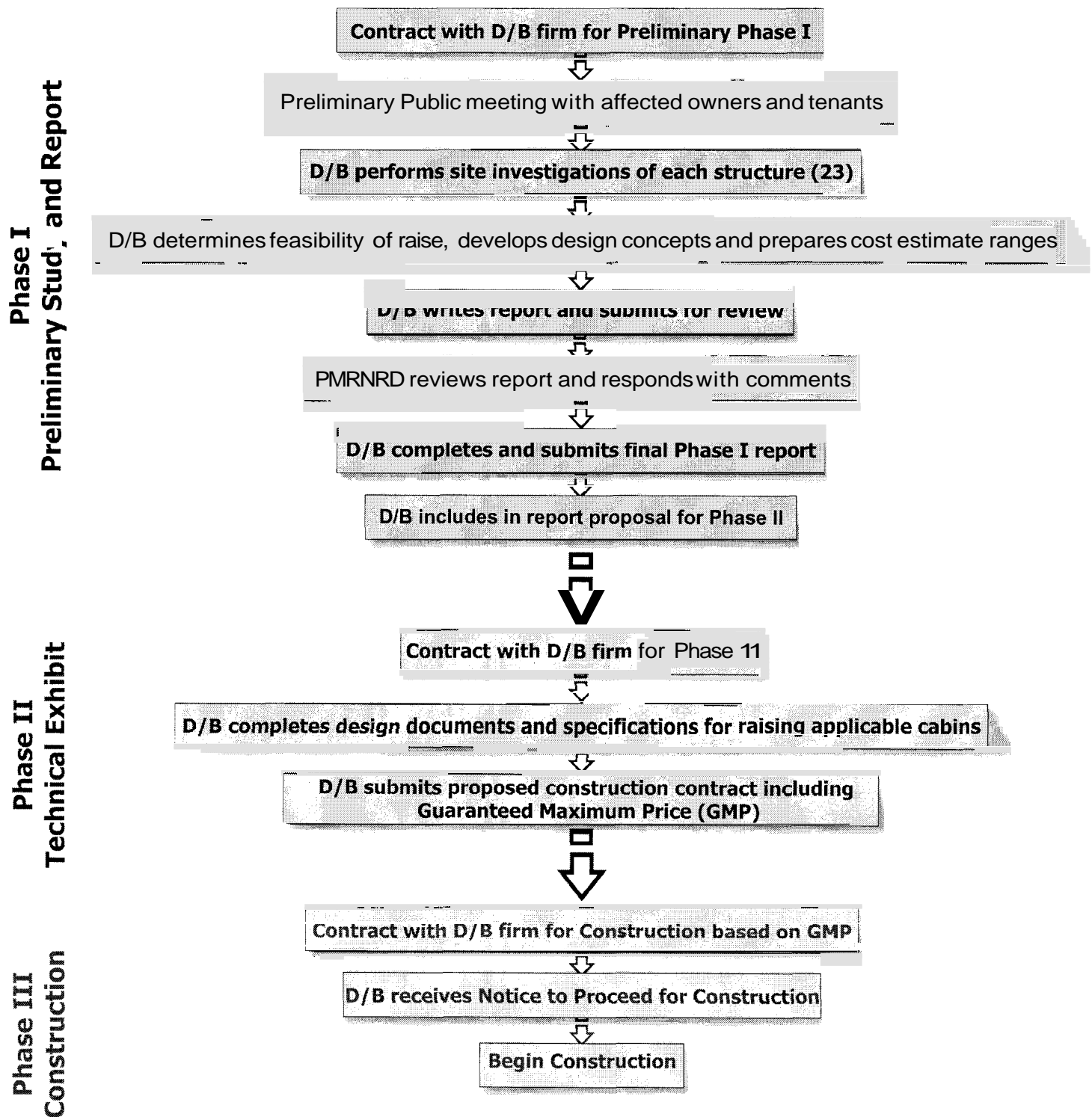
Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute proposed contracts with W. Boyd Jones Construction Co. with a maximum cost of **\$47,500**, The Schemmer Associates with a maximum cost of \$ **12,047**, Valuation Services with a maximum cost of **\$49,400** and Midwest ROW Services Inc. with a maximum cost of **\$60,630** for the Western Sarpy/Clear Creek (WS/CC) Flood Reduction Project Structure (Cabin) Raise, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

Attachments

CC: Nelson Carpenter, Corps of Engineers
Glenn Johnson, LPSNRD
John Miyoshi and Mike Murren, LPNNRD
Steve Oltmans, Marlin Petermann, Paul Peters and Dick Sklenar, NRD

WSd102 File: 548 Reach: 9-4

WESTERN SARPY/CLEAR CREEK FLOOD REDUCTION (WS/CC) PROJECT
STRUCTURE CABIN RAISE SERVICES





DRAFT

June 9,2003

Mr. Martin Cleveland, P.E.
Construction Engineer
Papio-Missouri River Natural Resources District
8901 S. 154th St.
Omaha, NE 68138-3621

RE: Western Sarpy/Clear Creek Flood Reduction (WS/CC) Project
Structure Cabin Raise Services

Dear Mr. Cleveland:

On behalf of the design build team of W. Boyd Jones Construction and The Schemmer Associates, I am pleased to submit this proposal for technical services on the above referenced project. These services are for preliminary analysis and reporting on the feasibility, method, and approximate cost of raising 23 structures along the Platte River, south of Capehart Road in Sarpy and Saunders Counties.

SCOPE OF SERVICES

Attached are Exhibits A, Design/Builder's Services, and Exhibit B, Further Responsibilities of the Owner. These outline the proposed scope of services for the Preliminary Phase of the project and the anticipated scope of services for the Technical Exhibit Phase, Proposal Phase. Both Exhibits A and B will be included in an Engineers Joint Contract Documents Committee, "Standard Form of Agreement Between Owner and Design/Builder for Preliminary Services", EJCDC D-510.

Due to the unknown scope of services necessary to complete the Technical Exhibit Phase and the Proposal Phase, this proposal only includes the Preliminary Phase. The Technical Exhibit Phase and the Proposal Phase will be completed under a subsequent proposal, negotiated after completion of the Preliminary Phase when the true scope of design and construction services is understood.

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The Preliminary Phase consists of the on-site analysis and report to determine if and how each structure will be elevated above the required flood levels.

For information only, the Technical Exhibit Phase services are included in Exhibit A and include the completion of construction documents as required by the Design/Build team to successfully price the work and develop a Guaranteed Maximum Price (GMP).

The Proposal Phase involves the submittal by the Design/Builder of a proposal to complete the work required.

FEE

1. The services provided shall be performed for a lump sum fee of \$47,500.00.
2. We would complete and submit the Preliminary Phase report to you within 60 days of authorization to begin services.
3. Additional services requested by the Owner but not contemplated at this time will be performed by the Design/Builder on an hourly basis. The amount due will be based on the actual hours expended on behalf of the project to the date of the invoice at the rates contracted.

If this proposal meets with your approval, we would then plan to contract with you under the EJCDC D-510 document. Please call if you have questions or wish to discuss in more detail. Thank you for this opportunity to be of service to you in this matter.

Sincerely,

Jon D. Crane
President

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This is **EXHIBIT A**, consisting of ____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Design/Builder for Preliminary Services** dated __, __.

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~~Deleted: SUGGESTED FORMAT¶
(for use with D-510, 2002 Edition)¶~~

Initials

Owner: _____

Design/Builder: _____

Design/Builder's Services

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ARTICLE A1 – BASIC SERVICES

A1.01 Study and Report Phase

A Design/Builder shall

1 ~~Attend a kick-off meeting with~~ Owner to define and clarify Owner's requirements for the Project including Owner's budgetary limitations, if any, and review of Conceptual Documents, if any, and available data

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2 Request that Owner obtain data or services of the types described in Exhibit B which are not part of Design/Builder's Basic Services and are reasonably required to enable Design/Builder to complete its Basic Services and Additional Services, if any

3 Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project described by Design/Builder, including but not limited ~~identifying required permits for construction work of raising cabins.~~

~~Deleted: to mitigating measures identified in the environmental assessment~~

~~4 Attend a public meeting with Owner and affected property owners and tenants to present the preliminary project objectives and to answer questions. Both the Designer and Builder will provide representatives to this meeting.~~

~~Deleted: 4 Identify and evaluate alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Design/Builder's judgment meet Owner's requirements for the Project~~

~~Perform on-site investigations of all 23 sites included in this project. Investigation will be accomplished by representatives of both the Designer and Builder and include visual analysis of each affected structure's condition, type, site orientation, access, utilities, clearances, and other physical aspects that would be involved with a structure elevation.~~

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6 Determine the physical feasibility of elevating each structure based upon the possibility of maintaining the structural integrity of each. Develop a design/construction plan for elevating each affected structure where elevation is possible. 7. Prepare a written report (the "Report"), which will, as appropriate, contain schematic layouts, sketches, photos and conceptual design criteria, and appropriate exhibits; and indicate the applicable requirements, and considerations involved. This Report will be accompanied by Design/Builder's estimate of

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~~Deleted: and recommended alternate so'u ions~~

(Exhibit A – Special Provisions)

EJCDC D-510 Standard Form of Agreement Between Owner and Design/Builder for Preliminary Services
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Design/Build Cost for each recommended solution. This Report shall include descriptions of any deviations from Owner's requirements.

7. Furnish ~~5~~ review copies of the Report (and any other deliverables) to Owner ~~within 60~~ days of authorization to begin services and review it with Owner

8. Revise the Report (and any other deliverables) in response to Owner's comments, as appropriate, and ~~furnish 5~~ copies of the revised Report (and any other deliverables) to the Owner ~~within 10~~ days of receipt of Owner's comments

B Design/Builder's services under the Study and Report Phase will be considered complete on the date when the copies of the revised Report (and any other deliverables) have been delivered to Owner

A1.02 Technical Exhibit Phase-~~For Information Only~~

A After acceptance by Owner of the Report, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by Owner, and upon written authorization from Owner, Design/Builder shall

1 Advise Owner if additional reports, data or other information or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data or other information and services

2 On the basis of the above acceptance, selection, and authorization, prepare the following Technical Exhibits

- a. drawings;
- b. specifications,
- c. other graphic or written materials,
- d. criteria and information concerning Owner's requirements for the Project;
- e. a basis of design,
- f. design objectives and constraints;
- g. quality standards
- h. Guaranteed Maximum Price (GMP) of each structure raise

3. These Technical Exhibits will show or describe the character, scope, and intent of, or relate to, the Work to be performed or furnished by or for Design/Builder

4. Provide in writing to Owner descriptions of any deviations in the Technical Exhibits from either the Owner's requirements or the Report

5. Furnish to Owner ~~5~~ final copies of the Technical Exhibits ~~(to be determined)~~ days after authorization to proceed with this phase, and review them with Owner

6. Revise the Technical Exhibits (and any other deliverables) in response to Owner's comments, as appropriate, and ~~furnish 5~~ copies of the revised Technical Exhibits to the Owner ~~within 10~~ days of receipt of Owner's comments.

B Design/Builder's services under the Technical Exhibit Phase will be considered complete on the date when final copies of the Technical Exhibits (and any other deliverables) have been delivered to Owner

Deleted: 6 Perform or furnish the following additional Study and Report Phase tasks or deliverables: ____.

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Deleted: <#>g space, capacity and performance requirements.
<#>h. flexibility and expandability requirements; and

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NOTE TO USER:

The percent of the final design can vary from 5 to 35 depending upon the type and complexity of the Project, and the extent to which the design is to be completed in order to define the full scope of the Work and agree on a Contract Price and

Contract Times:

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(Exhibit A - Special Provisions)

EJCDC D-510 Standard Form of Agreement Between Owner and Design/Builder for Preliminary Services
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A1.03 Proposal Phase

A. After acceptance by Owner of the Technical Exhibits and upon written authorization by Owner to proceed, Design/Builder shall submit a Proposal for the completion of the Work to Owner in the form included as Exhibit E to this agreement.

B. The Proposal Phase will be considered complete upon signing of the Contract between Owner and Design/Builder to complete the Work, or cessation of contract negotiations between Owner and Design/Builder.

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ADDITIONAL SERVICES¶

¶
A2.01 . Owner's Authorization in
Advance Required7

¶
A. . If authorized in writing by Owner,
Design/Builder shall furnish or obtain
from others Additional Services of the
types listed below. These services will be
paid for by Owner as indicated in Article
4 of the Agreement.¶

¶
1. . Prepare applications and supporting
documents (in addition to those furnished
under Basic Services) for private or
governmental grants, loans, or advances in
connection with the Project; prepare or
review environmental assessments and
impact statements; review and evaluate
the effects on the design requirements for
the Project of any such statements and
documents prepared by others; and assist
in obtaining approvals of authorities
having jurisdiction over the anticipated
environmental impact of the Project.¶

¶
2. . Make measured drawings of or
investigate existing conditions or facilities,
or verify the accuracy of drawings or other
information furnished by Owner.¶

7
3. . Perform services resulting from
significant changes in the scope, extent or
character of the portions of the Project
presented or specified by Design/Builder
or its design requirements including, but
not limited to, changes in sue,
complexity, Owner's schedule, character
of construction, or method of financing;
and revise previously accepted studies,
reports, Technical Exhibits, or other
Contract Documents when such revisions
are required by changes in Laws or
Regulations enacted subsequent to the
Effective Date of the Agreement, or are
due to any other causes beyond
Design/Builder's control.¶

¶
4. . Perform services resulting from
evaluation by Design/Builder during the
Study and Report Phase at Owner's
request of alternative solutions in addition
to those specified in Article A1.01.¶

7
5. Perform services required as a result
of Owner's providing incomplete or
incorrect Project information, with respect
to Exhibit B. ¶

¶ ... [1]

Deleted: NOTE TO USER¶
If Design/Builder's services in this
Agreement are to include services related
to a Hazardous Environmental Condition,
modifications will be necessary at
paragraph 6.10 of the Agreement. ¶

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(Exhibit A – Special Provisions)

EJCDC D-510 Standard Form of Agreement Between Owner and Design/Builder for Preliminary Services
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This is EXHIBIT B, consisting of ___ pages, referred to in
and part of the Agreement between Owner and
Design/Builder for Preliminary Services dated _____

Initials
Owner _____
Design/Builder _____

Owner's Responsibilities

ARTICLE B1 – FURTHER RESPONSIBILITIES OF OWNER

B1.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall

A Prepare and provide to Design/Builder the Agreement, General Conditions, Supplementary Conditions, and Bond Forms which will be included in the Proposal

B Provide Design/Builder with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations

C Furnish copies of all design and construction standards which Owner will require to be included in the Contract Documents

D Furnish to Design/Builder any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
Plan, organize, and schedule a Public Meeting with affected property owners and tenants to be held prior to site visits by the Design/Builder.

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E Following Design/Builder's assessment of initially-available Project information and data, upon Design/Builder's request, furnish or otherwise make available such additional Project-related information and data as is available to Owner and reasonably required to enable Design/Builder to complete its Basic and Additional Services. Such additional information or data would generally include the following

- 1 Property descriptions,
- 2 Zoning, deed, and other land use restrictions;
- 3 Property, boundary, easement, right-of-way, and other special engineering surveys or data, including establishing relevant reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work,
- 4 Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof,
- 5 Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas, and
- 6 Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

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(Exhibit A – Special Provisions)

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F. Give prompt written notice to Design/Builder whenever Owner observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of Design/Builder's services, or any defect or nonconformance in Design/Builder's services.

G. Furnish, as appropriate, other services or provide written authorization to Design/Builder to provide required Additional Services as set forth in Article A2.

H. Arrange for safe access to and make all provisions for Design/Builder and Design/Builder's subconsultants to enter upon public and private property as may reasonably be required for Design/Builder to perform services under the Agreement.

I. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Design/Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination) and render in writing decisions pertaining thereto within a reasonable time after receipt of documents.

J. Obtain reviews, approvals, and permits from all governmental authorities having jurisdiction over the Project or from such others as may be necessary for completion of each Phase of the services in this Agreement.

K. Provide, as required for the Project:

1. Accounting, bond, financial advisory, and insurance counseling services;
2. Legal services with regard to the Project as needed by Owner, or as Design/Builder reasonably requests.

L. Advise Design/Builder of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

Deleted: NOTE TO USER
EJCDC recommends that both this Agreement and the Design/Build Agreement for final design and construction contain a list designating responsibilities for obtaining and paying

Deleted: M. Additional Owner responsibilities:

Civil Division Hourly Rate Schedule

Effective February 1, 2003

	Standard Rate
Principal Project Manager	\$135.00
Project Manager	\$110.00
Senior Registered Engineer	\$124.00
Registered Engineer	\$90.00

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(Exhibit A - Special Provisions)

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Engineer	\$65.00
Design Technician	\$70.00
Technician	\$60.00
Draftsperson	\$50.00
Senior Contract Administrator	\$85.00
Senior Project Representative	\$75.00
Project Representative	\$65.00
Contract Administrator	\$65.00
Senior Registered Land Surveyor	\$90.00
Registered Land Surveyor	\$80.00
3-Man Survey Crew	\$140.00
2-Man Survey Crew	\$110.00
Survey Technician	\$60.00
Administrative Support	\$48.00

NOTE: Hourly rates are subject to change annually on the first day of the month of February of each year.

Phase III Construction Services, Cost Of Work

FEE FOR SERVICES

The Owner Agrees to pay the Design Builder a fee plus the cost of work as defined below

The fee shall be a percentage of the construction hard costs (outlined below) as established at the end of the technical phase as a Guaranteed Maximum Cost (GMP). The fee percentage shall depend on the magnitude of the construction to be performed and shall be based upon the number of units to be raised, and as follows

- 19 to 23 units, a fee of %10
- 18 to 12 units, a fee of %12.5
- 11 units and less, a fee of %15

CONSTRUCTION HARD COSTS

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(Exhibit A - Special Provisions)

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The following costs shall be included in the project's construction hard costs:

1. Design services related to the construction phase eg. Contract administration, special engineering requirements.
2. Wages paid for labor in the direct employ of the Design Builder in the performance of the work.
3. Costs for design Builder's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal office performing the functions listed below:
 - a. Detailed cost accounting for monthly billings.
4. Cost of all employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Design-Builder's standard personnel policy, insofar as such costs are paid to employees of the Design-Builder who are included in the Cost of the Work under Subparagraphs 2 & 3.
5. Reasonable transportation, travel expenses of the Design-Builder's personnel incurred in connection with the Work.
6. Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage and handling.
7. Payments made by the Design-Builder to Subcontractors for work performed under this Agreement.
8. Fees and expenses for design services procured or furnished by the Design-Builder except as provided by the Architect/Engineer and compensated in phase II, technical exhibit s phase.
9. Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value and/or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Design-Builder.
10. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Design-Builder or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Design-Builder or its affiliates, subsidiaries or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.
11. Cost of the premiums for all insurance and surety bonds which the Design-Builder is required to procure or deems necessary, and approved by the Owner.
12. Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Design-Builder is liable.
13. Permits, fees, licenses, tests, royalties, damages for infringement of patents and/or copyrights, including costs of defending related suits for which the Design-Builder is not responsible as set forth, in and deposits lost for causes other than the Design-Builder's negligence.
14. Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work and/or redesign during the construction Phase and for a period of one year following the Date of Substantial Completion, provided that such corrective work and/or redesign did not arise from the negligence of the Design-Builder.
15. All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.
16. Reproduction costs, photographs, cost of telegrams, facsimile transmissions, long distance telephone calls, data processing services, internet based management systems, postage, express delivery charges, telephone service at the Worksite and reasonable petty cash expenses at the field office.
17. All water, power and fuel costs necessary for the Work.
18. Cost of removal of all non-hazardous substances, debris and waste materials.
19. Costs incurred due to an emergency affecting the safety of persons and/or property.
20. Legal, mediation and arbitration fees and costs, other than those arising from disputes between the Owner and the Design-Builder, reasonably and properly resulting from the Design-Builder's performance of the Work.
21. All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Design-Builder's Fee as set forth in Phase I, Preliminary Report and Phase II, Technical Deleted: H

(Exhibit A - Special Provisions)

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Exhibits, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

22. **DISCOUNTS** All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Design-Builder, all cash discounts shall accrue to the Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

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(Exhibit A - Special Provisions)

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ARTICLE A2 – ADDITIONAL SERVICES**A2.01 Owner's Authorization in Advance Required**

A. If authorized in writing by Owner, Design/Builder shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by Owner as indicated in Article 4 of the Agreement.

1. Prepare applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Make measured drawings of or investigate existing conditions or facilities, or verify the accuracy of drawings or other information furnished by Owner.

3. Perform services resulting from significant changes in the scope, extent or character of the portions of the Project presented or specified by Design/Builder or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revise previously accepted studies, reports, Technical Exhibits, or other Contract Documents when such revisions are required by changes in Laws or Regulations enacted subsequent to the Effective Date of the Agreement, or are due to any other causes beyond Design/Builder's control.

4. Perform services resulting from evaluation by Design/Builder during the Study and Report Phase at Owner's request of alternative solutions in addition to those specified in Article A1.01.

5. Perform services required as a result of Owner's providing incomplete or incorrect Project information, with respect to Exhibit B.

6. Provide renderings or models for Owner's use.

7. Undertake investigations and studies of Owner's operations including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; prepare feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assist in obtaining financing for the Project; evaluate processes available for licensing, and assist Owner in obtaining process licensing, audits, or inventories required in connection with construction performed by Owner.

8. Perform services requiring out-of-town travel by Design/Builder, other than for visits to the Site or Owner's office.

9. Prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and perform or furnish services required to revise studies, reports, Technical Exhibits or other Proposal Documents as a result of such review processes.

General Conditions							
Project:		Natural Resource District - Cabin Raise					
Location:		Platte River					
Dates:							
			Labor		Material		Equip
ITEM	QUAN	UNIT	U.P.	Sub-total	U.P.	Sub-total	U.P.
MANAGEMENT							
Initial Site Visit (4 hours/site)	88	hr	110.00	9,680.00		-	-
Estimate Preparation	88	hr	110.00	9,680.00		-	
mileage/incidentals	1	ls		-		-	-
		WK		-		-	
		WK		-	25.00	-	
		WK		-		-	
		WK		-		-	
		WK		-		-	
UTILITIES							
Contr's Telephone		MO		-	75.00	-	
Telephone Set-up		EA		-	250.00	-	
Fax Line		MO		-		-	
Cell Phone	1	MO		-	400.00	400.00	
Computer		WK		-	40.00	-	
Constructware		MO		-	100.00	-	
Temp Toilets		MO		-	65.00	-	
Temp Power (by owner)				-		-	
Temp Elec. Lights				-		-	
Temp Water (by owner)				-		-	
Drinking Water		MO		-		-	
				-		-	
				-		-	
Temp Heat		MO		-	1,500.00	-	
Dumpster		EA		-	250.00	-	
MISC WORKS							
Clean-up(Interior)				-		-	
Existing Bldg		SF	0.13	-	0.01	-	
Glass Cleandown				-		-	
Windows		SF	0.25	-	0.02	-	
Doors		SF	1.00	-	0.20	-	
Interim Clean-up		WK	120.00	-		-	
Dumpster Rental		EA		-	200.00	-	
TEMPORARY CONSTRUCTION							
Warn Signs&Barricades		LF		-		-	
Temp Store Signs		EA	35.00	-	250.00	-	
Temporary Enclosures - Fence		LF		-	0.50	-	
SAFETY							
Safety		LS		-	667.00	-	
First Aid		LS		-	-	-	
				19,360.00	400.00		

[illegible]

DRAFT

June 9, 2003

Mr. Martin Cleveland, P.E.
Construction Engineer
Papio-Missouri River Natural Resources District
8901 South 154th Street
Omaha, Nebraska 68138-3821

RE: Professional Services Proposal
Western Sarpy/Clear Creek Flood Reduction
Project Structure (Cabin) Raise Survey Services

Dear Mr. Cleveland,

The Schemer Associates Inc. (TSA) proposes to render surveying and management services to Papio-Missouri River Natural Resources District (P-MRNRD) in connection with the raising of approximately twenty-three (23) structures. The development of the scope of services and compensation proposal is based in part on the following:

- 9 Scope of services meeting on May 15, 2003
- 9 Memorandum to Project File with attachments dated May 12, 2003
- 9 Cabin Tour of May 19, 2003
- 9 Discussions with P-MRNRD staff
- 9 FAX of revised cabin list dated June 2, 2003

TSA shall be entitled to rely upon the accuracy of information provided by the P-MRNRD.

I. SCOPE OF SERVICES

- A. Kick-off Meeting with P-MRNRD staff**
 - 1. Data provided by P-MRNRD
 - a. Title Search
 - b. Project Strip Map (electronic format)
- B. Flowage Easements (23 legals)**
 - 1. Review Title Search Data provided by P-MRNRD
 - 2. Prepare legal description based on description in deed
 - 3. Prepare CAD generated exhibit of easement description

- C. Temporary Construction Easements
 - 1. Prepare legal description based on legal description in deed.
 - 2. Prepare CAD generated exhibit of temporary construction easement.

11. CRITERIA, ASSUMPTIONS AND EXCEPTIONS

- A. Flowage easements descriptions will be based on legal descriptions contained in the deeds.
- B. Exhibits of flowage easements and temporary construction easements will be drawn from available maps and drawings (in electronic format) provided by the P-MRNRD.

11I. COMPENSATION

- A. **Basic Services:** For Basic Services as enumerated above, you will pay TSA on an hourly rate basis according to the current schedule of hourly rates (attached) for services hours accrued to the project with the total amount not to exceed Twelve thousand dollars (\$12,000.00) plus reimbursable expenses. *\$12,047 maximum fee*
- B. **Additional Services:** Additional Services as approved and directed by you will be rendered by The Schemmer Associates Inc. on an hourly rate basis according to the current Schedule of Hourly Rates for services accrued to the project, plus Consultant Costs (if any), plus Reimbursable Expenses for such services:

"Hourly Rates" means salaries and wages paid to the Engineer's employees engaged in the work of this agreement and the cost of their mandatory and customary contributions and benefits related thereto, including social security contributions, unemployment, excise and payroll taxes, Worker's Compensation Insurance, health and retirement benefits, sick leave, vacation, holidays, pensions, similar contributions and benefits, and the proportioned cost of general and administrative overhead expenses.

"Consultants' Costs" mean 1.1 times the direct cost billed to the Engineer by its consultants, contractors and others engaged by the Engineer to perform the services specified for this project.

"Reimbursable Expenses" mean actual expenditures made by the Engineer or its consultants directly in connection with the project and include: expense of out-of-town transportation and subsistence incidental thereto; expense of postage, handling and reproduction of drawing and other documents; amounts of excise, gross receipts of sales tax that may be imposed; expense of data processing, computer-aided drawing development and photographic production and reproduction; expense of overtime work requiring higher than regular rates and authorized by the client; expense of renderings, models and mock-ups; expense of additional insurance coverage requested by the client in excess of that normally carried by the Engineer or its consultants.

Professional Services Proposal
Western Sarpy/Clear Creek Flood Reduction
Project Structure (Cabin) Raise Survey Services
June 9,2003
Page 3

IV. SCHEDULE

We stand ready to proceed upon receipt of the signed agreement, and will proceed on a mutually acceptable schedule set by the P-MRNRD.

If the foregoing Scope of Services, Fee proposal and General Conditions are agreeable, please indicate your acceptance by signing and returning one copy of this proposal. We will consider the signed proposals an Agreement Between the Papio-Missouri River Natural Resources District and The Schemmer Associates Inc. for the services described herein. Receipt of the signed proposal will also be considered Notice-to-Proceed.

Sincerely,

THE SCHEMMER ASSOCIATES, INC.
Architects-Engineers

ACCEPTED:
Papio-Missouri River Natural Resources District

Ronald J. Woracek
Civil Vice President

BY _____

TITLE _____

DATE _____

P-MRNRD
 WS/CC Flood Reduction Project
 Structure (Cabin) Raise Survey Services
 Estimated Fee
 June 9,2003

<u>Employee Classification</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Amount</u>
P.M./Sr R.L.S	44	\$ 90	\$ 3,960.00
Survey Technician	106	\$ 60	\$ 6,360.00
Clerical	12	\$ 48	<u>\$ 576.00</u>
	Subtotal		\$10,890.00

Reimbursable Expenses

Mileage			
Passenger Vehicle	100 miles @ \$.036	\$	36.00

Materials

Office supplies, prints	<u>\$ 20.00</u>
-------------------------	-----------------

Subtotal	\$ 56.00
----------	----------

Total	<u>\$10,952.00</u>
-------	--------------------

Contingency 10%	\$ 1,095.00
-----------------	-------------

<i>Not to Exceed Amount</i>	<i>\$12,047.00</i>
------------------------------------	---------------------------

Civil Division

Hourly Rate Schedule

Effective February 1, 2003

	Standard Rate
Principal Project Manager	\$135.00
Project Manager	\$110.00
Senior Registered Engineer	\$124.00
Registered Engineer	\$90.00
Engineer	\$65.00
Design Technician	\$70.00
Technician	\$60.00
Draftsperson	\$50.00
Senior Contract Administrator	\$85.00
Senior Project Representative	\$75.00
Project Representative	\$65.00
Contract Administrator	\$65.00
Senior Registered Land Surveyor	\$90.00
Registered Land Surveyor	\$80.00
3-Man Survey Crew	\$140.00
2-Man Survey Crew	\$110.00
Survey Technician	\$60.00
Administrative Support	\$48.00

NOTE: Hourly rates are subject to change annually on the first day of the month of February of each year.

STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND DESIGN/BUILDER
FOR
PRELIMINARY SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use in anticipation that the Standard General Conditions of the Contract between Owner and Design/Builder (No. D-700, 2002 Edition) and one of the two Agreements Between Owner and Design/Builder (Nos. D-520 and D-525, 2002 Editions) of the Engineers Joint Contract Documents Committee will be used for final design and construction of the work. Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are also contained in the Guide to Use of EJCDC Design/Build Documents (No. D-001, 2002 Edition).

**02002 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794**

**American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005**

**American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400**

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**STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND DESIGN/BUILDER
FOR
PRELIMINARY SERVICES**

THIS IS AN AGREEMENT between _____ (“Owner”)
and _____ (“Design/Builder”).

Owner intends to _____

which is (all)(part of) _____
_____ (“Project”).

Owner and Design/Builder in consideration of their mutual covenants as set forth herein agree as follows:

ARTICLE 1 – GENERAL

1.01 Scope

A. Design/Builder shall provide the services set forth in Exhibit A.

B. No Construction at the Site is included in Design/Builder's services.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3 – TIMES FOR RENDERING SERVICES

3.01 Commencement

A. Design/Builder shall begin rendering services as of the Effective Date of the Agreement.

3.02 Time for Completion

A. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A. If such periods of time or dates are changed through no fault of Design/Builder, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment.

B. If Owner authorizes changes in the scope, extent, or character of the Project, the time of performance of Design/Builder's services shall be adjusted equitably.

C. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the services of Design/Builder. Owner shall pay Design/Builder additional compensation for costs resulting from unreasonable delay caused by Owner.

D. If Design/Builder fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of damages for any loss resulting from such failure.

ARTICLE 4–PAYMENTS TO DESIGN/BUILDER

4.01 Payments

A. Owner shall pay Design/Builder for services performed or furnished under Exhibit A on the basis set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Design/Builder shall prepare its invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Design/Builder may submit no more than one invoice to Owner per month.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. Payments will be credited first to any interest due to Design/Builder and then to principal.

C. *Late Payment.* If Owner fails to make any payment due Design/Builder for services and expenses within 30 days after receipt of Design/Builder's invoice, then:

1. the amounts due Design/Builder will be increased at the rate of 1.0 percent per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Design/Builder may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid Design/Builder in full all amounts due for services, expenses, and other related charges.

D. *Disputed Invoices.* In the event of a disputed or contested invoice, Owner may withhold from payment only that portion so contested, and must pay the undisputed portion.

E. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.06, Design/Builder will be entitled to invoice Owner and to receive full payment for all services performed and expenses incurred through the effective date of termination, subject to the provisions of paragraph 6.06.F.

2. In the event of termination by Owner for convenience or by Design/Builder for cause, Design/Builder, in addition to its entitlement under paragraph 4.02.E.1, shall be entitled to invoice Owner and to payment of a reasonable sum for services and

expenses directly attributable to termination, including those provided and incurred both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Design/Builder's Subcontractors, and other related close-out costs, using methods and rates for Additional Services set forth in Exhibit C.

F. *Records of Design/Builder's Costs.* Design/Builder shall keep records of its costs pertinent to compensation under this Agreement in accordance with generally accepted accounting practices. To the extent necessary to verify Design/Builder's charges and upon Owner's timely request, Design/Builder shall make copies of such records available to Owner.

ARTICLE 5–ESTIMATES OF COST

5.01 Estimate of Probable Design/Build Cost

A. Design/Build Cost is the cost to Owner to design and construct the Work. Design/Build Cost is limited to Design Professional Services and Construction to be furnished by Design/Builder, and does not include costs of items not provided by Design/Builder including but not limited to cost of land and rights of way, compensation for damages to properties, interest and financing charges, and charges for services to be provided to Owner by others.

ARTICLE 6–GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all Design Professional Services will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

B. Design/Builder shall be responsible for the technical accuracy of the services it performs and documents it prepares, and Owner shall not be responsible for discovering deficiencies in such services or documents. Design/Builder shall correct such deficiencies without additional compensation, and compensate Owner for any losses or damages resulting from such deficiencies, except to the extent such action is directly attributable to deficiencies in Owner-furnished information.

C. Design/Builder may employ such Subcontractors as Design/Builder deems necessary to assist in the performance of services, subject to reasonable objection by Owner. Design/Builder shall not be required to employ any Subcontractor unacceptable to Design/Builder.

D. This Agreement is based on requirements of applicable Laws or Regulations and Owner-mandated standards provided to Design/Builder applicable as of its Effective Date. Changes to these requirements after the Effective Date of the Agreement may be the basis for modifications to Owner's responsibilities or to the scope, schedule, and compensation for Design/Builder's services.

E. Owner shall be responsible for, and Design/Builder may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner pursuant to this Agreement. Design/Builder may use such requirements, reports, data, and information in performing services under this Agreement.

F. Owner and Design/Builder agree that the General Conditions of any contract between them for the final design and construction of the Work will be based upon "Standard General Conditions of the Contract Between Owner and Design/Builder" as prepared by the Engineers Joint Contract Documents Committee (Document No. D-700, 2002 Edition) unless both parties mutually agree to use other General Conditions as specifically set forth in Exhibit H, "Special Provisions."

G. At the request of the Owner, Design/Builder shall safeguard the proprietary nature of Owner-provided data.

6.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, Design/Builder and Owner shall designate specific individuals to act as their respective representatives with respect to this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project.

6.03 Use of Documents

A. All Documents are instruments of service in respect to this Project and Design/Builder shall retain the ownership and property interest therein (including the right of reuse at the discretion of the Design/Builder) whether or not the Project is completed.

B. Owner may make and retain copies of Documents for information, reference, and use on this Project by Owner or others under contract to Owner. Such Documents are not intended or represented to be suitable

for reuse by Owner or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by Design/Builder as appropriate for the specific purpose intended, or use of Documents prepared by Design/Builder to complete the Project using Owner's own forces or others, will be at Owner's sole risk and without liability or legal exposure to Design/Builder, or to Design/Builder's officers, directors, partners, employees, or Subcontractors. Owner shall indemnify and hold harmless Design/Builder and its officers, directors, partners, employees, and Subcontractors from all claims, costs, damages, losses, and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or resulting therefrom.

C. Design/Builder will be entitled to further compensation at rates to be agreed upon by Owner and Design/Builder for any verification or adaptation of the Documents for extensions of the Project or any other project.

6.04 Electronic Media

A. Copies of data furnished by Owner to Design/Builder or by Design/Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, or graphics or of other types are furnished only for the convenience of the other party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored on electronic media can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving data in an electronic format agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. Design/Builder reserves the right to remove all indicia of ownership or involvement, including title blocks and seals, from each electronic drawing.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of data resulting from the use of software application packages, operating systems, or computer hardware differing from those used by data's creator.

6.05 Insurance

A. Design/Builder shall procure and maintain insurance as set forth in Exhibit D, "Insurance."

B. During the term of this Agreement, Owner shall cause Design/Builder and Design/Builder's Subcontractors to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.

C. Owner and Design/Builder shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit D. Such certificates shall be furnished prior to commencement of Design/Builder's services and at renewal thereafter during the term of the Agreement.

D. All policies of property insurance shall contain provisions to the effect that Design/Builder's and Design/Builder's Subcontractors' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated for cause:

1. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.

2. by Design/Builder upon seven days written notice if the Design/Builder's performance of services has been delayed or suspended for more than 90 days for reasons beyond Design/Builder's control.

B. Owner may terminate this Agreement for its convenience effective upon Design/Builder's receipt of notice from Owner.

C. In the case of termination by Design/Builder, Design/Builder shall have no liability to Owner on account of such termination.

D. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure to perform as set forth in paragraph 6.06.A.1 and .2 if the party receiving notice begins, within seven days of receipt, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot reasonably be cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the

same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

E. The terminating party under paragraph 6.06.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Design/Builder to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project documents in orderly files.

F. In the event of termination of Design/Builder for cause by Owner, Owner may complete the services to be provided by Design/Builder as Owner deems expedient. In such case, Design/Builder will not be entitled to receive any payment until these services are complete. If the unpaid balance due Design/Builder under paragraph 4.02.E.1 exceeds all costs, losses, and damages sustained by Owner in completing the Design/Builder's services (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs), such excess will be paid to Design/Builder. If such costs, losses, and damages exceed such unpaid balance, Design/Builder shall pay the difference to Owner.

6.07 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.08 Successors, Assigns, and Beneficiaries

A. Owner and Design/Builder each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Design/Builder (and to the extent permitted by paragraph 6.08.B the assigns of Owner and Design/Builder) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Design/Builder may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

6.09 Dispute Resolution

A. Owner and Design/Builder agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under Exhibit F or other provisions of this Agreement, or under law.

B. If and to the extent that Owner and Design/Builder have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in Exhibit F, "Dispute Resolution." In the absence of such an agreement, the parties may exercise their rights under law.

6.10 Hazardous Environmental Condition

A. Owner acknowledges that Design/Builder is performing professional services for Owner and that Design/Builder is not and shall not be required to become an "operator," "generator," or "transporter" of Hazardous Materials which are or may be encountered at or near the Site in connection with Design/Builder's activities under this Agreement.

B. Owner represents to the best of its knowledge that a Hazardous Environmental Condition does not exist and it has disclosed to Design/Builder the existence of all known Hazardous Materials located at or near the Site, including type, quantity, and location.

C. If any Hazardous Environmental Condition is encountered or alleged, Design/Builder shall have the obligation to notify Owner and, to the extent required by applicable Laws and Regulations, appropriate governmental officials.

D. Except as required by Exhibit A, it is acknowledged by both parties that the Design/Builder's scope of services does not include any services related to a Hazardous Environmental Condition. If Design/Builder or any other party encounters a Hazardous Environmental Condition at the Site, or should it become known in any way that Hazardous Materials may be present at the Site or any adjacent areas in such a manner as to affect the performance of Design/Builder's services, Design/Builder may, at its option and without liability for consequential or any other damages, suspend performance of services on the Project until Owner: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition, and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. If the Design/Builder's services under this Agreement cannot be performed because of a Hazardous

Environmental Condition, the existence of the condition shall justify Design/Builder terminating this Agreement for cause pursuant to paragraph 6.06.

6.11 Allocation of Risks – Indemnification

A. To the fullest extent permitted by law, Design/Builder shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Construction), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Design/Builder or Design/Builder's officers, directors, partners, employees, or Subcontractors. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by Owner and Design/Builder in Exhibit G, "Allocation of Risks," if any.

B. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Design/Builder, Design/Builder's officers, directors, partners, agents, consultants, employees, and Subcontractors from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than completed Construction), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

C. In addition to the indemnity provided under paragraph 6.11.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Design/Builder and its officers, directors, partners, employees, and Design/Builder's Subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or relating to or resulting from a Hazardous Environmental Condition at, on, or under the Site, provided that (i) any such claim, cost, loss or damage

is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than completed Construction), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

6.12 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by certified mail (return receipt requested), by facsimile, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 Survival

A. All express representations, indemnifications, or limitations of liability made in or given in this Agreement will survive its completion or termination for any reason.

6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design/Builder, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7- DEFINITIONS

7.01 Defined Terms

A. Wherever a term used in this Agreement (including the Exhibits) is printed with an initial capital letter, the term has the meaning indicated in the General

Conditions described in paragraph 6.01.F. The meaning is applicable to both the singular and plural forms of the term.

B. Additional terms printed with initial capital letters have the meanings indicated which are applicable to both the singular and plural thereof

1. Agreement—This "Standard Form of Agreement Between Owner and Design/Builder for Preliminary Services" including those Exhibits listed in Article 8.

2. Documents—The documents, including data, reports, Technical Exhibits, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Design/Builder to Owner pursuant to this Agreement.

3. Effective Date of the Agreement—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

4. Reimbursable Expenses—The expenses incurred directly by Design/Builder or its Subconsultants for transportation and subsistence; toll telephone calls and telegrams, copying, facsimile, and courier charges; reproduction of reports, drawings, specifications, and similar items; and, if authorized in advance by Owner in writing, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner in writing, Reimbursable Expenses shall also include expenses incurred for computer time and the use of other highly-specialized equipment.

5. Technical Exhibits—Documents prepared by Design/Builder which set forth Design/Builder's plan for meeting the Owner's requirements.

ARTICLE 8-EXHIBITS

8.01 Exhibits Included

A. Exhibit A, "Design/Builder's Services," consisting of _____ pages.

B. Exhibit B, "Owner's Responsibilities," consisting of _____ pages.

C. Exhibit C, "Payments to Design/Builder for Services and Reimbursable Expenses," consisting of ____ pages.

D. Exhibit D, "Insurance," consisting of ____ pages.

E. Exhibit E, "Proposal Form," consisting of ____ pages.

F. Exhibit F, "Dispute Resolution," consisting of ____ pages.

G. Exhibit G, "Allocation of Risks," consisting of ____ pages.

H. Exhibit H, "Special Provisions," consisting of ____ pages.

8.02 Total Agreement

A. This Agreement (consisting of pages 1 to inclusive, together with the Exhibits identified above) constitutes the entire agreement between Owner and Design/Builder and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which has an Effective Date of ____.

Owner:

Design/Builder:

By: _____

By: _____

Title: _____

Title: _____

License or Certificate No. and State: _____

Address for giving notices:

Address for giving notices:

Authorized Project Representative:

Authorized Project Representative:

Title: _____

Title: _____

Phone Number: _____

Phone Number: _____

Facsimile Number: _____

Facsimile Number: _____

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is **EXHIBIT A**, consisting of ____ pages, referred to in and part of the **Standard Form of Agreement between Owner and Design/Builder for Preliminary Services** dated ____, ____.

Initials
Owner: _____
Design/Builder: _____

[NOTE: Exhibits A and B should be carefully prepared with regard to selecting services which comprise Basic and Additional Services as appropriate to assure that all services Owner requires are provided by either Design/Builder or Owner.]

Design/Builder's Services

ARTICLE A1 – BASIC SERVICES

A1.01 Study and Report Phase

A. Design/Builder shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project including Owner's budgetary limitations, if any, and review of Conceptual Documents, if any, and available data.
2. Request that Owner obtain data or services of the types described in Exhibit B which are not part of Design/Builder's Basic Services and are reasonably required to enable Design/Builder to complete its Basic Services and Additional Services, if any.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project described by Design/Builder, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate ____ alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Design/Builder's judgment meet Owner's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria, and appropriate exhibits; and indicate the applicable requirements, considerations involved, and recommended alternate solutions. This Report will be accompanied by Design/Builder's estimate of Design/Build Cost for each recommended solution. This Report shall include descriptions of any deviations from Owner's requirements.
6. Perform or furnish the following additional Study and Report Phase tasks or deliverables: ____.
7. Furnish ____ review copies of the Report (and any other deliverables) to Owner within ____ days of authorization to begin services and review it with Owner.
8. Revise the Report (and any other deliverables) in response to Owner's comments, as appropriate, and furnish copies of the revised Report (and any other deliverables) to the Owner within ____ days of receipt of Owner's comments.

B. Design/Builder's services under the Study and Report Phase will be considered complete on the date when the copies of the revised Report (and any other deliverables) have been delivered to Owner.

A1.02 Technical Exhibit Phase

A. After acceptance by Owner of the Report, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by Owner, and upon written authorization from Owner, Design/Builder shall:

1. Advise Owner if additional reports, data or other information or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data or other information and services.
2. On the basis of the above acceptance, selection, and authorization, prepare the following Technical Exhibits:
 - a. drawings;
 - b. specifications;
 - c. other graphic or written materials;
 - d. criteria and information concerning Owner's requirements for the Project;
 - e. a basis of design;
 - f. design objectives and constraints;
 - g. space, capacity and performance requirements;
 - h. flexibility and expandability requirements; and
 1. quality standards
3. These Technical Exhibits will show or describe the character, scope, and intent of, or relate to, the Work to be performed or furnished by or for Design/Builder. Such Technical Exhibits will be taken to a point of ___ percent of the final design.

NOTE TO USER

The percent of the final design can vary from 5 to 35 depending upon the type and complexity of the Project, and the extent to which the design is to be completed in order to define the full scope of the Work and agree on a Contract Price and Contract Times.

4. Provide necessary field surveys and topographic and utility mapping for the purpose of preparing Technical Exhibits. Utility mapping will be based upon information obtained from utility owners.
5. Provide in writing to Owner descriptions of any deviations in the Technical Exhibits from either the Owner's requirements or the Report.
6. Furnish or provide the following additional Technical Exhibit Phase tasks or deliverables: ___.
7. Furnish to Owner ___ final copies of the Technical Exhibits within ___ days after authorization to proceed with this phase, and review them with Owner.
8. Revise the Technical Exhibits (and any other deliverables) in response to Owner's comments, as appropriate, and furnish ___ copies of the revised Technical Exhibits to the Owner within ___ days of receipt of Owner's comments.

B. Design/Builder's services under the Technical Exhibit Phase will be considered complete on the date when final copies of the Technical Exhibits (and any other deliverables) have been delivered to Owner.

A1.03 Proposal Phase

A. After acceptance by Owner of the Technical Exhibits and upon written authorization by Owner to proceed, Design/Builder shall submit a Proposal for the completion of the Work to Owner in the form included as Exhibit E to this agreement.

B. The Proposal Phase will be considered complete upon signing of the Contract between Owner and Design/Builder to complete the Work, or cessation of contract negotiations between Owner and Design/Builder.

ARTICLE A2 – ADDITIONAL SERVICES

A2.01 Owner's Authorization in Advance Required

A. If authorized in writing by Owner, Design/Builder shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by Owner as indicated in Article 4 of the Agreement.

1. Prepare applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Make measured drawings of or investigate existing conditions or facilities, or verify the accuracy of drawings or other information furnished by Owner.

3. Perform services resulting from significant changes in the scope, extent or character of the portions of the Project presented or specified by Design/Builder or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revise previously accepted studies, reports, Technical Exhibits, or other Contract Documents when such revisions are required by changes in Laws or Regulations enacted subsequent to the Effective Date of the Agreement, or are due to any other causes beyond Design/Builder's control.

4. Perform services resulting from evaluation by Design/Builder during the Study and Report Phase at Owner's request of alternative solutions in addition to those specified in Article A1.01.

5. Perform services required as a result of Owner's providing incomplete or incorrect Project information, with respect to Exhibit B.

6. Provide renderings or models for Owner's use.

7. Undertake investigations and studies of Owner's operations including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; prepare feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assist in obtaining financing for the Project; evaluate processes available for licensing, and assist Owner in obtaining process licensing, audits, or inventories required in connection with construction performed by Owner.

8. Perform services requiring out-of-town travel by Design/Builder, other than for visits to the Site or Owner's office.

9. Prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and perform or furnish services required to revise studies, reports, Technical Exhibits or other Proposal Documents as a result of such review processes.

NOTE TO USER

If Design/Builder's services in this Agreement are to include services related to a Hazardous Environmental Condition, modifications will be necessary at paragraph 6.10 of the Agreement.

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is EXHIBIT B, consisting of ____ pages, referred to in and part
of the **Agreement between Owner and Design/Builder for
Preliminary Services** dated __, __.

Initials

Owner: _____

Design/Builder: _____

Owner's Responsibilities

ARTICLE B1 – FURTHER RESPONSIBILITIES OF OWNER

B1.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall:

A. Prepare and provide to Design/Builder the Agreement, General Conditions, Supplementary Conditions, and Bond Forms which will be included in the Proposal.

B. Provide Design/Builder with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.

C. Furnish copies of all design and construction standards which Owner will require to be included in the Contract Documents.

D. Furnish to Design/Builder any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

E. Following Design/Builder's assessment of initially-available Project information and data, upon Design/Builder's request, furnish or otherwise make available such additional Project-related information and data as is reasonably required to enable Design/Builder to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions;
2. Zoning, deed, and other land use restrictions;
3. Property, boundary, easement, right-of-way, and other special engineering surveys or data, including establishing relevant reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work;
4. Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof;
5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas; and
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

F. Give prompt written notice to Design/Builder whenever Owner observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of Design/Builder's services, or any defect or nonconformance in Design/Builder's services.

G. Furnish, as appropriate, other services or provide written authorization to Design/Builder to provide required Additional Services as set forth in Article A2.

H. Arrange for safe access to and make all provisions for Design/Builder and Design/Builder's subconsultants to enter upon public and private property as may reasonably be required for Design/Builder to perform services under the Agreement.

I. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Design/Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination) and render in writing decisions pertaining thereto within a reasonable time after receipt of documents.

J. Obtain reviews, approvals, and permits from all governmental authorities having jurisdiction over the Project or from such others as may be necessary for completion of each Phase of the services in this Agreement.

NOTE TO USER

EJCDC recommends that both this Agreement and the Design/Build Agreement for final design and construction contain a list designating responsibilities for obtaining and paying for permits. (See also paragraphs 6.08 and 8.01.A.6.g of the General Conditions.)

K. Provide, as required for the Project:

1. Accounting, bond, financial advisory, and insurance counseling services;
2. Legal services with regard to the Project as needed by Owner, or as Design/Builder reasonably requests.

L. Advise Design/Builder of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

M. Additional Owner responsibilities: ____.

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is **EXHIBIT C**, consisting of ____ pages, referred to in and part
of the **Agreement between Owner and Design/Builder for
Preliminary Services** dated ____.

Initials
Owner: _____
Design/Builder: _____

Payments to Design/Builder for Services and Reimbursable Expenses

Article 4 of the Agreement is supplemented as follows:

**ARTICLE 4-PAYMENTS TO DESIGN/BUILDER –
LUMP SUM METHOD OF PAYMENT**

**C4.01 For Basic Services Having a Determined
Scope**

A. Owner shall pay Design/Builder for Basic Services set forth in Exhibit A, including all related expenses, as follows:

1. A Lump Sum of \$____ for Basic Services in Exhibit A allocated as follows:

- a. Study and Report Phase \$
- b. Technical Exhibit Phase \$
- c. Proposal Phase \$

2. The Lump Sum includes compensation for Design/Builder's services and services of Design/Builder's Subcontractors, if any. Appropriate factors have been incorporated into the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

3. The portion of the Lump Sum billed will be based upon Design/Builder's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum for the phase.

**C4.02 For Additional Services Not Covered by
Lump Sum**

A. Owner shall pay Design/Builder for Additional Services as follows:

1. For services of Design/Builder's principals and employees engaged directly in providing services pursuant to Article A2 of Exhibit A an amount equal to the cumulative hours devoted to such services by each class of Design/Builder's employees times hourly rates for each applicable billing class for all Additional Services, plus Reimbursable Expenses and Design/Builder's Subcontractors' charges, if any. The Design/Builder's Standard Hourly Rates and Reimbursable Expenses Schedule is attached to this Exhibit C as Appendix 1. The total compensation for services under this paragraph is estimated to be \$ based upon Contract Times of __ months.

2. The amounts payable to Design/Builder for Reimbursable Expenses will be the services-related internal expenses actually incurred or allocated by Design/Builder; plus all invoiced external Reimbursable Expenses allocable to the services, the latter multiplied by a factor of ____.

3. Whenever compensation to Design/Builder herein is stated to include charges of Design/Builder's Subcontractors, those charges to Owner shall be the amounts billed to Design/Builder times a factor of ____.

4. Standard Hourly Rates set forth in Appendix 1 to this Exhibit C include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is **EXHIBIT C**, consisting of ___ pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated ____.

Initials
Owner: _____
Design/Builder: _____

Payments to Design/Builder for Services and Reimbursable Expenses

Article 4 of the Agreement is supplemented as follows:

ARTICLE 4 – PAYMENTS TO DESIGN/BUILDER – DIRECT LABOR COSTS TIMES A FACTOR

C4.01 For Basic Services Having a Determined Scope and Additional Services

A. Owner shall pay Design/Builder for Basic Services and Additional Services as follows:

1. An amount equal to Design/Builder's Direct Labor Costs times a factor of ___ for all Basic Services and Additional Services by principals and employees engaged directly in providing such services, plus Reimbursable Expenses, plus Design/Builder's Subcontractors' charges, if any, all for an estimated total compensation for services of \$____, based on the following assumed distribution of compensation:

- | | |
|----------------------------|----|
| a. Study and Report Phase | \$ |
| b. Technical Exhibit Phase | \$ |
| c. Proposal Phase | \$ |
| d. Additional Services | \$ |

2. Design/Builder may alter the distribution of compensation between individual phases and Additional Services, noted herein, to be consistent with services actually rendered, but shall not exceed the total compensation amount unless approved in writing by Owner.

C4.02 Direct Labor Costs

A. Direct Labor Costs means salaries and wages paid to personnel but does not include payroll related costs or benefits.

B. The Direct Labor Costs factor includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto; the cost of general and administrative overhead which includes salaries and wages

of principals and employees engaged in business operations not directly chargeable to projects, plus non-Project operating costs, including but not limited to, business taxes, legal, rent, utilities, office supplies, insurance and other operating costs, but excluding operating margin or profit.

C4.03 For Reimbursable Expenses

A. Owner shall pay Design/Builder for Reimbursable Expenses.

B. The amounts payable to Design/Builder for Reimbursable Expenses will be the services-related internal expenses actually incurred or allocated by Design/Builder; plus all invoiced external Reimbursable Expenses allocable to the services, the latter multiplied by a factor of ____.

C4.04 For Design/Builder's Subcontractor's Charges

A. Whenever compensation to Design/Builder herein is stated to include charges of Design/Builder's Subcontractors, those charges to Owner shall be the amounts billed to Design/Builder times a factor of ____.

C4.05 Other Provisions Concerning Payment

A. *Progress Payments.* The portion of the amounts invoiced for Design/Builder's services which are on account of services rendered on the basis of the Direct Labor Costs Times a Factor Plus a Percentage Fee Method of Payment will be billed based on the Direct Labor Costs of the cumulative hours devoted to the services by all of Design/Builder's employees, times the Direct Labor Costs factor, plus a percentage fee, plus Reimbursable Expenses and Design/Builder's Subcontractors' charges incurred during the billing period.

B. *Estimated Compensation Amounts.*

1. Design/Builder's estimate of the amounts that will become payable for Basic Services and Additional Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Design/Builder under the Agreement. Notwithstanding the fact that the

estimated amounts for Basic Services or Additional Services are exceeded, Design/Builder shall receive appropriate compensation based on the Direct Labor Costs Times a Factor Plus a Percentage Fee Method of Payment for all Basic Services and Additional Services furnished or performed under this Agreement, in accordance with the provisions as set forth in this Exhibit C.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Design/Builder that a compensation

amount thus estimated will be exceeded, Design/Builder shall give Owner written notice thereof. Promptly thereafter Owner and Design/Builder shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Design/Builder shall agree to a reduction in the remaining services to be rendered by Design/Builder, so that total compensation for such services will not exceed said estimated amount when such services are completed.

SUGGESTED FORMAT
(for use with D-5 10, 2002 Edition)

This is **EXHIBIT C**, consisting of ___ pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated __, __.

Initials
Owner: _____
Design/Builder: _____

Payments to Design/Builder for Services and Reimbursable Expenses

Article 4 of the Agreement is supplemented as follows:

**ARTICLE 4 – PAYMENTS TO DESIGN/BUILDER –
STANDARD HOURLY RATES METHOD OF
PAYMENT**

**C4.01 For Basic Services Having a Determined
Scope and Additional Services**

A. Owner shall pay Design/Builder for Basic Services and Additional Services as follows:

1. An amount equal to cumulative hours devoted to the Project by each class of Design/Builder's employees times Standard Hourly Rates for each applicable billing class for all services rendered, plus Reimbursable Expenses and Design/Builder's Subcontractors' charges, if any.

2. Design/Builder's Standard Hourly Rates and Reimbursable Expenses Schedule is attached to this Exhibit C as Appendix 1.

3. The total compensation for services under this paragraph is estimated to be \$____, based on the following assumed distribution of compensation:

- | | |
|----------------------------|----|
| a. Study and Report Phase | \$ |
| b. Technical Exhibit Phase | \$ |
| c. Proposal Phase | \$ |
| d. Additional Services | \$ |

C4.02 For Reimbursable Expenses

A. Owner shall pay Design/Builder for Reimbursable Expenses.

B. The amounts payable to Design/Builder for Reimbursable Expenses will be the services-related internal expenses actually incurred or allocated by Design/Builder; plus all invoiced external Reimbursable Expenses allocable to the services, the latter multiplied by a factor of ____.

**C4.03 For Design/Builder's Subcontractor's
Charges**

A. Whenever compensation to Design/Builder herein is stated to include charges of Design/Builder's Subcontractors, those charges to Owner shall be the amounts billed to Design/Builder times a factor of ____.

C4.04 Standard Hourly Rates

A. Standard Hourly Rates set forth in Appendix 1 to this Exhibit C include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

C4.05 Other Provisions Concerning Payment

A. *Progress Payments.* The portion of the amounts billed for Design/Builder's services which are related to services rendered on the basis of the Standard Hourly Rates Method of Payment will be billed based on the cumulative hours devoted to the Project by each class of Design/Builder's employees, times the Standard Hourly Rate for each such employee class, plus Reimbursable Expenses and Design/Builder's Subcontractors' charges, if any, incurred during the billing period.

B. *Estimated Compensation Amounts*

1. Design/Builder's estimate of the amounts that will become payable for Basic Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Design/Builder under the Agreement. Notwithstanding the fact that the estimated amounts for Basic Services and Additional Services are exceeded, Design/Builder shall receive appropriate compensation based on the Standard Hourly Rates Method of Payment for all Basic Services and Additional Services furnished or performed under this Agreement, in accordance with the provisions as set forth in this Exhibit C.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Design/Builder that a compensation amount thus estimated will be exceeded, Design/Builder shall give Owner written notice thereof. Promptly thereafter Owner and Design/Builder shall review the matter of services remaining to be performed and compensation for such

services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Design/Builder shall agree to a reduction in the remaining services to be rendered by Design/Builder, so that total compensation for such services will not exceed said estimated amount when such services are completed.

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is **Appendix 1 to EXHIBIT C**, consisting of ____ pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated ____, ____, ____.

Initials
Owner: _____
Design/Builder: _____

Standard Hourly Rates and Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the rates are subject to review and adjustment per Exhibit C. Standard Hourly Labor Rates and Reimbursable Expense rates on the date of the Agreement are:

Billing Class 9	Senior Associate	\$____/hour
Billing Class 8	Staff Manager	____/hour
Billing Class 7	Professional VI	____/hour
Billing Class 6	Professional V	____/hour
Billing Class 5	Professional IV	____/hour
Billing Class 4	Professional III	____/hour
Billing Class 3	Professional II	____/hour
Billing Class 2	Technician II	____/hour
Billing Class 1	Technician I	____/hour
Principal		____/hour
Support Staff		____/hour
FAX		\$____/page
8"x11" Copies/Impression		____/page
Blueprint Copies		____/sq. ft.
Reproducible Copies (Mylar)		____/sq. ft.
Reproducible Copies (Paper)		____/sq. ft.
Mileage (auto)		____/mile
Field Truck Daily Charge		____/day
Mileage (Field Truck)		____/mile
Field Survey Equipment		____/day
Confined Space Equipment		____/day plus expenses
Resident Project Representative Equipment		____/month
Computer CPU Charge		____/hour
Personal Computer Charge		____/hour
CAD Charge		____/hour
CAE Terminal Charge		____/hour
VCR and Monitor Charge		____/day, \$____/week, or \$____/month
Video Camcorder		____/day, plus \$____/tape
Electrical Meters Charge		____/week, or \$____/month
Flow Meter Charge		____/week, or \$____/month
Rain Gauge		____/week, or \$____/month
Sampler Charge		____/week, or \$____/month
Dissolved Oxygen Tester Charge		____/week
Fluorometer		____/week
Laboratory Pilot Testing Charge		____/week, or \$____/month
Soil Gas Kit		____/day
Submersible Pump		____/day
Water Level Meter		____/day, or \$____/month
Soil Sampling		____/sample
Groundwater Sampling		____/sample

Health and Safety Level D	___/day
Health and Safety Level C	___/day
Electronic Media Charge	___/hour
Long Distance and Mobile Phone Calls	At Cost

SUGGESTED FORMAT
for use with D-5 10, 2002 Edition)

This is **EXHIBIT D**, consisting of ____ pages, referred to in and part
of the **Agreement between Owner and Design/Builder for
Preliminary Services** dated __, __.

Initials
Owner: _____
Design/Builder: _____

Insurance

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties:

D6.05 Insurance

The limits of liability for the insurance required by paragraph 6.05 of the Agreement are as follows:

A. By Design/Builder:

- | | |
|--|-----------|
| 1. Workers' Compensation: | Statutory |
| | |
| 2. Employer's Liability – | |
| Each Accident: | \$ |
| Disease, Policy Limit: | \$ |
| Disease, Each Employee: | \$ |
| | |
| 3. General Liability – | |
| General Aggregate: | \$ |
| Each Occurrence (Bodily Injury and
Property Damage): | \$ |
| | |
| 4. Excess Umbrella Liability – | |
| Each Occurrence: | \$ |
| General Aggregate: | \$ |
| | |
| 5. Automobile Liability – | |
| a. Bodily Injury: | |
| Each Person | \$ |
| Each Accident | \$ |
| Property Damage | |
| Each Accident | \$ |
| or | |
| a. Combined Single Limit
(Bodily Injury and Property Damage): | |
| Each Accident | \$ |
| | |
| 6. Professional Liability Insurance | \$ |

7. Other (specify): \$

B. By Owner:

1. General Liability: \$

2. Property Damage Liability Insurance: \$

3. Property Insurance: \$

4. Other (specify): \$

5. Additional Insureds. The following individuals or entities are to be listed on Owner's policies of insurance as additional insureds as provided in paragraph 6.05.B of the Agreement:

SUGGESTED FORMAT
(for use with D-5 10, 2002 Edition)

This is **EXHIBIT E**, consisting of ____ pages, referred to in and part
of the **Agreement between Owner and Design/Builder for
Preliminary Services** dated __, __.

Initials
Owner: _____
Design/Builder: _____

Proposal Form

ARTICLE E1 – PROPOSAL FORM

E1.01 General

NOTES TO USER

1. *A Proposal Form should be included as an exhibit to this Preliminary Agreement. A sample Proposal Form is not provided herein. However, users are referred to Section III of EJCDC Document No. D-001, Guide to Use of EJCDC Design/Build Documents (2002 Edition) for guidance in preparing a proposal form for a particular project.*
2. *Note that in Exhibit B, the Owner is to prepare certain contract Documents including the Agreement, General Conditions, Supplementary Conditions, and the Bond Forms. These Contract Documents should be specifically identified in the Proposal Form.*
3. *In preparing the Proposal Form, the Owner should consider which options for establishing Contract Price and Contract Times should be available to the Design/Builder.*
4. *Note that in preparing the Proposal Form for use with this Preliminary Agreement, it is not necessary to refer to “Proposal Documents.” Rather, the term “Contract Documents” should be used.*
5. *If the Owner has prepared any Conceptual Documents for the work, such documents need to be specifically identified in the Proposal Form. The Design/Builder should be required to specifically identify in the Proposal any deviations from the Conceptual Documents.*

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is **EXHIBIT F**, consisting of ____ pages, referred to in and part
of the **Agreement between Owner and Design/Builder for
Preliminary Services** dated ____, ____.

Initials
Owner: _____
Design/Builder: _____

Dispute Resolution

Paragraph 6.09 of the Agreement is amended and supplemented to include the following agreement of the parties:

F6.09 Dispute Resolution

A. Owner and Design/Builder agree that they shall submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation by ____.

B. All disputes between Owner and Design/Builder not resolved under paragraph F6.09.A will be decided by arbitration in accordance with the rules and procedures of ____ then obtaining, subject to the limitations and restrictions stated in paragraph F6.09.B.2 below. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph F6.09 will be specifically enforceable under the prevailing law of any court having jurisdiction.

1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the _____. The demand must be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

2. No arbitration arising out of or relating to this Agreement will include by consolidation, joinder or in any other manner any other person or entity who is not a party to this Agreement.

C. By written consent signed by all the parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraph F6.09.B.2 may be waived in whole or in part as to any claim, counterclaim, dispute, or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute, or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute, or other matter in question which is not specifically described in such consent or which is with any party not specifically described therein.

D. The award rendered by the arbitrators will be final and binding, and judgment may be entered upon it in any court having jurisdiction thereof.

E. The arbitration may, at the initiation of either party, include by consolidation or joinder an individual or entity who is not a party to the Agreement if:

1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and

2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and

3. the written consent of the other individual or entity sought to be included has been obtained for such inclusion.

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is EXHIBIT G, consisting of ____ pages, referred to in and part
of the Agreement between Owner and Design/Builder for
Preliminary Services dated ____.

Initials
Owner: _____
Design/Builder: _____

Allocation of Risks

The limitations on Design/Builder's liability and on damages set forth in this Exhibit G shall have no force and effect if Design/Builder and Owner enter into a contract for the remainder of the Work; in such case the terms of the subsequent contract shall establish the contractual limitations, if any, on Design/Builder's liability and on damages.

Paragraph 6.11 of the Agreement is amended and supplemented to include the following agreement of the parties:

G6.11.D Limitation of DesignBuilder's Liability

1. *[Design/Builder's Liability Limited to Amount of Design/Builder's Compensation]*

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the services included in this Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty (express or implied) of Design/Builder or DesignBuilder's officers, directors, partners, employees, agents, or Subcontractors, or any of them, shall not exceed the total compensation received by Design/Builder under this Agreement.

OR

1. *[Design/Builder's Liability Limited to Amount of Insurance Proceeds]*

Design/Builder shall procure and maintain insurance as required by and set forth in Exhibit E to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Design/Builder and DesignBuilder's officers, directors, partners, employees, agents, and Subcontractors, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the services included in this Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty (express or implied) of Design/Builder or DesignBuilder's officers, directors, partners, employees, agents, or Subcontractors, or any of them (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Design/Builder by DesignBuilder's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of DesignBuilder's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all such uninsured Owner's Claims shall not exceed \$_____.

OR

1. *[Design/Builder's Liability Limited to the Sum of \$___]*

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to services included in this Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty (express or implied) of Design/Builder or Design/Builder's officers, directors, partners, employees, agents, or Subcontractors, or any of them, shall not exceed \$____.

2. *[Exclusion of Special, Incidental, Indirect and Consequential Damages]*

To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from or in any way related to services included in this Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or breach of warranty (express or implied) of Design/Builder or Design/Builder's officers, directors, partners, employees, agents, or Subcontractors, or any of them, and including but not limited to:

[NOTE: List here particular types of damages that Design/Builder may be concerned about by reason of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the phrase "or any of them".]

[NOTE: The above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of paragraph 6.11.D.1 above, by providing that "Design/Builder's total liability for such damages shall not exceed \$____."]

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is EXHIBIT H, consisting of ___ pages, referred to in and part of
the Agreement between Owner and Design/Builder for Preliminary
Services dated __, __.

Initials
Owner: _____
Design/Builder: _____

Special Provisions

H1.01 Article(s) ___ of the Agreement is/are amended to include the following agreement(s) of the parties:

**Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement**

Instructions

Before you use any EJCDC document:

1. Read the License Agreement. You agree to it and are bound by its terms when you use the EJCDC document.
2. Make sure that you have the correct version for your word processing software.

How to Use:

1. While EJCDC has expended considerable effort to make the software translations exact, it can be that a few document controls (e.g., bold, underline) did not carry over.
2. Similarly, your software may change the font specification if the font is not available in your system. It will choose a font that is close in appearance. In this event, the pagination may not match the control set.
3. If you modify the document, you must follow the instructions in the License Agreement about notification.
4. Also note the instruction in the License Agreement about the EJCDC copyright.

License Agreement

You should carefully read the following terms and conditions before using this document. Commencement of use of this document indicates your acceptance of these terms and conditions. If you do not agree to them, you should promptly return the materials to the vendor, and your money will be refunded.

The Engineers Joint Contract Documents Committee ("EJCDC") provides **EJCDC Design and Construction Related Documents** and licenses their use worldwide. You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from **EJCDC Design and Construction Related Documents**.

You acknowledge that you understand that the text of the contract documents of **EJCDC Design and Construction Related Documents** has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You further acknowledge that EJCDC documents are protected by the copyright laws of the United States.

License:

You have a limited nonexclusive license to:

1. Use **EJCDC Design and Construction Related Documents** on any number of machines owned, leased or rented by your company or organization.
2. Use **EJCDC Design and Construction Related Documents** in printed form for bona fide contract documents.
3. Copy **EJCDC Design and Construction Related Documents** into any machine readable or printed form for backup or modification purposes in support of your use of **EJCDC Design and Construction Related Documents**.

You agree that you will:

1. Reproduce and include EJCDC's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program. All proprietary rights in **EJCDC Design and Construction Related Documents** are and shall remain the property of EJCDC.
2. Not represent that any of the contract documents you generate from **EJCDC Design and Construction Related Documents** are EJCDC documents unless (i) the document text is used without alteration or (ii) all additions and changes to, and deletions from, the text are clearly shown.

You may not use, copy, modify, or transfer EJCDC Design and Construction Related Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of EJCDC Design and Construction Related Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited.

If you transfer possession of any copy, modification or merged portion of EJCDC Design and Construction Related Documents to another party, your license is automatically terminated.

Term:

The license is effective until terminated. You may terminate it at any time by destroying **EJCDC Design and Construction Related Documents** altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy **EJCDC Design and Construction Related Documents** along with all copies, modifications and merged portions in any form.

Limited Warranty:

EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

EJCDC does not warrant that the functions contained in **EJCDC Design and Construction Related Documents** will meet your requirements or that the operation of **EJCDC Design and Construction Related Documents** will be uninterrupted or error free.

Limitations of Remedies:

EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction Related Documents** even if EJCDC has been advised of

the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

MEMORANDUM TO THE PROGRAMS, PROJECTS AND OPERATIONS SUBCOMMITTEE:

SUBJECT: Western Sarpy/Clear Creek Flood Reduction (WS/CC) Project
Structure (Cabin) Raise Related Proposals

DATE: June 3, 2003

BY: Martin P. Cleveland, P.E.
Construction Engineer

As part of the recent Corps of Engineers Headquarters project review process, the Corps decided that the cabin raise (structure flood-proofing) activity will no longer be part of the project construction effort, but instead will be the local sponsor (NRD's) responsibility. The local sponsor is always responsible to acquire all land rights for project construction and this effort was deemed by the Corps to be a land rights task. This flood-proofing is being undertaken to mitigate the Platte River flood rise (about a foot) caused by the levee raise activity, as required by local, state and federal floodplain regulations. These regulations require that the structures be elevated to 1 foot above the new 100 year flood level.

Western Sarpy/Clear Creek Flood Reduction Project construction is scheduled by the Corps to start in September 2003, with conservation measures implementation (clearing an island) on land already acquired by the NRD. The next phase (levee related) will then start in the October 2003+ period. In order for levee work to occur in the cabin reach, the cabin raise activity must first be underway. Therefore, it is important that the process of legal description preparation, appraisals, cabin raise engineering, ROW negotiation and construction occur as soon as possible to utilize and not lose federal and state funding to other projects. It is the staff recommendation that the Subcommittee/Board make an exception to its Policies 15.1 Construction Services and 15.2 Purchasing – Professional Services in order to save the 3+ months of process required to select an Appraiser, Engineer/Surveyor, ROW Services (Negotiator) and Contractor. Enclosed is a copy of these Board Policies.

Enclosed are copies of tables that show the impacted structures details and outlines the amount of elevating required. Also enclosed are associated maps of the project and structures. The proposed consultants/contractor work tasks are listed below and also discussed in the enclosed preliminary proposals from each firm.

1. Design/Build Contract for Cabin Raise and Construction Activity: W. Boyd Jones (Contractor)
 - Contractor will be the lead on this task and will subcontract with The Schemer Associates (survey/engineering consultant) for surveying, engineering, easement legal description preparation, permitting and construction observation.
 - Contractor will complete structure raise work, with possible assistance of other subcontractors (e.g. utility modifications).
 - Phase I of design/build process: Initial Assessment of Structures including evaluating raise feasibility, determining method of raise and range of cost. Contract fee for Phase I is **\$47,500.**
 - Phase II of design/build process: Plan preparation and raise structures, which will include the following tasks:
 1. Establishment of an approved guaranteed maximum price (**GMP**) for each structure.

2. Evaluate how to modify any utility hookups (power, water, sewage, telephone, cable)
 3. Review Contractor price submittals/shop drawings
 4. Coordinate with ROW Services Company
 5. Obtain all necessary permits
 6. Construction observation and utility relocation coordination
 7. Certify final elevation of cabins
 8. Contract fee for Phase II to be negotiated after Phase I work is completed and the scope of the work is known.
2. ROW/Cabin Appraisals: Valuation Services (Kevin Kroeger)
- Appraise full acquisition, impact of raise on structures and flowage easement in cases where the property isn't acquired.
 - Contract fee for this effort is **\$35,600 to 49,400**, depending on ownership conditions found during the appraisal process.
3. ROW/Cabin Raise Negotiation Services: Midwest ROW Services Inc.
- Acquire property (structures, land) if possible
 - Acquire additional levee easements, if needed
 - Acquire flowage easement for land rivenward of dike. This only applies if full buyout is not taken.
 - Review and administration of payments to landowners
 - Complete COE certification forms
 - Contract fee (Maximum) for this effort is **\$60,630**.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute proposed contracts with W. Boyd Jones Construction Co. with a maximum cost of **\$47,500**, Valuation Services with a maximum cost of **\$49,400** and Midwest ROW Services Inc. with a maximum cost of **\$60,630** for the Western Sarpy/Clear Creek Flood Reduction (WS/CC) Project Structure (Cabin) Raise Project, subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

Attachments

CC: Nelson Carpenter, Corps of Engineers
Glenn Johnson, LPSNRD
John Miyoshi and Mike Murren, LPNNRD
Steve Oltmans, Marlin Petermann, Paul Peters and Dick Sklenar, NRD

15.1 Purchasing - Construction Services. The General Manager is authorized to contract for construction services and to rent equipment for authorized programs and projects. Any such contract shall not require Board approval when the contract price does not exceed \$20,000. Construction services shall mean construction, operation, maintenance, and repair of improvements to real estate and fixtures. Contracts shall not be phased or split to avoid the limitation. The General Manager is authorized to effect change orders accumulating not more than a total of 10% of the contract amount. Contracts under this policy shall be subject to the provisions of Policy 15.6, 15.7 and 15.8.

[December 5, 1986; June 13, 1991; April 15, 1993; December 10, 1998]

15.2 Purchasing - Professional Services.

A. Statement of purpose. It is the purpose of this policy to provide a uniform procedure for advertising for and selecting firms for the award of contracts for professional services.

B. Definitions. As used throughout this policy, unless the context otherwise requires, the following terms shall have the following meanings:

1. Firm: Any person, partnership, association or corporation engaged in, and legally authorized to practice in the state, a professional service.
2. Professional services: Any one or more of the following services: architecture, engineering, land surveying, landscape architecture, land appraisal or audit firms.

C. Selection Committee. The Ad Hoc Selection Committee responsible for selecting and negotiating with firms for these professional services shall consist of three Directors appointed by the Chairperson and one non-voting staff member appointed by the General Manager, or, as determined by the Chairperson, five Directors appointed by the Chairperson and two non-voting staff members appointed by the General Manager.

D. Request for Services. Projects that have been determined by the General Manager as requiring professional services shall be advertised at least once in the daily newspaper having the greatest circulation in the District. Written requests for professional services (requests for proposals) may be sent by Management to known qualified firms. Such requests for professional services shall indicate that those firms wishing to participate shall contact the District for a copy of the general scope of the professional services. All firms requesting a copy of the general scope of the professional services shall be given a uniform date by which to reply, and the name of the District staff member to contact for replies to any questions.

E. List of Firms. A list of all firms interested in providing professional services shall be developed and maintained by Management. Statements of qualifications and past performance data will be required to be filed by interested firms. Such statements should include the following:

1. Firm name, address, telephone number;

2. Years established and former names;
3. Type of services particularly qualified to perform;
4. Names of principals and states in which they are registered;
5. Names of key personnel to be utilized, experience of each and length of service with the firm;
6. Maximum number of the staff at any one time;
7. Outside consultants and associates that might be employed;
8. List of similar completed projects for which the firm was the principal professional;
9. Similar current projects of the firm and estimated construction costs of each; and,
10. History of professional negligence claims made against the firm during the past five years.

F. Reply by interested firms. After the firm has obtained a copy of the general scope of the professional services, then firm shall reply in writing to the General Manager to the following items:

1. Express if they are interested in the project;
2. Relate any changes in the firm's qualifications and past performance date from those previously submitted;
3. Express willingness and capability to meet time requirements;
4. Other additional material as may be outlined in the scope of the project, or as may be beneficial to the selection committee; and,
5. Provide a proposed plan of approach to the project.

G. Method of selection. The method of selection of a firm for professional services shall be in accordance with the following estimated fees, as established by the General Manager:

1. When the fee does not exceed twenty thousand dollars (\$20,000.00), the General Manager shall select the firm directly, giving consideration which shall include, but not be limited to, the following:
 - a) Firms which have sufficient professional manpower to meet project schedules;
 - b) Firms with a sound performance record for meeting time and budget requirements;

- c) Firms which possess project experience and management ability;
 - d) Recent, current and projected work load with the District; and,
 - e) Any other specialized qualification which the firms might possess to benefit the project.
2. When the fee exceeds twenty thousand dollars (\$20,000.00), the Ad Hoc selection committee shall, where possible, select the three (3), or more at its discretion, best qualified firms in accordance with the considerations set out in subsection (a), above, and from the reply to the items set out in subparagraph F. The selection committee shall rank the firms first, second, third, etc. Where possible, the three (3) or more at its discretion, best qualified firms shall be given a time and place for a personal interview by the selection committee. After review of submittal materials and the personal interview, the selection committee shall rank the firms first, second, third, etc.

H. Fee negotiations.

The firm ranked as first shall be notified to appear and negotiate with Management on the fee, detailed scope and schedule for the professional services requested. If Management and the firm selected as first cannot come to an agreement regarding the fee, the negotiations with that firm shall be terminated and the firm ranked second shall be contacted. If the factors which caused them to be ranked as such have not changed, negotiations shall be initiated with them. The procedure shall be repeated until an agreement is reached if it can be reached.

Where agreement is reached, the contract in final written form shall be submitted to the Ad Hoc selection committee for approval and be awarded an executed, if at all, in accord with all applicable provisions of these policies and applicable provisions of State Statutes.

I. Board authority not limited. Nothing in this policy shall be construed to abrogate, limit or amend the authority of the Board in the award or approval of contracts.

[December 5, 1986; June 13, 1991; January 9, 1992]

15.3 Purchasing - Personal Property. The General Manager is authorized to contract for the purchase of personal property for authorized programs and projects without Board approval whenever the contract price does not exceed \$20,000. Contracts shall not be phased or split to avoid the limitation. Each contract or order, whether written or oral, for the purchase of personal property shall be entered into in the name of the District and shall expressly or impliedly provide that good title to such property shall be conveyed to the District free from any security interest or other lien or encumbrance. Contracts under this policy shall be subject to the provisions of Policy 15.6 and 15.7. Contracts under this policy shall not be subject to the provisions of Policy 15.8 unless otherwise required by the Board.

[December 5, 1985; June 13, 1991; December 9, 1993; December 10, 1998]

WESTERN SARPY/CLEAR CREEK LEVEE SYSTEM
50-Year Levees
Elevation Datum (Mean Sea Level)
Cabin Elevations

Sarpy County (Left Bank) -

June 2, 2003

Owner/Tenant	Site #	Main Building Finish Floor	Adjacent Ground	100-Yr Flood (Current)	100-Yr Flood (With Levees)	MITIGATION REQUIRED
David Wilken	1L	1080.4	1080.4	1079.2	1080.1	
Philip Hansen	2L	1075.1	1075.1	1079.7	1080.6	YES
Philip Hansen	3L	1081.4	1076.8	1079.9	1080.8	
Philip Hansen	4L	1079.6	1075.1	1080.1	1081.0	YES
Herb Grothe	5L	1080.6	1076.2	1080.2	1081.0	YES
Ron Vosler	6L	1080.0	1078.6	1080.6	1081.3	YES
Allan Forman	7L	1077.7	1077.1	1081.0	1081.7	YES
Closner-Nabity	8L	1081.0	1079.1	1081.5	1082.1	YES
Rhoades	9L	1081.2	1078.6	1083.5	1083.6	YES
RSP MGMT/Richard Pietryga	10L	1082.5	1078.4	1083.7	1083.8	YES
Smith	11L	1082.5	1081.6	1084.0	1084.0	YES

Saunders County (Right Bank) -

Owner/Tenant	Site #	Main Building Finish Floor	Adjacent Ground	100-Yr Flood (Current)	100-Yr Flood (With Levees)	MITIGATION REQUIRED
Lot 51 Egermier	1R	1074.8	1071.7	1073.8	1075.5	YES
Lot 49 Wulff	2R	1072.6	1070.2	1073.9	1075.6	YES
Lot 48 Lindberg	3R	1075.2	1071.9	1073.9	1075.7	YES
Lot 47 McPherson	4R	1075.9	1074.3	1074.1	1075.9	YES
Lot 46 Monohan	5R	1074.3	1071.9	1074.5	1076.1	YES
Lot 45 Carper	6R	1074.7	1073.8	1074.7	1076.3	YES
Lot 44 Heironymas/Bailey	7R	1072.8	1071.4	1074.9	1076.4	YES
Lot 43 Masters	8R	1075.6	1075.4	1075.0	1076.5	YES
Lot 42 Gonderinger	9R	1075.9	1075.1	1075.4	1076.8	YES
Lot 41 Beckman	10R	1076.5	1075.1	1075.6	1076.9	YES
Red Jensen	11R	1075.0	1072.6	1079.8	1080.7	YES
Frank Haman	12R	1077.7	1074.2	1080.0	1080.9	YES
Harold Hawkins	13R	1075.5	1073.4	1080.6	1081.3	YES
Dan Reilly	14R	1075.9	1074.1	1080.8	1081.5	YES

IMPACTED CABIN/HOMES AND REQUIRED BUILDING RAISES

6-2-03

25903 Impacted Cabin/Homes & Required Building Raises

Owner/Tenant	Location	River Station	Exist. Cond.; 1% stage (inc.	With-Proj.; 1% stage (inc. ice)	Increase with Project	Existing Lowest Floor el.	Existing and (w/Project) Depth over lowest floor (ft.)	Raised Floor el.	Raise (feet)	Final Floor Above Existing Ground (ft.)
	XS	158450	1073.6	1075.3	1.7					
Egermier	1R	158900	1073.8	1075.5	1.7	1074.8	(0.7) -1.0	1076.5	1.7	4.8
Wulff	2R	159100	1073.9	1075.6	1.7	1072.6	(3.0) 1.3	1076.6	4.0	6.4
Lindberg	3R	159200	1073.9	1075.7	1.8	1075.2	(0.5) -1.3	1076.7	1.5	4.8
McPherson	4R	159700	1074.1	1075.9	1.8	1075.9	(-0.0) -1.8	1076.9	1.0	2.6
	XS	159700	1074.1	1075.9	1.8					
Monohan	5R	159900	1074.5	1076.1	1.6	1074.3	(1.8) 0.2	1077.1	2.8	5.2
Carper	6R	160000	1074.7	1076.3	1.7	1074.7	(1.6) 0.0	1077.3	2.6	3.5
Heironymas/Bailey	7R	160100	1074.9	1076.4	1.5	1072.8	(3.6) 2.1	1077.4	4.6	6.0
Masters	8R	160200	1075.0	1076.5	1.5	1075.6	(0.9) -0.6	1077.5	1.9	2.1
Gonderinger	9R	160400	1075.4	1076.8	1.4	1075.9	(0.9) -0.5	1077.8	1.9	2.7
Beckman	10R	160500	1075.6	1076.9	1.3	1076.5	(0.4) -0.9	1077.9	1.4	2.8
	XS	161550	1077.6	1078.2	0.6					
	XS	163500	1079.2	1080.0	0.8					
Wilken	1L	164000	1079.2	1080.1	0.9	1080.4	(-0.3) -1.2		NA	
Hansen	2L	164600	1079.7	1080.6	0.9	1075.1	(5.5) 4.6	1081.6	6.5	6.5
	XS	164800	1079.8	1080.7	0.9					
Hansen	3L	165000	1079.9	1080.8	0.9	1081.4	(-0.6) -1.5		NA	
Hansen	4L	165500	1080.1	1081.0	0.8	1079.6	(1.4) 0.5	1082.0	2.4	6.9
Grothe	5L	165600	1080.2	1081.0	0.9	1080.6	(0.5) -0.4	1082.0	1.4	5.8
Vosler	6L	166400	1080.6	1081.3	0.9	1080	(1.4) 0.6	1082.3	2.3	3.7
Forman	7L	167200	1081.0	1081.7	0.8	1077.7	(4.1) 3.3	1082.7	5.0	5.6
Jensen	11R	164800	1079.8	1080.7	0.9	1075	(5.7) 4.8	1081.7	6.7	9.1
Haman	12R	165300	1080.0	1080.9	0.9	1077.7	(3.2) 2.3	1081.9	4.2	7.7
Hawkins	13R	166400	1080.6	1081.3	0.9	1075.5	(5.9) 5.1	1082.3	6.8	8.9
Reilly	14R	166800	1080.8	1081.5	0.8	1075.9	(5.7) 4.9	1082.5	6.6	8.4
	XS	167300	1081.0	1081.8	0.8					
Nabity	8L	167700	1081.5	1082.1	0.7	1081.0	(1.2) 0.5	1083.1	2.1	4.0
Rhoades	9L	169300	1083.5	1083.6	0.1	1081.2	(2.4) 2.3	1084.6	3.4	6.0
Pietryga	10L	169500	1083.7	1083.8	0.1	1082.5	(1.3) 1.2	1084.8	2.3	6.4
Smith	11L	169700	1084.0	1084.0	0.0	1083.3	(0.7) 0.7	1085.0	1.7	3.4
	XS	170350	1084.8	1084.6	-0.2					

WESTERN SARPY/CLEAR CREEK LEVEE SYSTEM, 151,000 CFS LEVEES (PLAN 5), Elevation Datum is NGVD 1929

10/26/2000, Augmented 11/12/2000, Revised 5/29/03

Owner/Tenant	Site #	Main Building Living Floor	Adjacent Ground Elevation	100-Year Flood Elev. (Current)	100-Year Flood Elev. with Levee Improvements	1st Floor Elev. < With-Project 100-yr Flood? IMPACTED?	Permanent (P) or Seasonal (S) Resident Type of Structure
LEFT BANK (SARPY COUNTY)							
David/Marlene Wilken	1 L	1080.4	1080.4			NO	S 1-story house, conc slab, screen porch
Philip/Marcia Hansen	3 L	1081.4	1076.8			NO	S 1-story house, conc block foundation
Herbert/Nancy Grothe	5 L	1080.6	076.2			YES	S wood frame cabin, conc block foundation =homes without induced 100-yr flood
Philip/Marcia Hansen	4 L	1079.6	075.1			YES	S mobile home with conc block foundation
Ronald/Peggy Vosler	6 L	1080.0	078.6			YES	P brick house with conc block foundation
Allan/Sheridan Forman	7 L	1077.7	077.1			YES	P concrete block house
Gary/Janice Closner & Gary/Alicia Nabity	8 L	1081.0	079.1			YES	S comb. trailer & wood cabin, conc blk fdtn
RSP MGMT / Bill Rhoades	9 L	1081.2	078.6			YES	S comb. trailer & wood cabin, conc blk fdtn
RSP MGMT / Richard/Margaret Pietryga	10 L	1082.5	078.4			YES	S comb. mobile home & wood frame, deck
RSP MGMT / Walter Smith	11 L	1082.5	081.6			YES	S wood frame cabin on conc block foundtn =homes with induced 100-yr flood
Philip/Marcia Hansen (nonresidential lot)	2 L	1075.1	075.1			YES	na wood frame storage building on rr ties
Philip/Marcia Hansen (nonresidential lot)	2 L	1075.1	075.1				wood frame storage bldg, on conc slab
RIGHT BANK (SARPY & SAUNDERS)							
Lot 51 Egermier	1 R	1074.8	071.7			YES	S frame home, conc blk fdtn
T-M Trust, Lot 48/Larry & Joanna Lindberg	3 R	1075.2	071.9			YES	S frame cabin on conc blocks
Lot 47 Steven McPherson, Judy McDonald	4 R	1075.9	074.3			YES	S frame cabin on conc slab
Lot 43 Raymond and Alyce Masters	8 R	1075.6	075.4			YES	S frame cabin on conc slab
T-M Trust, Lot 42 / Gerald Gonderinger	9 R	1075.9	075.1			YES	S frame cabin on conc slab
T-M Trust, Lot 41 / Brent & Lori Beckman	10 R	1076.5	075.1			YES	S frame cabin
Thomas-Melvin Trust, Lot 49 /John Wulff	2 R	1072.6	070.2			YES	S frame cabin on conc blocks
Lot 46 William Monohan	5 R	1074.3	071.9			YES	S frame cabin, conc block fdtn
Lot 45 David and Marcia Carper	6 R	1074.7	073.8			YES	S 1.5 sty frame cabin, conc slab
Lot 44 Heionymas/Bailey	7 R	1072.8	071.4			YES	S frame cabin, conc block fdtn
Frank Haman (land) / Red Jensen	11 R	1075.0	1072.6			YES	S wood frame cabin, conc block fdtn
Frank Haman	12 R	1077.7	1074.2			YES	S wood frame cabin set on rr ties
Frank Haman (land) / Harold Hawkins	13 R	1075.5	1073.4			YES	S frame cabin on vertically set rr ties
Frank Haman (land) / Dan Reilly	14 R	1075.9	1074.1			YES	S wood frame cabin, conc block foundation

WESTERN SARPY/CLEAR CREEK LEVEE SYSTEM, 151,000 CFS LEVEES (PLAN 5), Elevation Datum is NGVD 1929												
10/26/2000, Augmented 11/12/2000, Revised 5/29/03												
		Main			100-Year	100-yr	w/Proj					
		Building	Adjacent	100-Year	Flood Elev.	Flood	100-yr	1st Floor Elev.				
		Living	Ground	Flood Elev.	with Levee	> 1st	>Exist	< With-Project	Permanent (P) or Seasonal (S) Resident	Own	Own	Sq
Owner/Tenant	Site #	Floor	Elevation	(Current)	Improvements	Floor	100-yr	100-yr Flood?	Type of Structure	Land?	Bldg?	Feet
LEFT BANK (SARPY COUNTY)												
David/Marlene Wilken	1 L								truck trailer on conc blocks, w/electricity	Y	Y	
David/Marlene Wilken	1 L								wood frame storage shed, with electricity	Y	Y	
Philip/Marcia Hansen	3 L								truck trailer on conc blocks, w/electricity	Y	Y	
Philip/Marcia Hansen	3 L								wood frame storage shed, with electricity	Y	Y	
Herbert/Nancy Grothe	5 L								storage building with rr tie foundation	Y	Y	
									=outbuildings w/o induced 100-yr flood			
David/Marlene Wilken	1 L	1080.4	1080.4					NO	S 1-story house, conc slab, screen porch	Y	Y	
Philip/Marcia Hansen	3 L	1081.4	1076.8					NO	S 1-story house, conc block foundation	Y	Y	
Herbert/Nancy Grothe	5 L	1080.6	1076.2					YES	S wood frame cabin, conc block foundation	Y	Y	
									=homes without induced 100-yr flood			
Philip/Marcia Hansen	4 L	1079.6	1075.1					YES	S mobile home with conc block foundation	Y	Y	672
Ronald/Peggy Vosler	6 L	1080.0	1078.6					YES	P brick house with conc block foundation	Y	Y	1670
Allan/Sheridan Forman	7 L	1077.7	1077.1					YES	P concrete block house	Y	Y	780
Gary/Janice Closner & Gary/Alicia Nabity	8 L	1081.0	1079.1					YES	S comb. trailer & wood cabin, conc blk fdtn	Y	Y	713
RSP MGMT / Bill Rhoades	9 L	1081.2	1078.6					YES	S comb. trailer & wood cabin, conc blk fdtn	Y	Y	446
RSP MGMT / Richard/Margaret Pietryga	10 L	1082.5	1078.4					YES	S comb. mobile home & wood frame, deck	Y	Y	683
RSP MGMT / Walter Smith	11 L	1082.5	1081.6					YES	S wood frame cabin on conc block foundtn	Y	Y	993
						0.0	0.0		=homes with induced 100-yr flood			
Philip/Marcia Hansen (nonresidential lot)	2 L	1075.1	1075.1					YES	na wood frame storage building on rr ties	Y	Y	
Philip/Marcia Hansen (nonresidential lot)	2 L	1075.1	1075.1						wood frame storage bldg, on conc slab	Y	Y	
Ronald/Peggy Vosler	6 L	1078.6	1078.6						brick 2-car garage with conc block fdtn	Y	Y	
Ronald/Peggy Vosler	6 L	1077.2	1077.2						wood frame shed	Y	Y	
Allan/Sheridan Forman	7 L	1077.4							wood frame shed set on conc blocks	Y	Y	
Allan/Sheridan Forman	7 L	1076.0							wood frame shed	Y	Y	
Gary/Janice Closner & Gary/Alicia Nabity	8 L	1079.3							wood frame shed on a concrete slab	Y	Y	
Gary/Janice Closner & Gary/Alicia Nabity	8 L	1079.0							wood frame outhouse	Y	Y	
RSP MGMT / Bill Rhoades	9 L	1079.3	1078.6						wood frame storage shed	Y	Y	
RSP MGMT / Walter Smith	11 L								metal storage shed set on conc blocks	Y	Y	
									=outbuildings with induced 100-yr flood			
RIGHT BANK (SARPY & SAUNDERS)												
Lot 51 Egermier	1 R	1073.5	1071.7						frame garage, conc fdtn	Y	Y	
Lot 51 Egermier	1 R								3 frame sheds, conc blk fdtn	Y	Y	
T-M Trust, Lot 48/Larry & Joanna Lindberg	3 R	1071.9	1071.9						storage shed on conc slab	N	Y	
Lot 47 Steven McPherson, Judy McDonald	4 R	1074.3	1074.3						frame shed on conc blocks	Y	Y	
Lot 43 Raymond and Alyce Masters	8 R	1075.1	1075.4						frame garage & shed, conc slabs	Y	Y	
T-M Trust, Lot 42 / Gerald Gonderinger	9 R	1075.1	1075.1						metal storage shed	N	Y	
T-M Trust, Lot 41 / Brent & Lori Beckman	10 R								outbuilding	N	Y	
Lot 51 Egermier	1 R	1074.8	1071.7					YES	S frame home, conc blk fdtn	Y	Y	
T-M Trust, Lot 48/Larry & Joanna Lindberg	3 R	1075.2	1071.9					YES	S frame cabin on conc blocks	N	Y	
Lot 47 Steven McPherson, Judy McDonald	4 R	1075.9	1074.3					YES	S frame cabin on conc slab	Y	Y	
Lot 43 Raymond and Alyce Masters	8 R	1075.6	1075.4					YES	S frame cabin on conc slab	Y	Y	
T-M Trust, Lot 42 / Gerald Gonderinger	9 R	1075.9	1075.1					YES	S frame cabin on conc slab	N	Y	
T-M Trust, Lot 41 / Brent & Lori Beckman	10 R	1076.5	1075.1					YES	S frame cabin	N	Y	
Thomas-Melvin Trust, Lot 49 / John Wulff	2 R	1072.6	1070.2					YES	S frame cabin on conc blocks	N	Y	768
Lot 46 William Monohan	5 R	1074.3	1071.9					YES	S frame cabin, conc block fdtn	Y	Y	1080
Lot 45 David and Marcia Carper	6 R	1074.7	1073.8					YES	S 1.5 sty frame cabin, conc slab	Y	Y	962
Lot 44 Heironymas/Bailey	7 R	1072.8	1071.4					YES	S frame cabin, conc block fdtn	Y	Y	1191
Frank Haman (land) / Red Jensen	11 R	1075.0	1072.6					YES	S wood frame cabin, conc block fdtn	N	Y	540
Frank Haman	12 R	1077.7	1074.2					YES	S wood frame cabin set on rr ties	Y	Y	760

[illegible]

**DRAFT MITIGATION POLICY
WESTERN SARPY/CLEAR CREEK LEVEE PROJECT
SARPY COUNTY AND SAUNDERS COUNTY, NEBRASKA
OCTOBER 2001**

** INTERNAL DOCUMENT FOR THE CORPS' AND NRDS' USE ONLY-NOT FOR DISTRIBUTION*

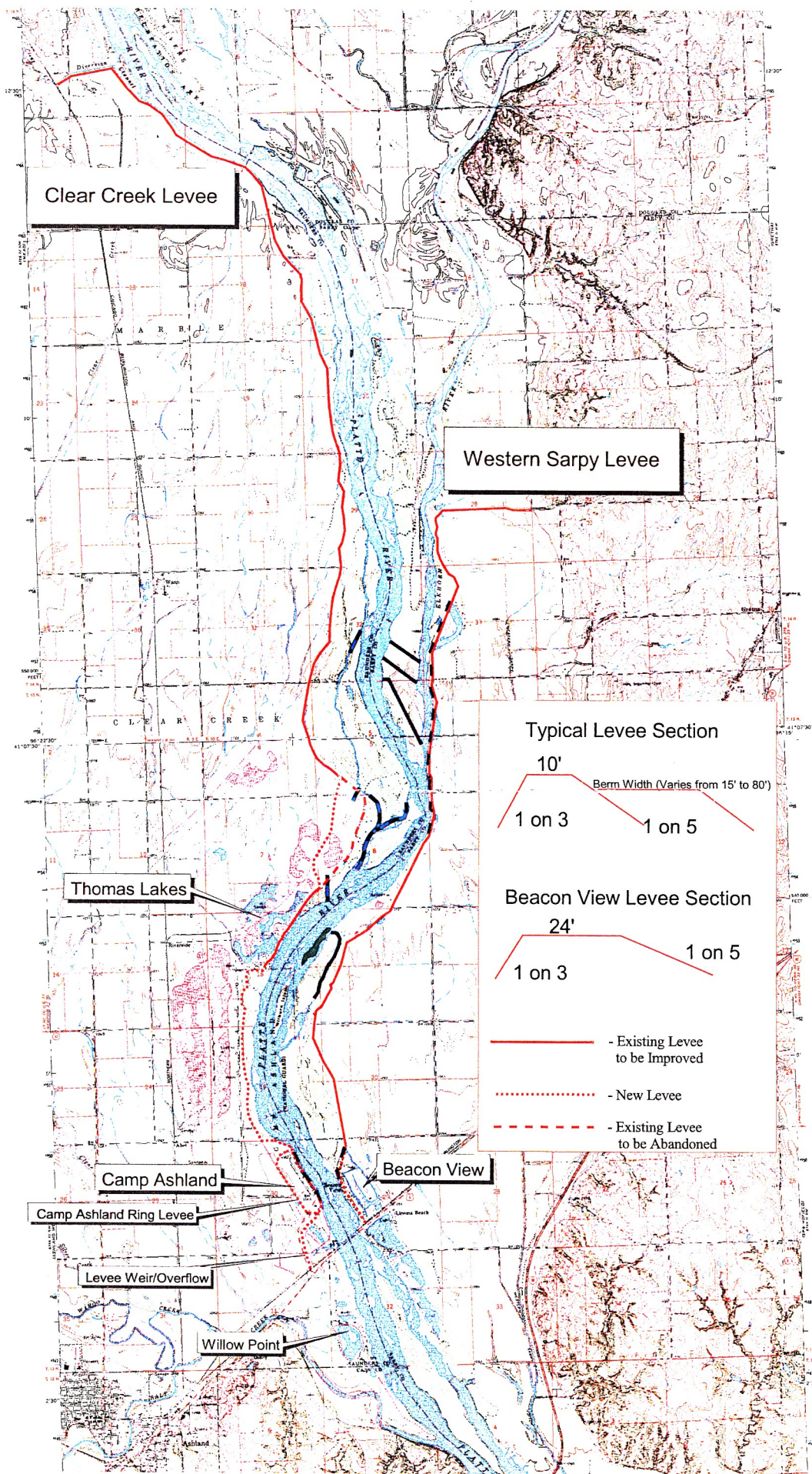
DEFINITIONS:

- “Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.” (44 CFR 59.1)
- “Structure means, for flood insurance coverage purposes, a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation.” (44 CFR 59.1)
- “Building-see Structure” (44 CFR 59.1)
- “Walled and roofed means the building has in place two or more exterior, rigid walls, and the roof is fully secured so that the building will resist flotation, collapse, and lateral movement.” (44 CFR Appendix A(1) to ~~Part~~ 61)
- “Recreational vehicle means a vehicle which is:
 - (a) Built on a single chassis;
 - (b) 400 square feet or less when measured at the largest horizontal projection;
 - (c) Designed to be self-propelled or permanently towable by a light duty truck; and
 - (d) Designed primarily not for use as a permanent dwelling but temporary living quarters for recreational, camping, travel, or seasonal use.” (44 CFR 59.1)
- “Accessory structures, used solely for parking (two-car detached garages or smaller) or limited storage (small, low-cost sheds)” (FEMA, Technical Bulletin 7-93)
- Outhouse-An outdoor toilet housed in a small structure. (Webster’s II New Riverside University Dictionary 1984)

CRITERIA:

- Any cabin/home that meets the National Flood Insurance Program (NFIP) definition of a structure for flood insurance coverage purposes and has an increase in the base flood elevation due to the project will be mitigated through a buyout and demolition; or through elevation of the cabin/home to the minimum elevation of 100-year flood + 1 foot elevation. The cabidhome owner has the option to choose whether to accept the buyout or the cabin/home elevation.

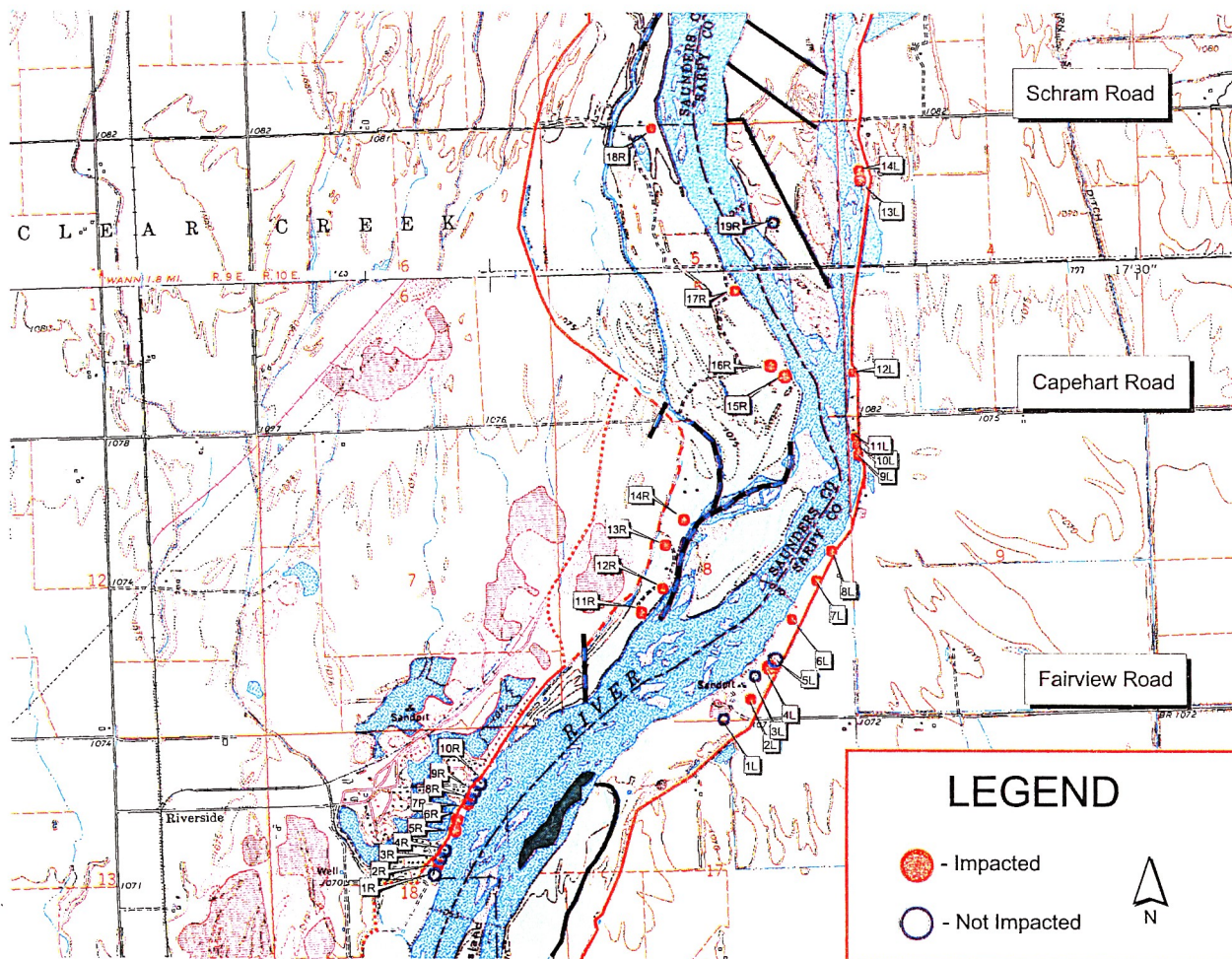
- Any accessory structure that meets the NFIP definition of a structure for flood insurance coverage purposes and has an increase in the base flood elevation due to the project will be mitigated through a buyout and demolition, reconstructing the lost storage space beneath the elevated cabidhome if technically feasible, or wet flood proofing of the existing accessory structure if possible, whichever is the lowest cost.
- Any accessory structure that does not meet the NFIP definition of a structure for flood insurance coverage purposes and has an increase in the base flood elevation due to the project will be mitigated through the fair market value of the flowage easement.
- Acquisition of a flowage easement will require the Government to make an individual determination on each and every accessory structure within the flowage easement area as to whether or not it will be allowed to remain. It will have to be identified as such within the recorded flowage easement.
- The buyout of the cabidhome will offer the owner of the cabin and land the amount to flood proof the cabin and the flowage easement amount, the fair market value of the cabin and a flowage easement on the land, or the fair market value of the cabin and the land, whichever is higher. This determined amount will be the maximum dollar amount that will be offered. (This will apply to cabin owners who own both the cabin and the land).
- The buyout of the cabidhome will offer the cabin owner the amount to flood proof the cabin plus the amount to buy out the lease on the land or the fair market value plus the amount to buy out the lease on the land, whichever is higher. The owner of the land will be offered a flowage easement amount. This determined amount will be the maximum dollar amount that will be offered. (This will apply to a cabidhome on leased land).
- The buyout of the accessory structures will be considered as personal property and will be obtained from the owner by a Bill of Sale or other instrument recognized under Nebraska Law as sufficient to transfer ownership.
- Any recreational vehicle will not be mitigated for due to an increase in the base flood elevation.
- Outhouses will not be mitigated for due to an increase in the base flood elevation.
- Any equipment that can be moved prior to a flood event will not be eligible for mitigation of the base flood elevation increase.



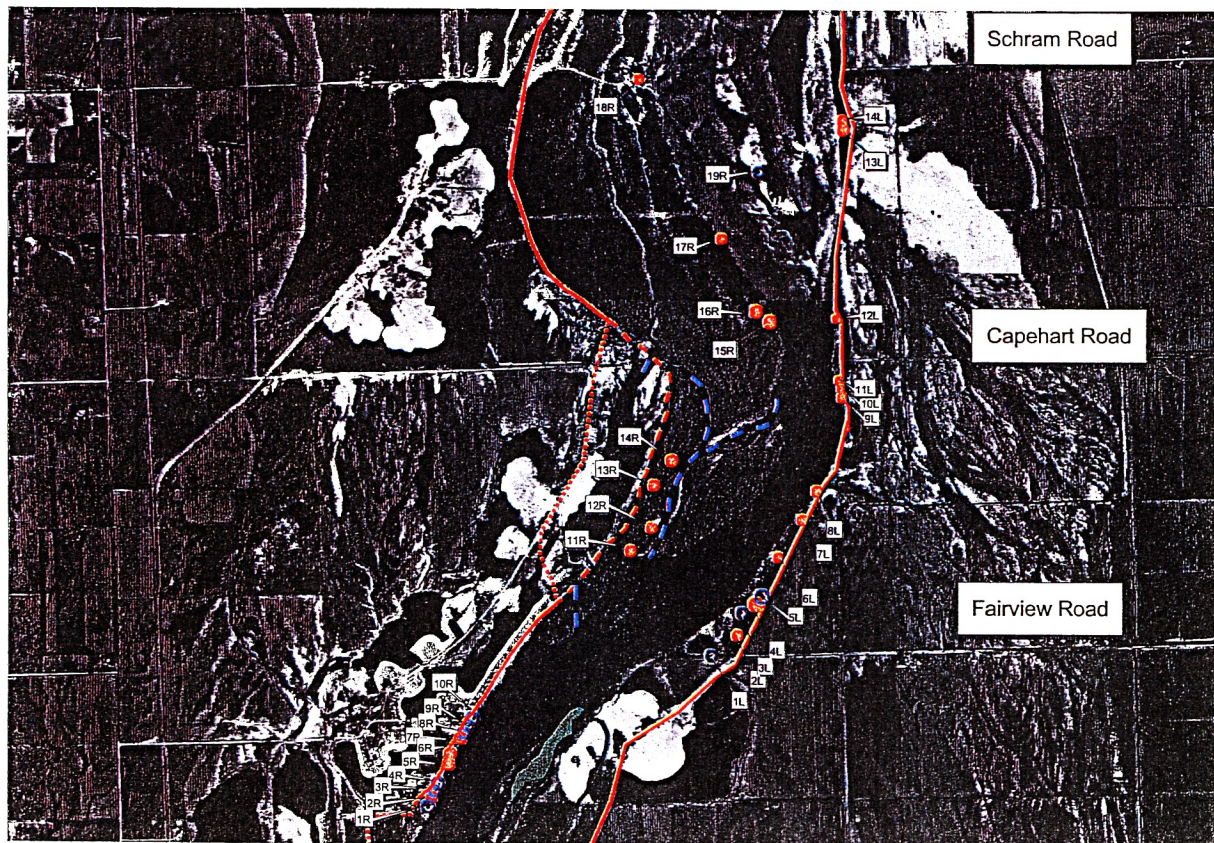
US Army Corps
of Engineers
Omaha District

Western Sarpy/Clear Creek Levee System

Levee
Features



No Cabin Raise
4
Road North of
Capehart



In cases of easement acquisition where the land and improvements are owned by the same person (Thomas Lakes 1 & 2, Hansen, Grothe, Vosler*, Foreman*, Haman 1):

Appraise the FMV of the entire property (land and improvements) before the acquisition and subtract the appraised FMV of the entire property (land and improvements) after the acquisition.

In cases of easement acquisition where the land and improvements are owned by the same person but are leased to a second person (Nabity, Haman 2, 3 & 4):

For the tenant: Appraise the FMV of the lessee's leasehold, using the "bargain rent" method

For the owner of the land and improvements: Appraise the FMV of the entire property (land and improvements) before the acquisition as subject to the lease and subtract the appraised FMV of the entire property (land and improvements) after the acquisition as subject to the lease

In cases of easement acquisition where the land and improvements apparently are owned by different persons (Thomas Lakes 3 & 4, Rhodes, Smith, Petriga):

For the tenant: Appraise the FMV of the lessee's leasehold in the land, using the "bargain rent" method, and add the difference between the appraised FMV of the improvements before and after the acquisition.

For the owner of the land and improvements: Appraise the FMV of the entire property (land and improvements) before the acquisition as subject to the lease and without the improvements and subtract the FMV of the entire property (land and improvements) after the acquisition as subject to the lease and without the improvements.

In all cases, assume that the cabin raise is part of the project and will be performed by the NRD at NRD cost without expense to the owner or tenant.

* signifies permanent resident

PRELIMINARY DESIGN-BUILD AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement is made this 2nd day of June, in the year 2003 by and between the OWNER Papio-Missouri River Natural Resources District, 8901 S. 154th Street,

Omaha, NE 68138-3621 and the CONTRACTOR W. Boyd Jones Construction Co., Inc., 4360

Nicholas Street, Omaha, NE 68131 for preliminary services in connection with the following

project: Western Sarpy / Clear Creek Floor Reduction (WS/CC) Project Structure (Cabin) Raise Services

ARTICLE 1 • Team Relationship

The Owner and the Contractor agree to proceed on the basis of **trust, good faith** and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in **an economical and timely manner**,

ARTICLE 2 • Contractor's Responsibilities

The Contractor shall exercise reasonable skill and judgement in the performance of its services. Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Contractor or furnished by licensed employees of the Contractor, or as **permitted by the law of the state where the Project is located**, The Architect/Engineer is **an independent design professionals**, the architectural and engineering services shall be procured pursuant to separate agreement between the Contractor and the Architectural/Engineer. The Architect/Engineer for the Project is The Schemmer Associates; The Contractor is responsible for the following Preliminary Design-Build Services:

Scope of Services - Feasibility/Assessment

1. Design/Build contract between PMRNRD and W. Boyd Jones with The Schemmer Associates Inc. a sub-consultant to W. Boyd Jones.
2. Public Meeting with affected **property owners and tenants**,
 - a. PMRNRD to plan, coordinate and lead the meeting
 - b. TSA to provide **two individuals in attendance** (Jeff Ehler and Eric Dove)
 - c. W. Boyd Jones to provide at least one representative.
 - d. Assume **one meeting required**.
3. Site Assessments of **Structures**
 - a. PMRNRD to provide coordination with property owners and tenants to secure **access** by Design/Build team for on-site inspections.
 - b. Design/Build team to provide visual inspection to assess feasibility and method of raising each individual structure on **(22 total sites)**.
4. **Phase I Report** ²³
 - a. Develop conceptual plan of means and **method** of **raising** each structure.
 - b. **Prepare** a method narrative for each structure with **any required** schematic details necessary to define and communicate the method.
 - c. Prepare cost estimate **ranges for** the work at each structure
 - d. Combine the work into a written report.

ARTICLE 3 • Ownership of Documents

All documents provided under this Agreement shall remain the property of the Contractor and are not to be used by the Owner without the written consent of the Contractor.

ARTICLE 4 • Owner's Responsibilities

The Owner shall provide to the Contractor all relevant information for the Project, including the Owner's Program which is an initial description of the Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

If the Owner elects to proceed with the project beyond the Preliminary Design-Build Services provided in this Agreement, the Owner and Contractor shall amend this agreement based upon mutually satisfactory terms in attached Amendment #1 Titled "AGC Document No. 410 "Standard Form of Design-Build Agreement and General Conditions between Owner and Design Builder", 1999 Edition, for the completion of the design and the construction of the Project.

If the Owner elects not to proceed with the Project, the Owner shall have no further obligation to the Contractor other than the payment of compensation as set forth in this Agreement.

Article 5 • Contract Time

Commence on June 15, 2003 and shall be completed on or about August 15, 2003.

Article 6 • Compensation

Lump sum billing of \$ Forty Seven Thousand Five ~~Hundred~~ Dollars (\$47,500) — at submission of report.

This Agreement is *entered* into as of the date set forth above.

ATTEST:

OWNER:

By _____

Print Name _____

Print Title _____

ATTEST:

CONTRACTOR:

By _____

Print Name _____

Print Title _____



AGC DOCUMENT NO. 410

STANDARD FORM OF DESIGN-BUILD

AGREEMENT AND GENERAL CONDITIONS

BETWEEN OWNER AND DESIGN-BUILDER

(Where the Basis of Payment is the Cost of the Work

Plus a Fee with a Guaranteed Maximum Price)

This standard form agreement was developed with the advice and cooperation of the AGC Private Industry Advisory Council, a number of Fortune 500 owners' design and construction managers who have been meeting with AGC contractors to discuss issues of mutual concern. AGC gratefully acknowledges the contributions of these owners' staff who participated in this effort to produce a basic agreement for construction.

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AMENDMENT NO. 1

This Agreement has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

AGC DOCUMENT NO. 410
STANDARD FORM OF DESIGN-BUILD
AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND DESIGN-BUILDER
(Where the Basis of Payment is the Cost of the Work
Plus a Fee with a Guaranteed Maximum Price)

ARTICLE 1
AGREEMENT

This Agreement is made this _____ day of _____ in the year _____ , ◆

by and between the

OWNER
(Name and Address) ◆

and the
DESIGN-BUILDER
(Name and Address) ◆

for services in connection with the following
PROJECT
(Name, location and brief description)

4

Notice to the parties shall be given at the above addresses.

GENERAL PROVISIONS

2.1 TEAM RELATIONSHIP The Owner and the Design-Builder agree to proceed with the Project on the basis of trust, good faith and fair dealing and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and by the Dates of Substantial Completion and Final Completion if they are established by Amendment No. 1. The Design-Builder agrees to procure or furnish, as permitted by the law of the state where the project is located, the design phase services and construction phase services as set forth below.

2.1.1 The Design-Builder represents that it is an independent contractor and that it is familiar with the type of work it is undertaking.

2.1.2 Neither the Design-Builder nor any of its agents or employees shall act on behalf of or in the name of the Owner unless authorized in writing by the Owner's Representative.

2.2 ARCHITECT/ENGINEER Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, or as permitted by the law of the state where the Project is located. The standard of care for architectural and engineering services performed under this Agreement shall be the care and skill ordinarily used by members of the architectural and engineering professions practicing under similar conditions at the same time and locality. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. If the Architect/Engineer is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Architect/Engineer. The Architect/Engineer for the Project is

2.3 EXTENT OF AGREEMENT This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral. The Owner and the Design-Builder agree to look solely to each other with respect to the performance of the Agreement. The Agreement and each and every provision is for the exclusive benefit of the Owner and the Design-Builder and not for the benefit of any third party nor any third party beneficiary, except to the extent expressly provided in the Agreement.

.1 The *Contract Documents* consist of:

- a. Change Orders and written amendments to this Agreement including exhibits and appendices, signed by both the Owner and the Design-Builder, including Amendment No. 1 if executed;
- b. this Agreement except for the existing Contract Documents set forth in item e. below;
- c. the most current documents approved by the Owner pursuant to Subparagraph 3.1.4, 3.1.6 or 3.1.7 ;
- d. the information provided by the Owner pursuant to Clause 4.1.2.1 ;
- e. the Contract Documents in existence at the time of execution of this Agreement which are set forth in Article 15;
- f. the Owner's Program provided pursuant to Subparagraph 4.1.1;

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above.

.2 The term *day* shall mean calendar day, unless otherwise specifically defined.

.3 *Design-Builder's Fee* means the compensation paid to the Design-Builder for salaries and other mandatory or customary compensation of the Design-Builder's employees at its principal and branch offices except employees listed in Subparagraph 8.2.2, general and administrative expenses of the Design-Builder's principal and branch offices other than the field office, and the Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work, and profit.

.4 *Defective Work* is any portion of the Work not in conformance with the Contract Documents as more fully described in Paragraph 3.8.

.5 The term *Fast-track* means accelerated scheduling which involves commencing construction prior to the completion of drawings and specifications and then using means such as bid packages and efficient coordination to compress the overall schedule.

.6 Final Completion occurs on the date when the Design-Builder's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable.

.7 A Material Supplier is a party or entity retained by the Design-Builder to provide material and equipment for the Work.

.8 Others means other contractors and all persons at the Worksite who are not employed by Design-Builder, its Subcontractors or Material Suppliers.

.9 The **Owner** is the person or entity identified as such in this Agreement and includes the Owner's Representative.

.10 The Owner's Program is an initial description of the Owner's objectives, that may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

.11 The Project, as identified in Article 1, is the building, facility and/or other improvements for which the Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by the Owner or Others.

.12 A Subcontractor is a party or entity retained by the Design-Builder as an independent contractor to provide the on-site labor, materials, equipment and/or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the **Architect/Engineer** or any separate contractor employed by the Owner or any separate contractor's subcontractors.

.13 Substantial Completion of the Work, or of a designated portion, occurs on the date when the Design-Builder's obligations are sufficiently complete in accordance with the Contract Documents so that the Owner can or does occupy or utilize the Project, or a designated portion, for the use for which it is intended, in accordance with Paragraph 10.4. The issuance of a Certificate of Occupancy is not a prerequisite for Substantial Completion if the Certificate of Occupancy cannot be obtained due to factors beyond the Design-Builder's control. This date shall be confirmed by a Certificate of Substantial Completion signed by the Owner and the Design-Builder. The Certificate shall state the respective responsibilities of the Owner and the Design-Builder for security, maintenance, heat,

utilities, damage to the Work, and insurance. The Certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction, within the time frame, if any, established in Amendment No. 1 for the Date of Final Completion.

.14 A Subsubcontractor is a party or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

.15 The Work is the Design Phase Services procured or furnished in accordance with Paragraph 3.1, the GMP Proposal provided in accordance with Paragraph 3.2, the Construction Phase Services provided in accordance with Paragraph 3.3, Additional Services that may be provided in accordance with Paragraph 3.10, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

.16 Worksite means the geographical area at the location mentioned in Article 1 where the Work is to be performed.

ARTICLE 3

DESIGN-BUILDER'S RESPONSIBILITIES

The Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with the Owner's Program, as such Program may be modified by the Owner during the course of the Work. The Design-Builder shall exercise reasonable skill and judgment in the performance of its services consistent with the team relationship described in Paragraph 2.1, but does not warrant nor guarantee schedules and estimates other than those that are part of the GMP proposal.

The Design-Builder and the Owner may establish a Fast-track approach to the design and construction services necessary to complete the Project. Such agreement establishing a Fast-track approach and the Schedule of the Work shall be included as an exhibit to this Agreement. In the absence of such agreement, the parties shall proceed in accordance with Paragraphs 3.1 and 3.3 below.

3.1 DESIGN PHASE SERVICES

3.1.1 PRELIMINARY EVALUATION The Design-Builder shall review the Owner's Program to ascertain the requirements of the Project and shall verify such requirements with the Owner. The Design-Builder's review shall also provide to the Owner a preliminary evaluation of the site

th regard to access, traffic, drainage, parking, building placement and other considerations affecting the building, the environment and energy use, as well as information regarding applicable governmental laws, regulations and requirements. The Design-Builder shall also propose alternative architectural, civil, structural, mechanical, electrical and other systems for review by the Owner, to determine the most desirable approach on the basis of cost, technology, quality and speed of delivery. The Design-Builder will also review existing test reports but will not undertake any dependent testing nor be required to furnish types of information derived from such testing in its Preliminary Evaluation. Based upon its review and verification of the Owner's program and other relevant information the Design-Builder shall provide a Preliminary Evaluation of the Project's feasibility for the Owner's acceptance. The Design-Builder's Preliminary Evaluation shall specifically identify any deviations from the Owner's Program.

3.1.2 PRELIMINARY SCHEDULE The Design-Builder shall prepare a preliminary schedule of the Work. The Owner shall provide written approval of milestone dates established in the preliminary schedule of the Work. The schedule shall show the activities of the Owner, the Architect/Engineer and the Design-Builder necessary to meet the Owner's completion requirements. The schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. If an update indicates that a previously approved schedule will not be met, the Design-Builder shall recommend corrective action to the Owner in writing.

3.1.3 PRELIMINARY ESTIMATE When sufficient Project information has been identified, the Design-Builder shall prepare for the Owner's acceptance a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the Owner's budget, the Design-Builder shall make recommendations to the Owner.

3.1.4 SCHEMATIC DESIGN DOCUMENTS The Design-Builder shall submit for the Owner's written approval Schematic Design Documents, based on the agreed upon Preliminary Evaluation. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. One set of these documents shall be furnished to the Owner. When the Design-Builder submits the Schematic Design Documents the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design-Builder's Preliminary Evaluation, schedule and estimate. The Design-Builder shall update the preliminary schedule and estimate based on the Schematic Design Documents.

3.1.5 PLANNING PERMITS The Design-Builder shall obtain and the Owner shall pay for all planning permits necessary for the construction of the Project.

3.1.6 DESIGN DEVELOPMENT DOCUMENTS The Design-Builder shall submit for the Owner's written approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents shall further define the Project including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. One set of these documents shall be furnished to the Owner. When the Design-Builder submits the Design Development Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Schematic Design Documents. The Design-Builder shall update the schedule and estimate based on the Design Development Documents.

3.1.7 CONSTRUCTION DOCUMENTS The Design-Builder shall submit for the Owner's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications based upon codes, laws and regulations enacted at the time of their preparation. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents. Construction shall be in accordance with these approved Construction Documents. One set of these documents shall be furnished to the Owner prior to commencement of construction. If a GMP has not been established, the Design-Builder shall prepare a further update of the schedule and estimate based on the Construction Documents.

3.1.8 OWNERSHIP OF DOCUMENTS Upon the making of payment pursuant to Paragraph 10.5, the Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information prepared, provided or procured by the Design-Builder, its Architect/Engineer, Subcontractors and consultants and distributed to the Owner for this Project. ("Design-Build Documents")

11 If this Agreement is terminated pursuant to Paragraph 12.2, the Owner shall receive ownership of the property rights, except for copyrights, of the Design-Build Documents upon payment for all Work performed in accordance with this Agreement, at which time the Owner shall have the right to use, reproduce and make derivative works from the Design-Build Documents to complete the Work.

.2 If this Agreement is terminated pursuant to Paragraph 12.3, the Owner shall receive ownership of the property rights, except for copyrights, of the Design-Build Documents upon payment of all sums provided in Paragraph 12.3, at which time the Owner shall have the right to use, reproduce and make derivative works from the Design-Build Documents to complete the Work.

.3 The Owner may use, reproduce and make derivative works from the Design-Build Documents for subsequent renovation and remodeling of the Work, but shall not use, reproduce or make derivative works from the Design-Build Documents for other projects without the written authorization of the Design-Builder, who shall not unreasonably withhold consent.

.4 The Owner's use of the Design-Build Documents without the Design-Builder's involvement or on other projects is at the Owner's sole risk, except for the Design-Builder's indemnification obligation pursuant to Paragraph 3.7, and the Owner shall defend, indemnify and hold harmless the Design-Builder, its Architect/Engineer, Subcontractors and consultants, and the agents, officers, directors and employees of each of them from and against any and all claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or resulting from the Owner's use of the Design-Build Documents.

.5 The Design-Builder shall obtain from its Architect/Engineer, Subcontractors and consultants property rights and rights of use that correspond to the rights given by the Design-Builder to the Owner in this Agreement.

3.2 GUARANTEED MAXIMUM PRICE (GMP)

3.2.1 GMP PROPOSAL At such time as the Owner and the Design-Builder jointly agree, the Design-Builder shall submit a GMP Proposal in a format acceptable to the Owner. Unless the parties mutually agree otherwise, the GMP shall be the sum of the estimated Cost of the Work as defined in Article 8 and the Design-Builder's Fee as defined in Article 7. The GMP is subject to modification as provided in Article 9.

3.2.1.1 If the Design-Build Documents are not complete at the time the GMP Proposal is submitted to the Owner, the Design-Builder shall provide in the GMP for further development of the Design-Build Documents consistent with the Owner's Program. Such further development does not

include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which if required, shall be incorporated by Change Order.

3.2.2 BASIS OF GUARANTEED MAXIMUM PRICE The Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include:

.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

.2 a list of allowances and a statement of their basis;

.3 a list of the assumptions and clarifications made by the Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

.4 the Date of Substantial Completion and/or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion and/or the Date of Final Completion is based;

.5 a schedule of applicable alternate prices;

.6 a schedule of applicable unit prices;

.7 a statement of Additional Services included, if any;

.8 the time limit for acceptance of the GMP proposal;

.9 the Design-Builder's Contingency as provided in Subparagraph 3.2.7;

.10 a statement of any work to be self-performed by the Design-Builder; and

.11 a statement identifying all patented or copyrighted materials, methods or systems selected by the Design-Builder and incorporated in the Work that are likely to require the payment of royalties or license fees.

3.2.3 REVIEW AND ADJUSTMENT TO GMP PROPOSAL The Design-Builder shall meet with the Owner to review the GMP Proposal. In the event that the Owner has any comments relative to the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to the Design-Builder, who shall make appropriate adjustments to the GMP, its basis or both.

3.2.4 ACCEPTANCE OF GMP PROPOSAL Upon acceptance by the Owner of the GMP Proposal, as may be amended by the Design-Builder in accordance with Subparagraph 3.2.3, the GMP and its basis shall be set forth in Amendment No. 1. The GMP and the Date of Substantial Completion and/or the Date of Final Completion shall be subject to modification in Article 9.

3.2.5 FAILURE TO ACCEPT THE GMP PROPOSAL Unless the Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the Design-Builder, the GMP Proposal shall not be effective. If the Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, the Owner shall have the right to:

- .1 Suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted in accordance with Subparagraph 3.2.4;
- .2 Direct the Design-Builder to proceed on the basis of reimbursement as provided in Articles 7 and 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or
- .3 Terminate the Agreement for convenience in accordance with Paragraph 12.3.

In the absence of a GMP the parties may establish a Date of Substantial Completion and/or a Date of Final Completion.

3.2.6 PRE-GMP WORK Prior to the Owner's acceptance of the GMP Proposal, the Design-Builder shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the Owner may specifically authorize in writing.

3.2.7 DESIGN-BUILDER'S CONTINGENCY The GMP Proposal will contain, as part of the estimated Cost of the Work, the Design-Builder's Contingency, a sum mutually agreed upon and monitored by the Design-Builder and the Owner for use at the Design-Builder's discretion to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order.

3.3 CONSTRUCTION PHASE SERVICES

3.3.1 The Construction Phase will commence upon the issuance by the Owner of a written notice to proceed with construction. If construction commences prior to execution of Amendment No. 1, the Design-Builder shall prepare for the Owner's written approval a list of the documents that are applicable to the part of the Work which the Owner has authorized, which list shall be included in the Owner's written notice to proceed.

3.3.2 In order to complete the Work, the Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and sub-contracted items.

3.3.3 The Design-Builder shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement which govern the proper performance of the Work.

3.3.4 The Design-Builder shall obtain and the Owner shall pay for the building permits necessary for the construction of the Project.

3.3.5 The Design-Builder shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The Owner shall be afforded access to all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by law.

3.3.6 The Design-Builder shall provide periodic written reports to the Owner on the progress of the Work in such detail as is required by the Owner and as agreed to by the Owner and the Design-Builder.

3.3.7 The Design-Builder shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to the Owner at mutually agreeable intervals.

3.3.8 The Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

3.3.9 The Design-Builder shall prepare and submit to the Owner:

final marked up as-built drawings

updated electronic data
(Cross-out one of the above) ◆

in general documenting how the various elements of the Work including changes were actually constructed or installed, or as defined by the parties by attachment to this Agreement.

3.4 SCHEDULE OF THE WORK The Design-Builder shall prepare and submit a Schedule of Work for the Owner's acceptance and written approval as to milestone dates. This schedule shall indicate the dates for the start and completion of the various stages of the Work, including the dates when information and approvals are required from the Owner. The Schedule shall be revised as required by the conditions of the Work.

3.5 SAFETY OF PERSONS AND PROPERTY

3.5.1 SAFETY PRECAUTIONS AND PROGRAMS The Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. While the provisions of this Paragraph establish the responsibility for safety between the Owner and the Design-Builder, they do not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

3.5.2 The Design-Builder shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

- .1** its employees and other persons at the Worksite;
- .2** materials, supplies and equipment stored at the Worksite for use in performance of the Work; and
- .3** the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.5.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE The Design-Builder shall designate an individual at the Worksite in the employ of the Design-Builder who shall act as the Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Design-Builder in writing to the Owner, the designated safety representative shall be the Design-Builder's project superintendent. The Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to the Owner. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall furnish a copy of the report to the Owner.

3.5.4 The Design-Builder shall provide the Owner with copies of all notices required of the Design-Builder by law or regulation. The Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

3.5.5 Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Design-Builder, or anyone for whose acts the Design-Builder may be liable, shall be promptly remedied by the Design-Builder. Damage or loss attributable to the acts or omissions of the Owner or Others and not to the Design-Builder shall be promptly remedied by the Owner.

3.5.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Design-Builder's safety program, may require the Design-Builder to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Design-Builder does not adopt corrective measures, the Owner may perform them and reduce by the costs of the corrective measures the amount of the GMP, or in the absence of a GMP, the Cost of the Work as provided in Article 8. The Design-Builder agrees to make no claim for damages, for an increase in the GMP, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion based on the Design-Builder's compliance with the Owner's reasonable request.

3.6 HAZARDOUS MATERIALS

3.6.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. The Design-Builder shall not be obligated to commence or continue work until all Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory approved by the appropriate government agency.

3.6.2 If after the commencement of the Work, Hazardous Material is discovered at the Project, the Design-Builder shall be entitled to immediately stop Work in the affected area. The Design-Builder shall report the condition to the Owner and, if required, the government agency with jurisdiction.

3.6.3 The Design-Builder shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.6.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effects upon the Work of the Design-Builder. The Design-

Builder shall resume Work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

3.6.5 If the Design-Builder incurs additional costs and/or is delayed due to the presence or remediation of Hazardous Material, the Design-Builder shall be entitled to an equitable adjustment in the GMP, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion.

3.6.6 Provided the Design-Builder, its Subcontractors, Material Suppliers and Subsubcontractors, and the agents, officers, directors and employees of each of them, have not, acting under their own authority, knowingly entered upon any portion of the Work containing Hazardous Materials, and to the extent not caused by the negligent acts or omissions of the Design-Builder, its Subcontractors, Material Suppliers and Subsubcontractors, and the agents, officers, directors and employees of each of them, the Owner shall defend, indemnify and hold harmless the Design-Builder, its Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, from and against any and all direct claims, damages, losses, costs and expenses, including but not limited to attorney's fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the Owner.

3.6.7 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Design-Builder, Subcontractors, the Owner or Others, shall be maintained at the Project by the Design-Builder and made available to the Owner and Subcontractors.

3.6.8 During the Design-Builder's performance of the Work, the Design-Builder shall be responsible for the proper handling of all materials brought to the Worksite by the Design-Builder. Upon the issuance of the Certificate of Substantial Completion, the Owner shall be responsible under this Paragraph for materials and substances brought to the site by the Design-Builder if such materials or substances are required by the Contract Documents.

3.6.9 The terms of this Paragraph 3.6 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

3.7 ROYALTIES, PATENTS AND COPYRIGHTS The Design-Builder shall pay all royalties and license fees which

may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Design-Builder and incorporated in the Work. The Design-Builder shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Design-Builder harmless from all suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Owner.

3.8 WARRANTIES AND COMPLETION

3.8.1 The Design-Builder warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the Date of Substantial Completion of the Work or of a designated portion. The Design-Builder agrees to correct all construction performed under this Agreement which is defective in workmanship or materials within a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.

3.8.2 To the extent products, equipment, systems or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. To the extent products, equipment, systems or materials incorporated in the Work are specified by the Owner but purchased by the Design-Builder and are inconsistent with selection criteria that otherwise would have been followed by the Design-Builder, the Design-Builder shall assist the Owner in pursuing warranty claims. **ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.**

3.8.3 The Design-Builder shall secure required certificates of inspection, testing or approval and deliver them to the Owner.

3.8.4 The Design-Builder shall collect all written warranties and equipment manuals and deliver them to the Owner in a format directed by the Owner.

3.8.5 With the assistance of the Owner's maintenance personnel, the Design-Builder shall direct the checkout of utilities and start up operations, and adjusting and balancing of systems and equipment for readiness.

3.9 CONFIDENTIALITY The Design-Builder shall treat as confidential and not disclose to third persons, except Subcontractors, Subsubcontractors and the Architect/Engineer as is necessary for the performance of the Work, or use for its own benefit any of the Owner's developments, confidential information, know-how, discoveries, production methods and the like that may be disclosed to the Design-Builder or which the Design-Builder may acquire in connection with the Work. The Owner shall treat as confidential information all of the Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement.

3.10 ADDITIONAL SERVICES The Design-Builder shall provide or procure the following Additional Services upon the request of the Owner. A written agreement between the Owner and the Design-Builder shall define the extent of such Additional Services before they are performed by the Design-Builder. If a GMP has been established for the Work or any portion of the Work, such Additional Services shall be considered a Change in the Work, unless they are specifically included in the statement of the basis of the GMP as set forth in Amendment No. 1.

.1 Development of the Owner's Program, establishing the Project budget, investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

.2 Consultations, negotiations, and documentation supporting the procurement of Project financing.

.3 Surveys, site evaluations, legal descriptions and aerial photographs.

.4 Appraisals of existing equipment, existing properties, new equipment and developed properties.

.5 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

.6 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.

.7 Investigation or making measured drawings of existing conditions or the reasonably required verification of Owner-provided drawings and information.

.8 Artistic renderings, models and mockups of the Project or any part of the Project or the Work.

.9 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Work.

.10 Interior design and related services including procurement and placement of furniture, furnishings, artwork and decorations.

.11 Making revisions to the Schematic Design, Design Development, Construction Documents or documents forming the basis of the GMP after they have been approved by the Owner, and which are due to causes beyond the control of the Design-Builder. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of Subcontractors, Material Suppliers, Subsubcontractors or the Architect/Engineer.

.12 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of the Work.

.13 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of the Design-Builder.

.14 The premium portion of overtime work ordered by the Owner, including productivity impact costs, other than that required by the Design-Builder to maintain the Schedule of Work.

.15 Out-of-town travel by the Architect/Engineer in connection with the Work, except between the Architect/Engineer's office, the Design-Builder's office, the Owner's office and the Worksite.

.16 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start up.

.17 Services for tenant or rental spaces not a part of this Agreement.

.18 Services requested by the Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.

.19 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.

.20 Document reproduction exceeding the limits provided for in this Agreement.

3.11 DESIGN-BUILDER'S REPRESENTATIVE The Design-Builder shall designate a person who shall be the Design-Builder's authorized representative. The Design-Builder's Representative is _____

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER

4.1.1 The Owner shall provide full information in a timely manner regarding requirements for the Project, including the Owner's Program and other relevant information.

4.1.2 The Owner shall provide:

.1 all available information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;

.2 inspection and testing services during construction as required by law or as mutually agreed; and

.3 unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required services.

4.1.3 The Owner shall provide reasonable evidence satisfactory to the Design-Builder, prior to commencing the Work and during the progress of the Work, that sufficient funds are available and committed for the entire cost of the Project, including a reasonable allowance for changes in the Work as may be approved in the course of the Work. Unless such reasonable evidence is provided, the Design-Builder shall not be required to commence or continue the Work. The Design-Builder may stop Work after seven (7) days written notice to the Owner if such evidence is not presented within a reasonable time. The failure of the Design-Builder to insist upon the providing of this evidence at any one time

shall not be a waiver of the Owner's obligation to make payments pursuant to this Agreement, nor shall it be a waiver of the Design-Builder's right to require that such evidence be provided at a later date.

4.1.4 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information and services required by this Paragraph 4.1.

4.2 RESPONSIBILITIES DURING DESIGN PHASE

4.2.1 The Owner shall provide the Owner's Program at the inception of the Design Phase and shall review and timely approve in writing schedules, estimates, Preliminary Estimate, Schematic Design Documents, Design Development Documents and Construction Documents furnished during the Design Phase as set forth in Paragraph 3.1, and the GMP Proposal as set forth in Paragraph 3.2.

4.3 RESPONSIBILITIES DURING CONSTRUCTION PHASE

4.3.1 The Owner shall review the Schedule of the Work as set forth in Paragraph 3.4 and timely approve the milestone dates set forth.

4.3.2 If the Owner becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Owner shall give prompt written notice to the Design-Builder.

4.3.3 The Owner shall communicate with the Design-Builder's Subcontractors, Material Suppliers and the Architect/Engineer only through or in the presence of the Design-Builder. The Owner shall have no contractual obligations to Subcontractors, suppliers, or the Architect/Engineer.

4.3.4 The Owner shall provide insurance for the Project as provided in Article 11.

4.4 OWNER'S REPRESENTATIVE The Owner's Representative is _____

The Representative:

.1 shall be fully acquainted with the Project;

.2 agrees to furnish the information and services required of the Owner pursuant to Paragraph 4.1 so as not to delay the Design-Builder's Work; and

.3 shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its

representative or the representative's authority as listed above, the Owner shall notify the Design-Builder in writing in advance.

4.5 TAX EXEMPTION If in accordance with the Owner's direction the Design-Builder claims an exemption for taxes, the Owner shall defend, indemnify and hold the Design-Builder harmless for all liability, penalty, interest, fine, tax assessment, attorney's fees or other expense or cost incurred by the Design-Builder as a result of any action taken by the Design-Builder in accordance with the Owner's direction.

ARTICLE 5

SUBCONTRACTS

Work not performed by the Design-Builder with its own forces shall be performed by Subcontractors or the Architect/Engineer.

5.1 RETAINING SUBCONTRACTORS The Design-Builder shall not retain any subcontractor to whom the Owner has a reasonable and timely objection, provided that the Owner agrees to compensate the Design-Builder for any additional costs incurred by the Design-Builder as a result of such objection. The Owner may propose subcontractors to be considered by the Design-Builder. The Design-Builder shall not be required to retain any subcontractor to whom the Design-Builder has a reasonable objection.

5.2 MANAGEMENT OF SUBCONTRACTORS The Design-Builder shall be responsible for the management of the Subcontractors in the performance of their work.

5.3 ASSIGNMENT OF SUBCONTRACT AGREEMENTS The Design-Builder shall provide for assignment of subcontract agreements in the event that the Owner terminates this Agreement for cause as provided in Paragraph 12.2. Following such termination, the Owner shall notify in writing those Subcontractors whose assignments will be accepted, subject to the rights of sureties.

5.4 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Design-Builder agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Subsubcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's and Material Supplier's portions of the Work.

5.5 LABOR RELATIONS (Insert here or attach as exhibit as necessary any conditions, obligations or requirements relative to labor relations and their effect on the Project. Legal counsel is recommended.)

ARTICLE 6

TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the effective date of this Agreement as first written in Article 1 unless otherwise set forth below: (Insert here any special provisions concerning Notices to Proceed and the Date of Commencement.)

The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, however, to other provisions of this Agreement.

6.2 SUBSTANTIAL/FINAL COMPLETION Unless the parties agree otherwise, the Date of Substantial Completion and/or the Date of Final Completion shall be established in Amendment No. 1 to this Agreement subject to adjustments as provided for in the Contract Documents. The Owner and the Design-Builder may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as a GMP is accepted a Date of Substantial Completion and/or Date of Final Completion of the Work shall be established in Amendment No. 1. If a GMP is not established and the parties desire to establish a Date of Substantial Completion and/or Date of Final Completion, it shall be set forth in Amendment No. 1.

6.2.1 Time limits stated in the Contract Documents are of the essence.

6.2.2 Unless instructed by the Owner in writing, the Design-Builder shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Design-Builder or the Owner.

6.3 DELAYS IN THE WORK

6.3.1 If causes beyond the Design-Builder's control delay the progress of the Work, then the GMP, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the Owner or Others, the Owner preventing the Design-Builder from performing the Work pending dispute resolution, Hazardous Materials or differing site conditions. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of the Design-Builder, Subcontractors, Sub-subcontractors, Material Suppliers or the Architect/Engineer.

6.3.2 To the extent a delay in the progress of the Work is caused by adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, general labor disputes impacting the Project but not specifically related to the Worksite, governmental agencies, or unavoidable accidents or circumstances, the Design-Builder shall only be entitled to its actual costs without fee and an extension of the Date of Substantial Completion and/or the Date of Final Completion.

6.3.3 In the event delays to the Project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

ARTICLE 7

COMPENSATION

7.1 DESIGN PHASE COMPENSATION

7.1.1 To the extent required by applicable law, the cost of services performed directly by the Architect/Engineer is computed separately and is independent from the Design-Builder's compensation for work or services performed directly by the Design-Builder; these costs shall be shown as separate items on applications for payment. If an Architect/Engineer is retained by the Design-Builder, the payments to the Architect/Engineer shall be as detailed in a separate agreement between the Design-Builder and the Architect/Engineer.

7.1.2 The Owner shall compensate the Design-Builder for services performed during the Design Phase as described in Paragraph 3.1, including preparation of a GMP Proposal, if applicable, as described in Paragraph 3.2, as follows: (State whether a stipulated sum, actual cost, or other basis. If a stipulated sum, state what portion of the sum shall be payable each month.) ♦

7.1.3 Compensation for Design Phase Services, as part of the Work, shall include the Design-Builder's Fee as established in Paragraph 7.3, paid in proportion to the services performed, subject to adjustment as provided in Paragraph 7.4.

7.1.4 Compensation for Design Phase Services shall be equitably adjusted if such services extend beyond _____ from the date of this Agreement for reasons beyond the reasonable control of the Design-Builder or as provided in Paragraph 9.1. For changes in Design Phase services, compensation shall be adjusted as follows: ♦

7.1.5 Within fifteen (15) days after receipt of each monthly application for payment, the Owner shall give written notice to the Design-Builder of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within fifteen (15) days after accepting such application, the Owner shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Design-Builder cannot agree on a revised amount then, within fifteen (15) days after its initial rejection in part of such application, the Owner shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.

7.1.6 If the Owner fails to pay the Design-Builder at the time payment of any amount becomes due, then the Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) days after receipt of the notice by the Owner, and after such seven (7) day period, stop the Work until payment of the amount owing has been received.

7.1.7 Payments due pursuant to Subparagraph 7.1.5, may bear interest from the date payment is due at the prime rate prevailing at the location of Project.

7.2 CONSTRUCTION PHASE COMPENSATION

7.2.1 The Owner shall compensate the Design-Builder for Work performed following the commencement of the Construction Phase on the following basis:

.1 the Cost of the Work as allowed in Article 8; and

.2 the Design-Builder's Fee paid in proportion to the services performed subject to adjustment as provided in Paragraph 7.4.

7.2.2 The compensation to be paid under this Paragraph 7.2 shall be limited to the GMP established in Amendment No. 1, as the GMP may be adjusted under Article 9.

7.2.3 Payment for Construction Phase Services shall be as set forth in Article 10. If Design Phase Services continue to be provided after construction has commenced, the Design-Builder shall continue to be compensated as provided in Paragraph 7.1, or as mutually agreed.

7.3 DESIGN-BUILDER'S FEE The Design-Builder's Fee shall be as follows, subject to adjustment as provided in Paragraph 7.4:
(State whether a stipulated sum or other basis. If a stipulated sum, state what portion of the sum shall be payable each month.) ◆

7.4 ADJUSTMENT IN THE DESIGN-BUILDER'S FEE Adjustment in the Design-Builder's Fee shall be made as follows:

.1 for changes in the Work as provided in Article 9, the Design-Builder's Fee shall be adjusted as follows: ◆

.2 for delays in the Work not caused by the Design-Builder, except as provided in Subparagraph 6.3.2, there will be an equitable adjustment in the Design-Builder's Fee to compensate the Design-Builder for increased expenses; and

.3 if the Design-Builder is placed in charge of managing the replacement of an insured or uninsured loss, the Design-Builder shall be paid an additional fee in the same proportion that the Design-Builder's Fee bears to the estimated Cost of the Work for the replacement.

ARTICLE 8

COST OF THE WORK

The Owner agrees to pay the Design-Builder for the Cost of the Work as defined in this Article. This payment shall be in addition to the Design-Builder's Fee stipulated in Paragraph 7.3.

8.1 COST ITEMS FOR DESIGN PHASE SERVICES

8.1.1 Compensation for Design Phase Services as provided in Paragraph 7.1.

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

8.2.1 Wages paid for labor in the direct employ of the Design-Builder in the performance of the Work.

8.2.2 Salaries of the Design-Builder's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:

8.2.3 Cost of all employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Design-Builder's standard personnel policy, insofar as such costs are paid to employees of the Design-Builder who are included in the Cost of the Work under Subparagraphs 8.2.1 and 8.2.2.

8.2.4 Reasonable transportation, travel, hotel and moving expenses of the Design-Builder's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage and handling.

8.2.6 Payments made by the Design-Builder to Subcontractors for work performed under this Agreement.

8.2.7 Fees and expenses for design services procured or furnished by the Design-Builder except as provided by the Architect/Engineer and compensated in Paragraph 7.1.

8.2.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value and/or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Design-Builder.

8.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Design-Builder or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Design-Builder or its affiliates, subsidiaries or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

8.2.10 Cost of the premiums for all insurance and surety bonds which the Design-Builder is required to procure or deems necessary, and approved by the Owner.

8.2.11 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Design-Builder is liable.

8.2.12 Permits, fees, licenses, tests, royalties, damages for infringement of patents and/or copyrights, including costs of defending related suits for which the Design-Builder is not responsible as set forth in Paragraph 3.7, and deposits lost for causes other than the Design-Builder's negligence.

8.2.13 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work and/or redesign during the Construction Phase and for a period of one year following the Date of Substantial Completion, provided that such corrective work and/or redesign did not arise from the negligence of the Design-Builder.

8.2.14 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

8.2.15 Reproduction costs, photographs, cost of telegrams, facsimile transmissions, long distance telephone calls, data processing services, postage, express delivery charges, telephone service at the Worksite and reasonable petty cash expenses at the field office.

8.2.16 All water, power and fuel costs necessary for the Work.

8.2.17 Cost of removal of all non-hazardous substances, debris and waste materials.

8.2.18 Costs incurred due to an emergency affecting the safety of persons and/or property.

8.2.19 Legal, mediation and arbitration fees and costs, other than those arising from disputes between the Owner and the Design-Builder, reasonably and properly resulting from the Design-Builder's performance of the Work.

8.2.20 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Design-Builder's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

8.3 DISCOUNTS All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Design-Builder, all cash discounts shall accrue to the Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9

CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished, without invalidating this Agreement, by Change Order, Work Change Directive, or a minor change in the work, subject to the limitations stated in the Contract Documents.

9.1 CHANGE ORDER

9.1.1 The Design-Builder may request and/or the Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions to the GMP or the estimated cost of the work, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion being adjusted accordingly. All such changes in the Work shall be authorized by applicable Change Order, and shall be performed under the applicable conditions of the Contract Documents.

9.1.2 Each adjustment in the GMP and/or estimated Cost of the Work resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase Services, other Cost of the Work and the Design-Builder's Fee, with the Design-Builder's Fee not to exceed _____ percent (_____%). ♦

9.1.3 The Owner and the Design-Builder shall negotiate in good faith an appropriate adjustment to the GMP or the estimated Cost of the Work, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the GMP, the estimated Cost of the Work, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion shall not be unreasonably withheld.

9.2 WORK CHANGE DIRECTIVES

9.2.1 The Owner may issue a written Work Change Directive directing a change in the Work prior to reaching agreement with the Design-Builder on the adjustment, if any, in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate, the compensation for Design Phase Services.

9.2.2 The Owner and the Design-Builder shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP, estimated Cost of the Work, the

Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, arising out of Work Change Directives. As the changed work is completed, the Design Builder shall submit its costs for such work with its application for payment beginning with the next application for payment within thirty (30) days of the issuance of the Work Change Directive. Pending final determination of cost to the Owner, amounts not in dispute may be included in applications for payment and shall be paid by Owner.

9.2.3 If the Owner and the Design-Builder agree upon the adjustments in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, for a change in the Work directed by a Work Change Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Change Directives issued since the last Change Order.

9.3 MINOR CHANGES IN THE WORK

9.3.1 The Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

9.3.2 The Design-Builder shall promptly inform the Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by the Design-Builder.

9.4 UNKNOWN CONDITIONS If in the performance of the Work the Design-Builder finds latent, concealed or subsurface physical conditions which materially differ from the conditions the Design-Builder reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement, then the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed. The Design-Builder shall provide the Owner with written notice within the time period set forth in Paragraph 9.6.

9.5 DETERMINATION OF COST

9.5.1 An increase or decrease in the GMP and/or estimated Cost of the Work resulting from a change in the Work shall be determined by one or more of the following methods:

- .1** unit prices set forth in this Agreement or as subsequently agreed;
- .2** a mutually accepted, itemized lump sum;
- .3** costs determined as defined in Paragraph 7.2 and Article 8 and a mutually acceptable Design-Builder's Fee as determined in Subparagraph 7.4.1; or
- .4** if an increase or decrease cannot be agreed to as set forth in Clauses 9.5.1.1 through 9.5.1.3 above, and the Owner issues a Work Change Directive, the cost of the change in the Work shall be determined by the reasonable actual expense and savings of the performance of the Work resulting from the change. If there is a net increase in the GMP, the Design-Builder's Fee shall be adjusted as set forth in Subparagraph 7.4.1. In case of a net decrease in the GMP, the Design-Builder's Fee shall not be adjusted unless ten percent (10%) or more of the Project is deleted. The Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.5.2 If unit prices are indicated in the Contract Documents or are subsequently agreed to by the parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Design-Builder, such unit prices shall be equitably adjusted.

9.5.3 If the Owner and the Design-Builder disagree as to whether work required by the Owner is within the scope of the Work, the Design-Builder shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. If the Owner issues a written order for the Design-Builder to proceed, the Design-Builder shall perform the disputed work and the Owner shall pay the Design-Builder fifty percent (50%) of its estimated cost to perform the work. In such event, both parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Design-Builder's receipt of payment for the disputed work does not prejudice

its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

9.6 CLAIMS FOR ADDITIONAL COST OR TIME For any claim for an increase in the GMP, estimated Cost of the Work, the Design-Builder's Fee and the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, the Design-Builder shall give the Owner written notice of the claim within twenty-one (21) days after the occurrence giving rise to the claim or within twenty-one (21) days after the Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the Owner, but which do not proceed, shall be made within twenty-one (21) days after the decision is made not to proceed. Any change in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, resulting from such claim shall be authorized by Change Order.

9.7 EMERGENCIES In any emergency affecting the safety of persons and/or property, the Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, on account of emergency work shall be determined as provided in this Article.

9.8 CHANGES IN LAW In the event any changes in laws or regulations affecting the performance of the Work are enacted after either the date of this Agreement or the date a GMP Proposal is accepted by the Owner and set forth in Amendment No. 1 to this Agreement, whichever occurs later, the GMP, estimated Cost of the Work, the Design-Builder's Fee, the Date of Substantial Completion and/or the Date of Final Completion, and if appropriate the compensation for Design Phase Services, shall be equitably adjusted by Change Order.

ARTICLE 10

PAYMENT FOR CONSTRUCTION PHASE SERVICES

10.1 PROGRESS PAYMENTS

10.1.1 On the _____ day of each month after the Construction Phase has commenced, the Design-Builder shall submit to the Owner an application for payment consisting of the Cost of the Work performed up to the _____ day of the month, including the cost of material suitably stored on the Worksite or at other locations approved by the Owner, along with a proportionate share of the Design-Builder's Fee. Approval of payment applications for such stored materials shall be conditioned upon submission by the Design-Builder of bills of sale and applicable insurance or such other procedures satisfactory to the Owner to establish the Owner's title to such materials, or otherwise to protect the Owner's interest, including transportation to the site. Prior to submission of the next application for payment, the Design-Builder shall furnish to the Owner a statement accounting for the disbursement of funds received under the previous application. The extent of such statement shall be as agreed upon between the Owner and the Design-Builder.

10.1.2 Within ten (10) days after receipt of each monthly application for payment, the Owner shall give written notice to the Design-Builder of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within fifteen (15) days after accepting such application, the Owner shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Design-Builder cannot agree on a revised amount then, within fifteen (15) days after its initial rejection in part of such application, the Owner shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.

10.1.3 If the Owner fails to pay the Design-Builder at the time payment of any amount becomes due, then the Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) days after receipt of the notice by the Owner, and after such seven day period, stop the Work until payment of the amount owing has been received.

10.1.4 Payments due but unpaid pursuant to Subparagraph 10.1.2, less any amount retained pursuant to Para-

graphs 10.2 and 10.3 may bear interest from the date payment is due at the prime rate prevailing at the place of the Project.

10.1.5 The Design-Builder warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Design-Builder, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens."

10.1.6 The Owner's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

10.1.7 Upon Substantial Completion of the Work, the Owner shall pay the Design-Builder the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Design-Builder's Fee, less one-hundred-fifty percent (150%) of the cost of completing any unfinished items as agreed to between the Owner and the Design-Builder as to extent and time for completion. The Owner thereafter shall pay the Design-Builder monthly the amount retained for unfinished items as each item is completed.

10.2 RETAINAGE From each progress payment made prior to the time Substantial Completion of the Work has been reached, the Owner shall retain _____ percent (_____ %), if required, of the amount otherwise due after deduction of any amounts as provided in Paragraph 10.3 of this Agreement. If the Owner chooses to use this retainage provision:

.1 at the time the Work is fifty percent (50%) complete and thereafter, the Owner may choose to withhold no more retainage and pay the Design-Builder the full amount of what is due on account of subsequent progress payments;

.2 once each early finishing trade Subcontractor has completed its work and that work has been accepted by the Owner, the Owner may release final retention on such work;

.3 in lieu of retainage, the Design-Builder may furnish securities, acceptable to the Owner, to be held by the Owner. The interest on such securities shall accrue to the Design-Builder;

.4 the Owner may, in its sole discretion, reduce the amount to be retained at any time.

10.3 ADJUSTMENT OF DESIGN-BUILDER'S APPLICATION FOR PAYMENT The Owner may adjust or reject an application for payment or nullify a previously approved Design-Builder application for payment, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Design-Builder is responsible under this Agreement:

- .1 the Design-Builder's repeated failure to perform the Work as required by the Contract Documents;
- .2 loss or damage arising out of or relating to this Agreement and caused by the Design-Builder to the Owner or Others to whom the Owner may be liable;
- .3 the Design-Builder's failure to properly pay the Architect/Engineer, Subcontractors or Material Suppliers for labor, materials, equipment or supplies furnished in connection with the Work, provided that the Owner is making payments to the Design-Builder in accordance with the terms of this Agreement;
- .4 Defective Work not corrected in a timely fashion;
- .5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion and/or the Date of Final Completion, and that the unpaid balance of the GMP is not sufficient to offset any direct damages that may be sustained by the Owner as a result of the anticipated delay caused by the Design-Builder; and
- .6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work.

The Owner shall give written notice to the Design-Builder at the time of disapproving or nullifying all or part of an application for payment of the specific reasons. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for the amount previously withheld.

10.4 OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK

10.4.1 Portions of the Work that are completed or partially completed may be used or occupied by the Owner when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) and/or sureties consent to the occupancy or use, and (c) appropriate

public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. The Design-Builder shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to the Owner.

10.5 FINAL PAYMENT

10.5.1 Final Payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Design-Builder's Fee, shall be due and payable when the work is fully completed. Before issuance of final payment, the Owner may request satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

10.5.2 In making final payment the Owner waives all claims except for:

- .1 outstanding liens;
- .2 improper workmanship or defective materials appearing within one year after the Date of Substantial Completion;
- .3 work not in conformance with the Contract Documents; and
- .4 terms of any special warranties required by the Contract Documents.

10.5.3 In accepting final payment, the Design-Builder waives all claims except those previously made in writing and which remain unsettled.

ARTICLE 11

INDEMNITY, INSURANCE, BONDS, AND WAIVER OF SUBROGATION

11.1 INDEMNITY

11.1.1 To the fullest extent permitted by law, the Design-Builder shall defend, indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents and employees from all claims for bodily injury and property damage (other than to the Work itself and other property required to be insured under Paragraph 11.5 owned by or in the custody of the owner), that may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions by the Design-Builder, Subcontractors or anyone employed directly or indirectly by

any of them or by anyone for whose acts any of them may be liable. The Design-Builder shall not be required to defend, indemnify or hold harmless the Owner, Owner's officers, directors, members, consultants, agents and employees for any acts, omissions or negligence of the Owner, the Owner's officers, directors, members, consultants, employees, agents or separate contractors.

11.1.2 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Design-Builder, its officers, directors or members, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under Paragraph 11.5, that may arise from the performance of work **by** Others, to the extent of the negligence attributed to such acts or omissions by Others.

11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

11.2.1 The Design-Builder shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Agreement, whether resulting from the Design-Builder's operations or from the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:

- .1** workers' compensation, disability and other employee benefit claims under acts applicable to the Work;
- .2** under applicable employer's liability law, bodily injury, occupational sickness, disease or death claims of the Design-Builder's employees;
- .3** bodily injury, sickness, disease or death claims for damages to persons not employed by the Design-Builder;
- .4** personal injury liability claims for damages directly or indirectly related to the person's employment by the Design-Builder or for damages to any other person;
- .5** claims for physical injury to tangible property, including all resulting loss of use of that property, to property other than the Work itself and property insured under Paragraph 11.5;
- .6** bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle; and
- .7** contractual liability claims involving the Design-Builder's obligations under Subparagraph 11.1.1.

11.2.2 The Design-Builder's Commercial General and Automobile Liability Insurance as required by Subparagraph 11.2.1 shall be written for not less than the following limits of liability:

.1 Commercial General Liability Insurance

- a. Each Occurrence Limit
\$ _____ ◆
- b. General Aggregate
_____ ◆
- c. Products/Completed Operations Aggregate
\$ _____ ◆
- d. Personal and Advertising Injury Limit
\$ _____ ◆

.2 Comprehensive Automobile Liability Insurance

- a. Combined Single Limit Bodily Injury and Property Damage
\$ _____ Each Occurrence ◆
- b. Bodily Injury
\$ _____ Each Person ◆
_____ Each Occurrence ◆
- c. Property Damage
\$ _____ Each Occurrence ◆

11.2.3 Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies and an Excess or Umbrella Liability policy.

11.2.4 The policies shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the Owner. Certificates of insurance showing required coverage to be in force shall be filed with the Owner prior to commencement of the Work.

11.2.5 Products and Completed Operations insurance shall be maintained for a minimum period of at least _____ year(s) after either final payment or Substantial Completion ninety (90) days following the Date of _____, whichever is earlier. ◆

11.3 PROFESSIONAL LIABILITY INSURANCE The Design Builder shall obtain, either itself or through the Architect/Engineer, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

General Office Coverage

Project Specific Professional Liability Insurance
(Cross-out one of the above),

written for not less than \$_____ per claim and in the aggregate with a deductible not to exceed \$_____. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Architect/Engineer. This coverage shall be continued in effect for _____ year(s) after the Date of Substantial Completion.

11.4 OWNER'S LIABILITY INSURANCE The Owner shall be responsible for obtaining and maintaining its own liability insurance. Insurance for claims arising out of the performance of this Agreement may be purchased and maintained at the Owner's discretion. The Owner shall provide the Design-Builder with a certificate of insurance at the request of the Design-Builder.

11.5 INSURANCE TO PROTECT PROJECT

11.5.1 The Owner shall obtain and maintain "All Risk" Builder's Risk insurance in a form acceptable to the Design-Builder upon the entire Project for the full cost of replacement at the time of any loss. This insurance shall include as named insureds the Owner, the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors. This insurance shall include "all risk" insurance for physical loss or damage including without duplication of coverage at least: theft, vandalism, malicious mischief, transit, materials stored off site, collapse, falsework, temporary buildings, debris removal, flood, earthquake, testing, and damage resulting from defective design, workmanship or material. The Owner shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The insurance policy shall be written without a co-insurance clause. The Owner shall be solely responsible for any deductible amounts.

11.5.2 If the Owner occupies or uses a portion of the Project prior to its Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and the Design-Builder. Permission for partial occupancy from the insurance company shall be included as standard in the property insurance policy, to ensure that this insurance shall not be canceled or lapsed on account of partial occupancy. Consent of the Design-Builder to such early occupancy or use shall not be unreasonably withheld.

11.5.3 The Owner shall obtain and maintain boiler and machinery insurance as necessary. The interests of the Owner, the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors shall be protected under this coverage.

11.5.4 The Owner shall purchase and maintain insurance to protect the Owner, the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors against loss of use of the Owner's property due to those perils insured pursuant to Paragraph 11.5. Such policy will provide coverage for expediting expenses of materials, continuing overhead of the Owner and the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors, necessary labor expense including overtime, loss of income by the Owner and other determined exposures. Exposures of the Owner, the Design-Builder, the Architect/Engineer, Subcontractors and Subsubcontractors, shall be determined by mutual agreement with separate limits of coverage fixed for each item.

11.5.5 The Owner shall provide the Design-Builder with a copy of all property insurance policies before an exposure to loss may occur. Copies of any subsequent endorsements shall be furnished to the Design-Builder. The Design-Builder shall be given thirty (30) days notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage. The Owner shall give written notice to the Design-Builder before commencement of the Work if the Owner will not be obtaining property insurance. In that case, the Design-Builder may obtain insurance in order to protect its interest in the Work as well as the interest of the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors in the Work. The cost of this insurance shall be a Cost of the Work pursuant to Article 8, and the GMP shall be increased by Change Order. If the Design-Builder is damaged by the failure of the Owner to purchase or maintain property insurance or to so notify the Design-Builder, the Owner shall bear all reasonable costs incurred by the Design-Builder arising from the damage.

11.5.6 The Owner shall have the right to self-insure against the risks covered in Subparagraphs 11.5.1 and 11.5.4 upon providing evidence satisfactory to the Design-Builder of the ability to so self-insure.

11.6 PROPERTY INSURANCE LOSS ADJUSTMENT

11.6.1 Any insured loss shall be adjusted with the Owner and the Design-Builder and made payable to the Owner and Design-Builder as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

11.6.2 Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the

agreement of the parties in interest, or in the absence of such agreement, in accordance with a dispute resolution award pursuant to Article 13. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to Article 13.

11.7 WAIVER OF SUBROGATION

11.7.1 The Owner and the Design-Builder waive all rights against each other, the Architect/Engineer, and any of their respective employees, agents, consultants, Subcontractors, Material Suppliers and Subsubcontractors for damages covered by the insurance provided pursuant to Paragraph 11.5 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and the Design-Builder as trustees. The Design-Builder shall require similar waivers from the Architect/Engineer and all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements.

11.7.2 The Owner waives subrogation against the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers and Subsubcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

11.7.3 The policies shall also be endorsed to state that the carrier waives any right of subrogation against the Design-Builder, the Architect/Engineer, Subcontractors, Material Suppliers, or Subsubcontractors.

11.8 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES The Owner and the Design-Builder agree to waive all claims against the other for all consequential damages that may arise out of or relate to this Agreement. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Property, all rental expenses incurred, loss of services of employees, or loss of reputation. The Design-Builder agrees to waive damages including but not limited to the loss of business, loss of financing, principal office overhead and profits, loss of profits not related to this Project, or loss of reputation. This paragraph shall not be construed to preclude contractual provisions for liquidated damages when such provisions relate to direct damages only. The provisions of this paragraph shall govern the termination of this Agreement and shall survive such termination.

11.9 BONDING

11.9.1 Performance and Payment Bonds

are

are not

(Cross-out one of the above) ◆

required of the Design-Builder. Such bonds shall be issued by a surety licensed in the state of the location of the Project and must be acceptable to the Owner.

11.9.2 Such Performance Bond shall be issued in the penal sum equal to one-hundred percent (100%) of the

GMP (if there is no GMP, then the agreed estimated cost of the Project, including design and construction).

agreed estimated construction cost of the Project.
(Cross-out one of the above) ◆

Such Performance Bond shall cover the cost to complete the Work, but shall not cover any damages of the type specified to be covered by the insurance pursuant to Paragraph 11.2 and Paragraph 11.3, whether or not such insurance is provided or is in an amount sufficient to cover such damages.

11.9.3 The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond.

ARTICLE 12

SUSPENSION AND TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM DESIGN-BUILDER'S RESPONSIBILITIES

12.1 SUSPENSION BY THE OWNER FOR CONVENIENCE

12.1.1 The Owner may order the Design-Builder in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate for its convenience.

12.1.2 Adjustments caused by suspension, delay or interruption shall be made for increases in the GMP, compensation for Design Phase Services, the Design-Builder's Fee and/or the Date of Substantial Completion and/or the Date of Final Completion. No adjustment shall be made if the Design-Builder is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

12.2 OWNER'S RIGHT TO PERFORM DESIGN-BUILDER'S OBLIGATIONS AND TERMINATION BY THE OWNER FOR CAUSE

12.2.1 If the Design-Builder persistently fails to perform any of its obligations under this Agreement, the Owner may, after five (5) days' written notice, during which period the Design-Builder fails to perform such obligation, undertake to perform such obligations. The GMP shall be reduced by the cost to the Owner of performing such obligations.

12.2.2 Upon an additional five (5) days' written notice to the Design-Builder and the Design-Builder's surety, if any, the Owner may terminate this Agreement for any of the following reasons:

- .1** if the Design-Builder persistently utilizes improper materials and/or inadequately skilled workers;
- .2** if the Design-Builder does not make proper payment to laborers, Material Suppliers or Subcontractors, provided that the Owner is making payments to the Design-Builder in accordance with the terms of this Agreement;
- .3** if the Design-Builder persistently fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or
- .4** if the Design-Builder otherwise materially breaches this Agreement.

If the Design-Builder fails to cure or commence and continue to cure within the five (5) days, the Owner, without prejudice to any other right or remedy, may take possession of the Worksite and complete the Work utilizing any reasonable means. In this event, the Design-Builder shall not have a right to further payment until the Work is completed.

12.2.3 If the Design-Builder files a petition under the Bankruptcy Code, this Agreement shall terminate if the Design-Builder or the Design-Builder's trustee rejects the Agreement or, if there has been a default, the Design-Builder is unable to give adequate assurance that the Design-Builder will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.2.4 In the event the Owner exercises its rights under Subparagraph 12.2.1 or 12.2.2, upon the request of the Design-Builder the Owner shall provide a detailed accounting of the cost incurred by the Owner.

12.3 TERMINATION BY OWNER WITHOUT CAUSE

If the Owner terminates this Agreement other than as set forth in Paragraph 12.2, the Owner shall pay the Design-Builder for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all demobilization costs. In addition, the Design-Builder shall be paid an amount calculated as set forth below:

.1 If the Owner terminates this Agreement prior to commencement of the Construction Phase, the Design-Builder shall be paid for the Design-Builder's Design Phase services provided to date as set forth in Subparagraph 7.1.2 and 7.1.3, and a premium as set forth below:

(Insert here the amount agreed to by the parties) ♦

.2 If the Owner terminates this Agreement after commencement of the Construction Phase, the Design-Builder shall be paid for the Construction Phase Services provided to date pursuant to Subparagraph 7.2.1 and a premium as set forth below:

(Insert here the amount agreed to by the parties) ♦

.3 The Owner shall also pay to the Design-Builder fair compensation, either by purchase or rental at the election of the Owner, for all equipment retained. The Owner shall assume and become liable for obligations, commitments and unsettled claims that the Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this Article 12, the Design-Builder shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Design-Builder's rights and benefits to the Owner, including the execution and delivery of required papers.

12.4 TERMINATION BY THE DESIGN-BUILDER

12.4.1 Upon five (5) days' written notice to the Owner, the Design-Builder may terminate this Agreement for any of the following reasons:

- .1** if the Work has been stopped for a sixty (60) day period
 - a. under court order or order of other governmental authorities having jurisdiction; or
 - b. as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Design-Builder, materials are not available;
- .2** if the Work is suspended by the Owner for sixty (60) consecutive days;
- .3** if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with Subparagraph 4.1.3 of this Agreement.

12.4.2 If the Owner has for thirty (30) days failed to pay the Design-Builder pursuant to Subparagraph 10.1.2, the Design-Builder may give written notice of its intent to terminate this Agreement. If the Design-Builder does not receive payment within five (5) days of giving written notice to the Owner, then upon five (5) days' additional written notice to the Owner, the Design-Builder may terminate this Agreement.

12.4.3 Upon termination by the Design-Builder in accordance with this Subparagraph, the Design-Builder shall be entitled to recover from the Owner payment for all Work executed and for all proven loss, cost or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, the Design-Builder shall be paid an amount calculated as set forth either in Subparagraph 12.3.1 or 12.3.2, depending on when the termination occurs, and Subparagraph 12.3.3.

ARTICLE 13

DISPUTE RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Design-Builder shall continue the Work and maintain the approved schedules during all dispute resolution proceedings. If the Design-Builder continues to perform, the Owner shall continue to make payments in accordance with the Agreement.

13.2 INITIAL DISPUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to the dispute resolution procedures contained in this Agreement. The location of the mediation shall be the location of the Project. Once one party files a request for mediation with the other contracting party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the party's representative to the other party's representative and the mediator.

13.3 EXHIBIT NO. 1 If the dispute cannot be settled by mediation within sixty (60) days, the parties shall submit the dispute to any dispute resolution process set forth in Exhibit No. 1 to this Agreement.

13.4 MULTIPARTY PROCEEDING The parties agree that all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of such dispute resolution proceedings.

13.5 COST OF DISPUTE RESOLUTION The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by the dispute resolution process set forth in Exhibit No. 1 to this Agreement shall be entitled to recover from the other party those reasonable attorneys fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process after direct discussions and mediation.

13.6 LIEN RIGHTS Nothing in this Article shall limit any rights or remedies not expressly waived by the Design-Builder which the Design-Builder may have under lien laws.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 ASSIGNMENT Neither the Owner nor the Design-Builder shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both parties, their partners, successors, assigns and legal representatives. Neither party to this Agreement shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly-owned subsidiary of the Owner when the Owner has fully indemnified the Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Design-Builder than this Agreement. In the event of such assignment, the Design-Builder shall execute all consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either party attempts to make such an assignment, that party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other party.

14.2 GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.

14.3 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.4 NO WAIVER OF PERFORMANCE The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

14.5 TITLES AND GROUPINGS The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

14.6 JOINT DRAFTING The parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to exe-

cution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

14.7 RIGHTS AND REMEDIES The parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

14.8 OTHER PROVISIONS ◆

ARTICLE 15

EXISTING CONTRACT DOCUMENTS

The Contract Documents in existence at the time of execution of this Agreement are as follows:



As defined in Subparagraph 2.4.1, the following Exhibits are a part of this Agreement:

EXHIBIT NO. 1 Dispute Resolution Menu, one page.

EXHIBIT NO. 2 Agreement establishing Fast-track approach and Schedule of the Work, _____ pages. 4

EXHIBIT NO. 3 Labor Relations provisions, _____ pages. 4

This Agreement is entered into as of the date entered in Article 1.

OWNER: _____ ◆

ATTEST: _____ ◆

BY: _____ 4

PRINT NAME: _____ 4

PRINT TITLE: _____ ◆

DESIGN-BUILDER: _____ 4

ATTEST: _____ ◆

BY: _____ ◆

PRINT NAME: _____ 4

PRINT TITLE: _____ 4

AMENDMENT NO. 1
TO

**AGC DOCUMENT NO. 410
STANDARD FORM OF DESIGN-BUILD AGREEMENT AND
GENERAL CONDITIONS BETWEEN OWNER AND DESIGN-BUILDER
(Where the Basis of Payment is the Cost of the Work
Plus a Fee with a Guaranteed Maximum Price)**

Pursuant to Paragraph 3.2 of the Agreement dated _____
between the Owner, _____
and the Design-Builder, _____
for _____ (the Project),
the Owner and the Design-Builder desire to establish a Guaranteed Maximum Price ("GMP") for the Work. Therefore, the Owner
and the Design-Builder agree as follows:

ARTICLE 1

GUARANTEED MAXIMUM PRICE

The Design-Builder's GMP for the Work, including the Cost of the Work as defined in Article 8 and the Design-Builder's Fee as
set forth in Paragraph 7.3, is _____
Dollars (\$ _____)

The GMP is for the performance of the Work in accordance with the documents listed below, which are part of the Agreement.

APPENDIX ____ Drawings and Specifications, including Addenda, if any, dated _____, _____ pages. ◆
APPENDIX ____ Allowance Items, dated _____, _____ pages. ◆
APPENDIX ____ Assumptions and Clarifications, dated _____, _____ pages. ◆
APPENDIX ____ Schedule of Work, dated _____, _____ pages. ◆
APPENDIX ____ Alternate Prices, dated _____, _____ pages. ◆
APPENDIX ____ Unit Prices, dated _____, _____ pages. ◆
APPENDIX ____ Additional Services included, dated _____, _____ pages. ◆

ARTICLE 2

DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the Work is _____ . ♦

ARTICLE 3

DATE OF FINAL COMPLETION

The Date of Final Completion of the Work is: _____ ♦
or within _____ (_____) days after the Date of Substantial Completion, ♦
subject to adjustments **as** provided for in the Contract Documents.

This Amendment is entered into as of _____ ♦

OWNER: _____ ♦
ATTEST: _____ ♦ BY: _____ ♦
PRINT NAME: _____ ♦
PRINT TITLE: _____ ♦

DESIGN-BUILDER: _____ ♦
ATTEST _____ ♦ BY: _____ ♦
PRINT NAME: _____ ♦
PRINT TITLE: _____ ♦

AGC DOCUMENT NO. 410
STANDARD FORM OF DESIGN-BUILD
AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND DESIGN-BUILDER
(Where the Basis of Payment is the Cost of the Work
Plus a Fee with a Guaranteed Maximum Price)

DISPUTE RESOLUTION MENU

Pursuant to Paragraph 13.3, if neither direct discussions nor mediation successfully resolve the dispute, the parties agree that the following shall be used to resolve the dispute.

(Check the appropriate selection(s). These procedures can be used singularly, or progressively, as agreed to by the parties.)

___ **Dispute Review Board** The Dispute Review Board is composed of one member selected by the Owner, one selected by the Design-Builder, and a third member selected by the Owner and Design-Builder selected members. This Board shall be selected by the time construction commences, shall meet periodically, and shall make advisory decisions which may be introduced into evidence at any subsequent dispute resolution process. If a Dispute Review Board is selected, it is understood its review will precede mediation. ◆

Advisory Arbitration Advisory Arbitration shall be pursuant to the Construction Industry Rules of the American Arbitration Association. ◆

___ **Mini Trial** Each party, in the presence of senior management, shall submit its position to a mutually selected individual who shall make a non-binding recommendation to the parties. Such advisory decision may be introduced into evidence at any subsequent dispute resolution process.

Binding Arbitration Binding Arbitration shall be pursuant to the Construction Industry Rules of the American Arbitration Association unless the parties mutually agree otherwise. A written demand for arbitration shall be filed with the American Arbitration Association and the other party to the Agreement within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding would have run. The location of the arbitration proceedings shall be at the office of the American Arbitration Association nearest the Project, unless the parties agree otherwise. The arbitration award shall be final. Notwithstanding Paragraph 14.2, this agreement to arbitrate shall be governed by the Federal Arbitration Act and judgment upon the award may be confirmed in any court having jurisdiction. ◆

___ **Litigation** Action may be filed in the appropriate state or federal court located in the jurisdiction in which the Project is located. ◆

Valuation Services

11232 Wright Circle

o

Omaha, Nebraska 68144

•

(402)397-8080

May 23, 2003

Mr. Marlin Peterman
Papio Missouri River NRD
8901 South 154th Street
Omaha, Nebraska 68138-6222

RECEIVED

MAY 27 2003

Re: Proposal to prepare appraisal reports
Western Sarpy/Clear Creek Flood Reduction Project
23 Tracts – Various Owners

Dear Mr. Peterman:

As requested, I am submitting a bid to prepare appraisal reports for properties being impacted by the Western Sarpy/Clear Creek Flood Reduction Project. Based on the information available as of the date of this proposal, my services will include preparing appraisals on up to 23 individual cabins in the project area as well as three (3) unimproved land parcels.

The purpose of these appraisals will be to estimate the market value of the properties in their “as is” condition as well as estimate the market value of the properties “after” the project is completed. The project will entail physically raising each of the properties being appraised above the established 100 year floodplain and determining what impact, if any, this raising of the structures has on their market value. I will also estimate damages to the properties (if any) for acquisition of permanent flowage easements on the properties.

In general, one of three different appraisal scenarios will be required when appraising these properties. These scenarios are as follows:

- 1) In cases of easement acquisition where the land and improvements are owned by the same person, appraise the fair market value of the entire property (land and improvements) before the acquisition and subtract the appraised value of the fair market value of the entire property (land and improvements) after the acquisition.
- 2) In cases of easement acquisition where the land and improvements are owned by the same person but are leased to a second person:

For the Tenant: Appraise the fair market value of the lessee’s leasehold, using the “bargain rent” method

For the owner of the land and improvements: Appraise the fair market value of the entire property (land and improvements) before the acquisition as subject to the lease and subtract the appraised fair market value of the entire property (land and improvements) after the acquisition as subject to the lease.

- 3) In cases of easement acquisition where the land and improvements are owned by different persons:

For the Tenant: Appraise the fair market value of the lessee's leasehold using the "bargain rent" method.

For the owner of the land and improvements: Appraise the fair market value of the entire property (land and improvements) before the acquisition as subject to the lease and without the improvements and subtract the fair market value of the entire property (land and improvements) after the acquisition as subject to the lease and without the improvements.

At this point in time, it is not possible to determine which scenario will be used in the appraisal of the individual properties. Also, the type of leases and ownership situations that will be encountered is uncertain for each tract. Given the uncertainty associated with the type of appraisal required for each property, I have identified a range of appraisal fees that will be applicable for this assignment with a maximum contract amount based on the appraisal of 23 improved tracts and 3 unimproved tracts. My proposed fee schedule is as follows:

	Individual Tract <u>Fee</u>	Total Minimum <u>Fee</u>	Total Maximum <u>Fee</u>
Preparation of Project Report to be used on all Tracts	\$3,500	\$ 3,500	\$ 3,500
Appraisal of Improved Cabin Properties Based on One of Three Scenarios Provided (23)	\$1,200- \$1,800	\$27,600	\$41,400
Vacant Land Appraisals (3)	\$1,500	<u>\$ 4,500</u>	<u>\$ 4,500</u>
TOTAL PROJECT FEE		\$35,600 -	\$49,400

My proposed fee reflects the cost associated with completing the appraisal reports based on information available at the time of preparation. This fee is inclusive of all time, travel, and out-of-pocket expenses which I may incur for the 23 improved tracts and 3 unimproved tracts. **Any** additional tracts requiring appraisal will be billed at the above rates. Any revisions or corrections to the original appraisal reports which are required as a direct result of changes in original facts made by the Papio Missouri Natural Resources District after the reports have been prepared and delivered shall be at additional expense and will be billed at the rate of \$75.00 per hour of time spent on said corrections with a minimum revision fee of \$300 per tract.

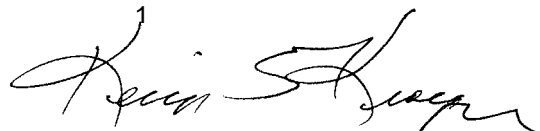
The above outlined appraisal fees does not include compensation for time required if the right of eminent domain is required to be exercised by the Papio Missouri Natural Resources District. Time required for pre-trial preparation and subsequent hearings shall be billed in addition to the above outlined fees. Hours involved in court testimony and condemnation proceedings will be billed at a rate of \$125.00 per hour or \$1,000 per day. An itemized list detailing the time spent on these items will be provided at the time any invoice requesting payment for said services is submitted.

Given the fact that all information is not currently available, a specific timeline for completion of the appraisal work cannot be established at this time. However, a project of this magnitude will likely take upwards of 90 working days to complete once all information is made available. As it is unlikely that all required information will be obtained at a single point in time, I propose to first complete the project report within **60** days of receiving authorization to proceed and will then proceed to complete the individual tract reports as pertinent information is made available. Assuming no undue delay in obtaining the required documentation, a completion date of no later than November 31, 2003 would appear likely for all tracts involved in this project. Also, I will provide you with four **(4)** copies of the project report as well as all individual appraisal reports upon their completion.

By providing you with this proposal, I understand that I will be solely responsible for satisfying the appraisal requirements of the Papio Missouri Natural Resources District. Payment of my appraisal fee by the Papio Missouri Natural Resources District will not be required until such time that the reports have been reviewed and approved by proper authority.

Should you elect to retain my services to complete the work outlined in this proposal, please sign and return one copy of this letter to my attention. If you have any questions concerning this proposal, please contact me at your convenience. Thank you for the opportunity to provide you with this proposal.

Sincerely,



Kevin S. Kroeger
Valuation Services

Acceptance:

Mr. Marlin Peterman
Papio Missouri River Natural Resources District

Acceptance Date

MIDWEST

Right of Way Services, Inc.

May 29, 2003

RE: Proposal for Right of Way Services
Papio-Missouri River Natural Resources District
Western Sarpy/Clear Creek Flood Reduction Project
Structure (Cabin) Raise/Buyout Negotiations

Mr. Martin Cleveland
Project Manager
Papio-Missouri River Natural Resources District
8901 South 154th Street
Omaha, Nebraska 68118-3621

Dear Mr. Cleveland:

Midwest Right of Way Services, Inc. is pleased to provide this proposal for right of way services for the above-referenced project in Sarpy and Saunders Counties, Nebraska.

Consultant and Key Personnel

Consultant - Midwest Right of Way Services, Inc.
10730 Pacific Street, Suite 243
Omaha, Nebraska 68114
(402) 955-2900

Key Personnel - Jack Borgmeyer, Right of Way Manager

Project Understanding

This project involves the negotiation for acquisition of land and/or improvements from twenty-three property owners or tenants. It will also involve the negotiation for agreements between Papio-Missouri River Natural Resources District and cabin owners regarding the elevation of their existing structures if the owners/tenants decline to be bought out. Additionally, three levee easements will need to be acquired and flowage easements will also be needed from all property owners who own land rivenvard of the levee.

Mr. Martin Cleveland
May 29, 2003
Page 2

The properties involved are improved with mostly seasonal residences and will not require relocation assistance. There are two dwellings that appear to be primary residences which may require relocation assistance.

Work Plan/Approach

The following tasks will accomplish the project according to the intent of the Papio-Missouri River Natural Resources District.

Project Management

This task will involve coordination of all project elements so that work is initiated as it should be, appropriate progress is made, and schedules are met. A project meeting involving the right of way manager and the Papio-Missouri River Natural Resources District will be the project's first activity. Coordination and scheduling of the acquisition, closing, cabin-raising and relocation process, as well as the preparation of scheduled progress reports for the NRD, will be the responsibility of the right of way manager. Periodic progress meetings will be required throughout the acquisition process.

Appraisals

Appraisals of the property will be completed to estimate just compensation for the improvements to be acquired, or construction work for elevating each structure. The independent fee appraiser will be hired directly by the Papio-Missouri River Natural Resources District. The appraisal will be reviewed and approved by an independent reviewer.

Acquisition

The first step in the acquisition process is to review the title search, lease information and the appraisal report for the property. The necessary purchase documents will be prepared by the NRD's attorney and forwarded electronically to Midwest Right of Way Services, Inc. After the documents have been prepared and reviewed, an offer will be made to the property owner in writing. We will attempt to personally meet with the property owner at least three times, if necessary. During our visits, we will verify ownership information. Each visit will be documented on a call report and kept in the parcel file.

Mr. Martin Cleveland

May 29, 2003

Page 3

If necessary, a recommendation for a negotiated settlement will be made to the NRD. When an agreement is reached, we will obtain the necessary signatures of all interested parties. Our goal will be to acquire the necessary right of way through amicable negotiations. If condemnation is required, we will work with the NRD and its attorney to file the necessary documents and be available to assist with condemnation preparation or court testimony.

Relocation Assistance

If relocation assistance is necessary, Midwest's relocation agents will provide relocation assistance and advisory services in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Nebraska Relocation Assistance Act. They will work closely with the acquisition agent and meet with the NRD, if necessary, to discuss the case before making the offer of relocation assistance. They will follow the general procedures, provide services, create and maintain records, and submit reports and status reports as required by Papio-Missouri River Natural Resources District procedures. Tax differential payments will be calculated and lump sum or first-year payment claims will be submitted for processing, if applicable.

Team Members

Jack Borgmeyer, Project Manager, will be responsible for the execution of the project. He will direct the work of staff as well as any sub-contractors. Borgmeyer will submit the periodic progress reports to the NRD as scheduled and be available for acquisition negotiations if necessary. In addition, he will review the lease information and completed tract files before submittal for payment. Borgmeyer has over 25 years of real estate and right of way experience.

Carl Hibbeler, Right of Way Agent, will perform acquisition services as needed, and will be available to assist with relocation assistance duties. In addition, he will assist Borgmeyer in the review of titles, leases and contract documents. Hibbeler has over 30 years experience relating to government, real estate, appraisal, right of way acquisition, and relocation.

Gene Gilmore, Relocation Agent, will provide relocation assistance for this project. Gilmore has over 30 years of experience in relocation assistance to individuals and families, businesses, farms, and non-profit organizations. His extensive experience will be of great benefit to this project.

Mr. Martin Cleveland
May 29, 2003
Page 4

Chris Pawloski, Right of Way Agent, will perform right of way acquisitions or relocation assistance as needed. Pawloski has over four years experience in real estate, right of way acquisition and relocation assistance.

Stacey Kroeger, under the direction of Borgmeyer, will prepare all required documents. She has extensive experience with right of way documents and procedures.

Payment for Services

Midwest Right of Way Services proposes the right of way services detailed above for the following hourly fees:

	<i>Hourly Salary Rates</i>
Project Manager	\$75.00
Right of Way Agent/Relocation Agent	\$60.00

The maximum fees for each task will be as follows:

<u>Task</u>	<u>Maximum Fee</u>
Project Management	\$3,750.00
Acquisition of land and easements (per tract)	1,680.00
Relocation Assistance (Per residential case)	6,600.00
Condemnation	Court testimony and consultation to be billed at our standard hourly salary rate plus expenses, if needed.

The maximum fee for the project, which includes acquisition negotiations with 23 property owners/tenants for either a buyout or elevation of their structure, acquisition of flowage easements from all property owners rivenard of the levees, the acquisition of levee easements from three property owners, and relocation assistance for two primary residences is **\$60,630.00**.

Hourly fees will be billed at our standard hourly rate plus expenses. If additional work or meetings are requested beyond the scope indicated in this proposal, we will contact you to discuss revising the contract amount before the additional work is started. Invoices will be sent on an approximate monthly basis for services rendered.

Mr. Martin Cleveland
May 29, 2003
Page 5

Summary

We believe this proposal demonstrates our understanding of the project and the right of way acquisition and relocation process. We understand the importance of acquiring these property rights expeditiously and in a positive manner which results in fair treatment for both the property owner and the Papio-Missouri River Natural Resources District.

If the above described items are satisfactory to you, please sign and date the original **and** duplicate original of this letter in the space provided. Keep one executed copy of this letter for your files and return the duplicated copy to us for our files. Receipt of this letter contract will be considered our formal notice to proceed with the work.

Sincerely,

MIDWEST RIGHT OF WAY SERVICES, INC.

Jack Borgmeyer
President

ACCEPTANCE OF PROPOSAL AND AUTHORIZATION TO PROCEED

Authorized Representative
Papio-Missouri River Natural Resources District

Date: _____

nor

To: Marlin Petermann, Assistant General Manager
From: Paul Woodward, Water Resources Engineer
Date: June 3, 2003
Re: Papillion Creek Watershed, Stage II Study Contract with HDR Engineering

Last November, the Programs, Projects and Operations subcommittee was updated on the status of the Papillion Creek Watershed Partnership's (PCWP) activities including the overall Watershed Study and Management Plan being developed by HDR Engineering, Inc (HDR). It was noted at that time that this plan had been segmented into two stages and that the initial stage was nearly complete. This initial stage of the study was funded by contributions from each of the members of the Partnership and by a grant from the Environmental Protection Agency (EPA). A summary of PCWP contributions and expenses prior to April 24, 2003 is attached.

Since last November, the remainder of the EPA grant has been exhausted during completion of Stage I and the City of Omaha (City) is in the process of making the final payment to HDR. The City has managed the contract with HDR during Stage I because the City was responsible for the grant from EPA. However, the Papio-Missouri River NRD (P-MRNRD) is the administering agent for the PCWP and is responsible for handling contracts and funding. Therefore, representatives from the City and P-MRNRD decided that it was in the best interest of the Partnership for the P-MRNRD to execute and manage the contract for Stage II with HDR.

Negotiations between HDR, the City, and the P-MRNRD to prepare a scope of services for Stage II identified many areas of study as possibilities for services in Stage II. However, due to financial constraints, the following are the services finally selected by representatives from the City and the P-MRNRD, and approved by the Partnership:

- Provide on-going project management and the facilitation of an additional public forum (\$60,000).
- Continued support of NPDES Stormwater Permit Programs including an implementation plan and guidelines on how to use assessment tools from Stage I (\$75,000).
- Analysis of remaining U.S. Corps of Engineers flood control reservoirs in the watershed (\$200,000 to be funded by P-MRNRD).

The plans for areas of study not selected are as follows:

- The development of a Stormwater Utility Fee System could be performed by the Partnership under a separate contract for professional services (\$200,000 estimated cost).

- Modifications to the Stormwater Design Manual addressing both stormwater and erosion control will be completed by City staff and facilitation for adoption of the revised manual by all entities will be provided cooperatively through the PCWP.

In conclusion, the total cost of Stage II services provided by HDR, including the analysis of flood control reservoirs funded solely by the P-MRNRD, would be \$335,000 and the contract would be handled by P-MRNRD staff in cooperation with the City and on behalf of the PCWP. A copy of the proposed professional services contract with HDR, including a detailed scope and cost estimate, is attached.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute a professional services contract on behalf of the Papillion Creek Watershed Partnership with HDR Engineering, Inc. for the Papillion Creek Watershed Stage II Study for a maximum fee of \$335,000, subject to approval as to form by District Legal Council.

If you have any questions or concerns, please contact me at 444-6222 or pwoodward@papionrd.org.

PAPILLION CREEK WATERSHED PARTNERSHIP



Watershed Fund Summary

CONTRIBUTIONS

Entity	Annual (Contribution Amount)	Contribution- To-Date	Amount Due Aug. 1, 2003	Amount Due Aug. 1, 2004	Total Future Contributions
Bellevue	\$12,500.00	\$25,000.00	\$0.00	\$12,500.00	\$12,500.00
Bennington	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$2,000.00
Girls and Boys Town	\$1,000.00	\$2,000.00	\$0.00	\$1,000.00	\$1,000.00
Elkhorn	\$2,500.00	\$5,000.00	\$0.00	\$2,500.00	\$2,500.00
Gretna	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$2,000.00
La Vista	\$3,750.00	\$7,500.00	\$0.00	\$3,750.00	\$3,750.00
Omaha	\$100,000.00	\$300,000.00	\$0.00	\$0.00	\$0.00
Papillion	\$5,000.00	\$10,000.00	\$0.00	\$5,000.00	\$5,000.00
Ralston	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$5,000.00
Douglas County	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$80,000.00
Sarpy County	\$25,000.00	\$50,000.00	\$0.00	\$25,000.00	\$25,000.00
Papio NRD	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$100,000.00
TOTAL	\$244,250.00	\$494,000.00	\$94,500.00	\$144,250.00	\$238,750.00

EXPENSES

Item	Expense-To- Date	Future Expenses
HDR Engineering, Inc.	\$236,526.15	\$114,500.00
City of Omaha Reimbursement	\$0.00	\$11,778.17
Partnership Letterhead	\$175.00	\$0.00
Checks	\$15.00	\$0.00
CDM	\$7,245.45	\$33,000.00
TOTAL	\$243,961.60	\$159,278.17

(Envision and Web Hosting)

BALANCE

	Balance-To- Date	Future Balance
Contributions	\$494,000.00	\$732,750.00
Expenses	\$243,961.60	\$403,239.77
Interest	\$3,441.42	\$5,000.00
TOTAL	\$253,479.82	\$334,510.23

PARTNERS:

Cities of Bellevue, Bennington, Elkhorn, Girls and Boys Town, Gretna, LaVista, Omaha, Papillion, Ralston
Douglas and Sarpy Counties, Papio-Missouri River Natural Resources District

**STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR
STUDY AND REPORT PHASE
PROFESSIONAL SERVICES**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

[LOGOS]

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

And

As Modified by the Parties Hereto (all changes shown in red-line/strike-out format)

Copyright© 1996
National Society of Professional Engineers
1420 King Street, Alexandria, VA 223 14

American Consulting Engineers Council
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4344

**STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR
STUDY AND REPORT PHASE
PROFESSIONAL SERVICES**

This is an Agreement effective as of _____, 2003 “Effective Date”) between
Papio-Missouri River Natural Resources District (“OWNER”) and HDR Engineering, Inc. (“ENGINEER”).
OWNER retains ENGINEER to perform professional- services: in connection with Papillion Creek Watershed. Stage II Study
 (“Assignment” or “Project”).

OWNER and ENGINEER, in consideration of their mutual covenants as set forth herein, agree as follows:

ARTICLE 1--ENGINEER'S SERVICES

1.01 Scope

A. ENGINEER shall provide the services set forth in Exhibit SR-A.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin services as set forth in Exhibit SR-A.

C. If authorized in writing by OWNER, and agreed to by ENGINEER, services beyond the scope of this Agreement will be performed by ENGINEER for additional compensation.

ARTICLE 2--OWNER'S RESPONSIBILITIES

2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit SR-A.

ARTICLE 3--TIMES FOR RENDERING SERVICES

3.01 ENGINEER's services will be performed within the time period or by the date stated in Exhibit SR-A.

3.02 If ENGINEER's services are delayed or suspended in whole or in part by OWNER, ENGINEER shall be entitled to equitable adjustment of the time for performance and rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4--PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services of ENGINEER.

A. OWNER shall pay ENGINEER for services rendered under this Agreement as follows:
(Delete inapplicable language.)

~~1. A Lump Sum amount of \$ _____.~~

~~2. Appropriate amounts are incorporated in the Lump Sum to account for labor, overhead, profit, Reimbursable Expenses, and ENGINEER's Consultants' charges, if any.~~

~~3. The portion of the Lump Sum amount billed for ENGINEER's services will be based upon ENGINEER's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.~~

[OR]

~~1. An amount equal to the cumulative hours charged to the Assignment by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Assignment, plus Reimbursable Expenses, estimated to be \$ _____ and ENGINEER's Consultants' charges, if any, estimated to be \$ _____. The total compensation under paragraph 4.01.A.1 is estimated to be \$ _____.~~

~~2. ENGINEER's Reimbursable Expenses Schedule and Standard Hourly Rate Schedule are attached to this Agreement as Exhibits SR-C and SR-D, respectively.~~

~~3. The amounts billed for ENGINEER's services will be based on the cumulative hours charged to the Assignment during the billing period by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and ENGINEER's Consultants' charges, if any, incurred during the billing period.~~

[OR]

1. An amount equal to ENGINEER's Direct Labor Costs times a Factor of 3.15 for the services of ENGINEER's employees engaged on the Assignment, plus Reimbursable Expenses, estimated to be \$ 11,200, which includes ENGINEER's Consultants' charges estimated to be \$ 2,000. The total compensation under paragraph 4.01.A.1 is

estimated to be \$ 335,000. The fee proposal for this Agreement is included as Attachment "A".

2. ENGINEER's Reimbursable Expenses Schedule is attached to this Agreement as Exhibit SR-C.

3. The amounts billed for ENGINEER's services will be based on the applicable Direct Labor Costs charged to the Assignment by ENGINEER's employees during the billing period multiplied by the above-designated Factor, plus Reimbursable Expenses and ENGINEER's Consultants' charges, if any, incurred during the billing period.

4. Direct Labor Costs means salaries and wages paid to employees but does not include payroll related costs or benefits.

5. The Direct Labor Costs Factor includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto; the cost of general and administrative overhead, which includes salaries and wages of principals and employees engaged in business operations not directly chargeable to projects, plus indirect operating costs, including but not limited to, business taxes, legal expense, rent, utilities, office supplies, insurance, and other operating costs; plus operating margin or profit.

4.02 Other Provisions Concerning Payment

A. Estimated Compensation Amounts.

1. ENGINEERs estimate of the amounts that will become payable are only estimates for planning purposes, are not binding on the parties, and are not the ~~minimum~~ or ~~maximum~~ amounts payable to ENGINEER under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to ENGINEER that a compensation amount thus estimated will be exceeded, ENGINEER shall give OWNER written notice thereof. Promptly thereafter OWNER and ENGINEER shall review the

matter of services remaining to be performed and compensation for such services. OWNER shall either agree to such compensation exceeding said estimated amount or OWNER and ENGINEER shall agree to a reduction in the remaining services to be rendered by ENGINEER, so that total compensation for such services will not exceed said estimated amount when such services are completed.

B. Adjustments

1. ENGINEER's compensation is conditioned on time to complete the Assignment not exceeding the time identified in Exhibit SR-A. Should the time to complete the Assignment be extended beyond this period due to reasons not the fault of and beyond the control of ENGINEER, the total compensation to ENGINEER shall be appropriately adjusted.

~~2. If used, the Standard Hourly Rates Schedule, Reimbursable Expenses Schedule, Direct Labor Costs and the Factor applied to Direct Labor Costs will be adjusted annually (as of _____) to reflect equitable changes to the compensation payable to ENGINEER.~~

C. *Reimbursable Expenses.* Reimbursable Expenses means the actual expenses incurred by ENGINEER or ENGINEER's Consultants directly in connection with the Assignment, including the categories and items listed in Exhibit SR-C, plus 10% and if authorized in advance by OWNER, overtime work requiring higher than regular rates. Reimbursable Expenses will also include the amount of any sales tax, excise tax, value added tax, or gross receipts tax or similar tax that may be imposed on this agreement.

D. *For Additional Services.* OWNER shall pay ENGINEER for all services not included in the scope of this Agreement on the basis agreed to in writing by the parties at the time such services are authorized by OWNER.

**ARTICLE 5--DESIGNATED
REPRESENTATIVES**

5.01 Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall each designate specific individuals as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of their respective party.

ARTICLE 6--CONTENT OF AGREEMENT

6.01 The following Exhibits are incorporated herein by reference:

A. Exhibit SR-A, "Further Description of Services, Responsibilities, Time, and Related Matters," consisting of 12 pages.

B. Exhibit SR-B, "Standard Terms and Conditions," consisting of 5 pages.

C. Exhibit SR-C, "Reimbursable Expenses Schedule," consisting of 1 pages.

D. Attachment A, "Fee Estimate - Stage II - Watershed Implementation Plan Development,"
consisting of 1 pages.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

PAPJO-MISSOURI RIVER NATUAL RESOURES
DISTRICT

By: _____

Title: _____

Date Signed: _____

~~D. Exhibit SR-D, "Standard Hourly Rates," consisting~~
~~of _____ pages.~~

6.02 Total Agreement

A. This Agreement (consisting of pages 1 to _____, inclusive, together with the Exhibits identified in paragraph 6.01) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may **only** be amended, supplemented, modified, or canceled by a duly executed written instrument.

ENGINEER

HDR ENGINEERING, INC.

By: _____

Title: _____

Date Signed: _____

Address for giving notices:

8901 S. 154th Street

Omaha, NE 68138-3621

Designated Representative (Paragraph 5.01):

Name: Steven Oltmans

Title: General Manager

Phone Number: _____

Facsimile Number: (402) 895-6543

E-Mail Address: soltmans@papiionrd.org

Address for giving notices:

8404 Indian Hills Drive

Omaha, **NE** 68114

Designated Representative (Paragraph 5.01):

Name: Timothy Crockett, P.E.

Title: Vice President

Phone Number: (402) 399-1257

Facsimile Number: (402) 399-1111

E-Mail Address: tcrocket@hdrinc.com

This is **EXHIBIT SR-A**, consisting of 12 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Study and Report Phase Professional Services** dated _____ ,

Initial
OWNER _____
ENGINEER _____

Further Description of Services, Responsibilities, Time, and Related Matters

Specific articles of the Agreement are amended and supplemented to include the following agreement of the parties:

A.I.O1 ENGINEER's Services

A. ENGINEER shall:

~~1. Consult with OWNER to define and clarify OWNER's requirements for the Assignment and available data.~~

~~2. Advise OWNER as to the necessity of OWNER providing data or services which are not part of ENGINEER's services, and assist OWNER in obtaining such data and services.~~

~~3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction relevant to the Assignment.~~

~~4. Identify and evaluate _____ alternate solutions available to OWNER and, after consultation with OWNER, recommend to OWNER those solutions which, in ENGINEER's judgment, meet OWNER's requirements.~~

~~5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended with each component, including the following, separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.~~

~~6. Perform or provide the following additional tasks or deliverables:~~

~~7. Furnish _____ review copies of the Report to OWNER within _____ days of the Effective Dates of this Agreement and review it with OWNER.~~

~~8. Revise the Report in response to OWNER's and other parties' comments, as appropriate, and furnish _____ final copies of the revised Report to the OWNER within _____ days after completion of reviewing it with OWNER.~~

**For Papio-Missouri River Natural Resources District
For Development of a Watershed Management Plan
Papillion Creek Watershed (Washington, Douglas and Sarpy Counties, NE)**



ENGINEERING PROPOSAL

CKGROUND 4 BASIS OF

The purpose of this effort is to develop a scope of services for the Papio Missouri River Natural Resources District (NRD) for the Papillion Creek Watershed Study – Stage II Services (Project). The City of Omaha (City) and the Papillion Creek Watershed Partnership (PCWP) also have a vested interest in the Project but are not parties to this Agreement. The scope of these services is intended to continue an on-going work effort in an integrated and cohesive manner toward development of a Watershed Management Plan, which is a multi-phase effort; this being Stage II.

The HDR Team has completed the first phase of a multi-phased project. Stage I is the Project Initiation/Watershed Assessment/Analysis phase in which the data was collected and evaluated and hydrologic, hydraulic and water quality models created, along with EPA Phase II stormwater permitting assistance and initial project funding research. Stage II is the Implementation Planning Phase, where strategies for structural and non-structural controls will be analyzed and will contribute to the development of the Watershed Plan.

OPE OF SERVICES – STAGE II – EMENTATION PLANNING PHASE

The basic objectives of Stage II activities are:

- Provide on-going project management, including attending internal project coordination meetings.
- Provide on-going facilitation by attending PCWP meetings and assistance for conducting an additional public forum.
- Develop a critical path schedule for implementing the common elements among the PCWP for the respective NPDES Phase I and II Stormwater Permits.
- Prepare a guidance manual for use of the Watershed management tools developed in Stage I. Such tools include the Decision Support System database; the H&H models; strategies for future water quality modeling and GIS interfacing; revisions to the water quality sampling program; how to implement many of the Phase II Stormwater Program BMPs; how one would approach the sediment/nutrients situation in the Watershed, etc.
- Prepare an assessment of the relative benefits and constraint factors associated with the construction of the selected remaining planned flood control reservoirs within the Watershed.

The HDR Team proposes to provide the following professional services over an anticipated twelve (12) – month project period from the time of contract authorization:

TASK SERIES 100 PROJECT MANAGEMENT

Task Objectives: Confirm that Project elements are being completed.

HDR Activities: **Task 110 Project Management.** Includes Project scheduling, administration and coordination activities on the Project. Internal HDR Project Team meetings will be conducted to discuss tasks, provide Project updates and review deliverables.

Task 120 Coordination Meetings. Several coordination meetings will be made with the City and NRD. An agenda will be prepared prior to the meeting and meeting minutes prepared after the meeting.

Subtask 120.1 City/NRD Project Coordination Progress Meetings. Meet with City and NRD personnel to review and discuss Project progress. Assume a total of 9 regularly scheduled meetings to coincide with PCWP meetings in Task Series 200 below.

Task Deliverables: Meeting agenda and minutes.

Key Understandings: The meetings will be held at the offices of the NRD, unless notified elsewhere.

TASK SERIES 200 FACILITATION/COMMUNICATIONS

Task Objectives: To develop a shared understanding of issues, goals and progress toward implementation planning for potential projects and BMP strategies within the Watershed.

HDR Activities: **Task 210 Partnership Meetings.** Meetings with the PCWP will be conducted throughout the Project. Assume one (1) introductory meeting with the PCWP to introduce the Project scope elements and nine (9) additional progress meetings.

Subtask 210.1 Introductory Meeting. Make a presentation to the PCWP introducing and reviewing key Project elements.

Subtask 210.2 Attend Other Meetings. Attend the remaining nine (9) PCWP meetings. Prepare supporting documentation for meetings, as necessary. Review draft meeting minutes prepared by others.

Task 220 Public Forum Meeting. Assist in conducting public meeting (1 assumed) to provide an update on the status of the Project.

Subtask 220.1 Pre-Planning Meeting with City/NRD. Meet with the City and NRD to discuss the open house with information stations format and content of the public meeting.

Subtask 220.2 Prepare Presentation Materials. Prepare presentation materials for the public meeting. Materials include a maximum of 3 colored boards.

Subtask 220.3 Attend Meeting. Attend the meeting and assist in the presentation.

Task 230 Host Web Site. It will be desirable to periodically update the existing website created by the City during Stage I and currently hosted by HDR in order to inform the PCWP and public on the Project.

Subtask 230.1 Host Web pages. The web pages will be modified by the City as the Project progresses and website hosting services will continue for the anticipated twelve-month Stage II period.

Task Deliverables: Review of PCWP meeting minutes.
Presentation boards (3 maximum).
Summary of public forum outcome and responses.

Key Understandings: The City and NRD will be responsible for inviting key people to attend the public meeting.

TASK SERIES 300 – NPDES STORMWATER COMPLIANCE AND WATERSHED TOOLS

Task Objectives: The first objective is to develop a critical path schedule of steps and estimated costs necessary to implement BMPs developed by the PCWP for common elements in the respective NPDES Phase I and II Stormwater Permits. The anticipated issuance of the Phase II permits by the Nebraska Department of Environmental Quality (NDEQ) is by August 2004. The second objective is to develop a guidance manual that provides a summary of all of the Watershed management tools developed during Stage I activities and the basic steps involved to use and update them.

HDR Activities: **Task 310 Critical Path Schedule for NPDES Phase I & II Implementation.**

Subtask 310.1 Develop Preliminary Critical Path Schedule. Develop a preliminary critical path implementation schedule based on the results of the planning meetings. The critical path schedule should identify key agency and milestones required to allow permit compliance. This preliminary schedule will form the basis of discussions under Subtask 310.2 below.

Subtask 310.2 Planning Meetings. Meet with the City, selected PCWP members, and perhaps NDEQ to discuss the basic logistics required for pre-planning and progressive implementation of the common, sharable elements of the Phase I and Phase II Stormwater Programs. It is assumed that the City's Phase I permit will be issued in 2003 and that the Phase II PCWP member permits will be issued by approximately August 2004 as previously suggested by NDEQ. It is assumed that 4 pre-planning meetings will be involved.

The previously submitted minimum Phase II Stormwater Program BMP controls are:

- Public Education and Outreach.
 - Household hazardous water brochure
 - Information concerning best management practices and participate in public educational events such as Earth Day
 - Public service announcements related to storm water protection on local TV, radio or print outlets.
 - Stormwater drain-stenciling program.
- Public Participation and Involvement.
 - System to handle phone calls and email for storm water-related concerns in the Watershed.
 - Public meetings on Papillion Creek Watershed Plan updates and to solicit feedback for management policies, proposed BMP's, financial reports, etc
 - Stream Cleanup Day.
 - PCWP website.
- Illicit Discharge Detection and Elimination.
 - Dry-weather inspection process to inspect known, major storm water outlets
 - Ordinance to prohibit illicit non-storm water discharges
 - Sewer system map of major storm water outfalls and identify the names of respective receiving waters
 - BMP/water quality tracking database (decision support system), including protocols for sharing resources within the PCWP and training staff.
 - Dry weather discharges of potentially polluted wastewater sources. Notification system with enforcement action consistent with the adopted ordinance.
- Construction Site Runoff Control.

- o Storm water management and erosion control ordinance for construction sites down to 1 acre in size.
 - o Contractor Certification Program
 - o Construction site inspection program
- Post-Construction Stormwater Management.
 - o BMP Inspection and Maintenance in stormwater management and erosion control ordinance.
 - o Post construction site inspection procedures
 - o Watershed master plan of structural BMPs
- Pollution Prevention and Good Housekeeping for Municipal/County Operations.
 - o Storm sewer inspection program.
 - o Training program for employees to prevent pollutant runoff from municipal operations.

Subtask 310.3 Develop Critical Path Schedule and Estimated Implementation Costs. Develop a final critical path implementation schedule based on the results of the planning meetings. The critical path schedule should identify key agency and milestones required to allow permit compliance and an estimate of implementation costs.

Task 320 Guidance for Use of Watershed Management Tools.

Subtask 320.1 Coordination Meetings. A series of coordination meetings will be conducted with selected representatives of the PCWP and their support staff to discuss development of a guidance manual for use and updating of the Watershed management tools developed during Stage I activities. It is assumed that 4 meetings will be required.

Subtask 320.2 Guidance Manual for Watershed Tools. Following the coordination meetings, a guidance manual will be written (assume 5 color copies with accompanying CD-ROM) that describes the various requirements for:

- Decision Support System database. Data inputs, coding conventions, query functions, reporting, maintenance and updating, GIS interfacing, etc.
- H&H model basic use and methodologies for future considerations.
- Basic functionality and capabilities of WASP dynamic water quality modeling, input parameters and assumptions, data outputs, and steps necessary for future interfacing with ArcView.
- Steps necessary to address sediment yield and transport, including relationships to bacteria and nutrients.
- Recommended revisions to the City's existing water quality sampling program, including strategies for pollutant source tracking.
- Implementation steps for the Phase II Stormwater Program BMPs that expand on the elements in the critical path schedule in Subtask 310.3.

Subtask 320.3 Training of Selected Staff on Manual Use. Train City and selected PCWP staff for use of the guidance manual. The basic concept is intended to be "train the trainer", such that trained staff can, in turn, subsequently train other support staff. It is assumed that 1 full day of training will be conducted in the A/V facilities at HDR.

Deliverables: Preliminary and final critical path implementation schedule and estimated implementation costs.

Guidance manual for use of Watershed management tools.

Key Understandings: As stated in task descriptions above; additional copies of guidance manual to be the responsibility of the NRD.

TASK SERIES 400 MULTI-RESERVOIR CONSTRUCTABILITY ANALYSIS

Task Objectives: To evaluate flood control reservoir sites.

HDR Activities: **Task 410 Hydrologic/Hydraulic Evaluation.** The U.S. Army Corp of Engineers (USACE) conducted a study in 1967 and identified 21 possible flood control reservoir sites within the Papillion Creek Watershed. The USACE conducted a re-evaluation of the 21 dams in the early 1980s. The results of this study identified a dam approximately 2 miles downstream of Dam Site 3, which would replace the need for Dam Sites 1, 2, 3 and 4. This dam was known as Dam Site 3-A and was never authorized by the USACE.

This Project covers twelve (10) of the proposed 1967 USACE Dam Sites 1-5, 7-10, and 12, and the evaluation of two (2) additional sites located near the Washington/Douglas County line, known herein as Dam Sites 3B (located downstream of Dam Sites 4 & 5 on Big Papillion Creek) and 3C (located downstream of Dam Sites 3, 4 & 5 on Big Papillion Creek). See Figure 1 for the locations of the planned reservoirs to be evaluated.

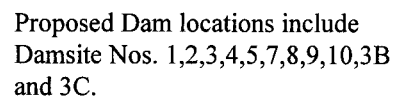
Subtask 410.1 Coordinate with Regulatory Agency. Coordinate with Nebraska Department of Natural Resources (DNR) to defined Project design standards, permitting requirements and water right impacts. Prepare a letter explaining the Project and request a meeting to discuss Project issues related to the DNR. It is assumed the dams will be classified as High Hazard.

Task 420 Data Collection. This task provides the information necessary to perform the study. All reasonable efforts shall be made to avoid duplication of work by using valid existing information. No field surveys will be conducted.

Subtask 420.1 Gather and Review Existing Data. HDR will collect and review existing data from the USACE, NRD, and other sources including:

- Mapping and drawings - hard copy and electronic.
- Proposed pool elevations of each impoundment, including the operational range of the pool.
- HDR HEC-HMS and HEC-RAS models completed under Phase I.
- USACE reports on 1967 proposed dam sites.
- USACE reports on 1985 reevaluation of proposed Dam Site 3-A.
- USACE reports on 1992 reevaluation.
- Metropolitan Area Planning Agency (MAPA) population projections.
- Conceptual Design Reports for Dam Sites 13 and 19 prepared by HDR Engineering.
- Existing data on existing dams in the Papillion Creek Watershed.

Map of Remaining Future Dam Sites in Watershed (Map courtesy of NRD)



Subtask 420.2 Site Reconnaissance: Conduct a site reconnaissance of the Papillion Creek Watershed proposed dam sites. Identify probable impact areas.

Task 430 Evaluate Impacts of Reservoirs. HDR will conduct a preliminary hydrologic/hydraulic analysis to determine the impact of the dam sites located in the Papillion Creek Watershed and size the outlet works.

Subtask 430.1 Review Baseline Model. The existing 1985 SWMM model for the Papillion Creek Watershed was converted and calibrated using the USACE's hydrologic model, HEC-HMS. The SWMM subbasins (approximately 300 acres in size) were combined to form larger subbasins (3 to 15 square miles). The HEC-HMS routing parameters were calibrated to the SWMM and Harder's model 100-year results at computed hydrograph locations. The routing parameters were adjusted until peak flow and runoff volumes were reasonable.

Once the HEC-HMS model was calibrated to the 1985 SWMM and Harder's model results, the model was updated to represent development that has occurred in the Big and Little Papillion Creek Watersheds since the 1985 modeling effort. The updated baseline model was then calibrated to a 1997 event and verified using 1998 and 1999 data collected from the flood warning system rainfall and stream gages that are located throughout the basin. Observed hydrographs were compared and the HEC-HMS model was adjusted to match the observed timing and peaks of the observed hydrographs.

A 2040 HEC-HMS model was developed using the 2040 land use projections for the Watershed. This 2040 model will be used as the basis for evaluating the remaining feasible multi-purpose reservoirs in the Watershed.

Subtask 430.2 Modify Hydrologic Model. Hydrologic impacts of the dam site alternates on the Papillion Creek Watershed will be analyzed using the Updated Baseline HEC-1 model. The computer model will be revised to reflect "with project" conditions based on a projected population (e.g. year 2040) and an estimate for development based on the project.

Storm runoff will be determined for criteria as per DNR Dam Safety requirements. The 100-, 500-year, and PMP events will be analyzed. Runoff will be routed through the proposed reservoir(s) using the Year 2040 Updated Baseline HEC-HMS model.

Subtask 430.2.1 Size Spillways. Size the outlet works and emergency spillway based on the dam alignment using the HEC-HMS model. It is proposed to use available area-capacity relationships for the reservoirs developed by the USACE.

Subtask 430.2.2 Downstream Impacts. Downstream impacts will be assessed at selected locations along the Papillion Creek system to determine the proposed structures' effects on peak discharges. Pre- and post-project discharges will be developed.

Subtask 430.2.3 Reservoir Sustainability. A conceptual analysis of the sustainability using normal pool surface area and contributing drainage area of the proposed reservoirs will be performed through a literature review of regional standard practices and rules of thumb, as well as information from the existing structures in the Papillion Creek Watershed. The Papillion Creek watershed dams have a typical surface area which does not exceed 3-5% of the watershed drainage area.

Subtask 430.3 Prepare Draft Technical Memorandum. HDR will prepare an interim draft technical memorandum summarizing the findings of the hydrologic/hydraulic investigation.

Task 440 Geotechnical Investigation. A minimal geotechnical investigation will be conducted by obtaining existing geotechnical information. A subsurface exploration will not be performed.

Subtask 440.1 Conduct Meeting. Meet with the USACE, Omaha District to obtain existing geotechnical information.

Subtask 440.2 Data Collection and Review. HDR will collect and review existing data from the USACE, NRD and other sources including:

- Site specific geotechnical and subsurface data.
- Vicinity bridge borings (NDOR, Washington, Douglas and Sarpy County Engineers).
- Regional soils and geological mapping (USGS, NRCS).

Subtask 440.3 Geotechnical Site Reconnaissance. Conduct a site reconnaissance of the Papillion Creek Watershed.

Subtask 440.4 Identify Potential Dam Sites. Identify potential locations of the dam sites.

Subtask 440.5 Prepare Draft Technical Memorandum. HDR will prepare an interim draft technical memorandum summarizing the findings of the geotechnical investigation.

Task 450 Water Quality Investigation. The purpose of the water quality task is to provide a screening evaluation to identify potential water quality issues upstream of the dam sites.

Subtask 450.1 Conduct Meeting. HDR will coordinate with the NDEQ to discuss water quality considerations in the watershed.

Subtask 450.2 Gather and Review Existing Data. HDR will collect and evaluate existing data from the NRD and other sources including:

- Existing 208 Water Quality Studies and 314 Clean Lake Studies
- NDEQ 303 (d) listings.
- Existing water sampling data.

Subtask 450.3 Site Water Quality Reconnaissance. Conduct a site reconnaissance of the Papillion Creek Watershed.

Subtask 450.4 Identify Pollutant Sources. Identify the sources of pollutants within the Watershed. No water quality sampling will be conducted.

Subtask 450.5 Prepare Draft Technical Memorandum. HDR will prepare an interim draft technical memorandum summarizing the findings of the water quality investigation.

Task 460 Environmental Investigation. Environmental investigations will be initiated on a reconnaissance level of study to identify issues requiring special Project consideration or mitigation.

Subtask 460.1 Conduct Meetings. HDR will coordinate with federal and state regulatory agencies to define the Project design standards and permitting requirements.

- Coordinate with the Fish and Wildlife Service to discuss instream flow requirements, identify threatened and endangered species that may occur within or in the vicinity of the Project and wetlands.
- Meet with the USACE in a pre-consultation meeting to discuss the regulatory

requirements of the Project.

Subtask 460.2 Gather and Review Existing Data. HDR will collect existing data from the NRD and other sources including:

- U.S. Fish and Wildlife Service National Wetland Inventory map

Subtask 460.3 Resource Evaluation.

Subtask 460.3.1 Wetland Evaluation. Upon review of the National Wetland Inventory maps, HDR will document the wetlands located within the Project. These areas will be inventoried and an estimate of wetland acreage affected made. A limited field investigation will be conducted.

Subtask 460.3.2 Threatened and Endangered (T&E) Species. HDR will contact the U.S. Fish and Wildlife Service to determine the T&E species within the Project area.

Subtask 460.3.3 Cultural Resources. HDR will contact the Nebraska Historical Society and Washington County Historical Society to determine the location of cultural resources sites within the Project area. The cultural resources identified in the 1985 Papillion Creek Re-Study and Final Supplement III to the FEIS will be reviewed and documented. A literature search will not be conducted.

Subtask 460.4 Prepare Draft Technical Memorandum. HDR will prepare an interim draft technical memorandum summarizing the findings of the resource evaluation.

Task 470 Social Economic Impacts. Social economic impacts including impacts to communities, utilities and transportation will be evaluated on a reconnaissance level of study to identify if issues require special Project consideration or mitigation. A description of a generalized development trend will be developed for each dam site.

Subtask 470.1 Gather and Review Existing Data. HDR will collect and review existing data including:

- NDOR Capital Improvement Plan
- City and County Road Grid in Vicinity of Reservoirs
- Rural/City water lines
- Electrical lines
- Railroad facilities
- Gas and oil pipelines

Subtask 470.2 Social Economic Value.

Subtask 470.2.1 Determine ROW needs. HDR will determine a preliminary limits of rights-of-way acquisition. No property ownership searches will be conducted.

Subtask 470.2.2 Determine Structures Impacted. HDR will determine the number of structures impacted by the proposed dam sites.

Subtask 470.2.3 Determine Impacts to Existing Infrastructure. HDR will determine the potential impacts to the existing infrastructure including utilities and roadways.

Subtask 470.3 Prepare Draft Technical Memorandum HDR will prepare an interim draft technical memorandum summarizing the findings of the social economic impacts.

Task 480 Financial Feasibility. Financial feasibility investigations will be initiated on a reconnaissance level of study to identify concept construction costs and potential sources of funding.

Subtask 480.1 Conduct Meetings. HDR will coordinate with NRD staff and other sources to identify funding strategies and opportunities.

Subtask 480.2 Gather and Review Existing Data. HDR will collect and review existing data.

Subtask 480.3 Feasibility Level Cost. An estimate will be prepared by HDR to determine basic feasibility level Project cost requirements. These costs will include budget level consideration of construction costs, land costs and relocations. Detailed quantity estimates are not anticipated.

Subtask 480.4 Prepare Draft Technical Memorandum. HDR will prepare an interim draft technical memorandum summarizing the findings of the financial feasibility.

Task 490 Technical Memoranda Presentation and Report Preparation. HDR will present the findings covered in the technical memoranda referenced above at a maximum of *two* (2) joint meetings with the NRD, NRD Board members, USACE, PCWP, and other interested stakeholders.

Subtask 490.1 Present Findings. HDR will present the referenced findings in the form of a PowerPoint slideshow and appropriate handouts.

Subtask 490.2 Prepare Draft Report. Compile the technical memorandums and incorporate into a draft technical memorandas.

Subtask 490.2 Prepare Final Report. P-MRNRD staff to review and comment. HDR will revise the Report and findings to include comments and prepare a final report.

Task Deliverables: Five (5) copies of the referenced draft technical final memoranda and a combined electronic version furnished on a CD-ROM.

Key Understandings: Additional copies of draft technical memoranda for distribution to interested stakeholders will be the responsibility of the NRD.

A.2.01 OWNER's Responsibilities

A. OWNER shall do the following in a timely manner, so as not to delay the services of ENGINEER

1. Provide all criteria and full information as to OWNER's requirements for the Assignment.

2. Furnish to ENGINEER all existing studies, reports and other available data pertinent to the Assignment, obtain or authorize ENGINEER to obtain or provide additional reports and data as required, and furnish to ENGINEER services of others as required for the performance of ENGINEER's services.

B. ENGINEER shall be entitled to use and rely upon all such information and services provided by OWNER or others in performing ENGINEER's services under this Agreement.

C. OWNER shall bear all costs incident to compliance with its responsibilities pursuant to this paragraph A.2.01.

A.3.01 Times for Rendering Services

A. The time period for the performance of ENGINEER's services shall be 12 months with milestones established as follows:

[State milestones]

B. ENGINEER's services under this Agreement will be considered complete when all deliverables set forth in Exhibit SR-A are submitted to OWNER.

A.4.02 Other

E. OWNER has established the following budgets:

Project fee is not to exceed three hundred thirty five thousand dollars (\$335,000).

This is EXHIBIT **SR-B**, consisting of 5 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Study and Report Phase Professional Services** dated _____, _____.

Initial:

OWNER _____
ENGINEER _____

Standard Terms and Conditions

Article 6 of the Agreement is amended and supplemented to include the following agreement of the parties:

B.6.01.B Standard Term and Conditions

1. Standard of Care

The standard of care for all professional services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. Independent Contractor

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either OWNER or ENGINEER. ENGINEER's services under this Agreement are being performed solely for OWNER's benefit, and no other entity shall have any claim against ENGINEER because of this Agreement or the performance or nonperformance of services hereunder. OWNER agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

3. Payments to ENGINEER

Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER monthly, unless otherwise agreed. Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges.

4. Insurance

ENGINEER will maintain insurance coverage for Workers' Compensation, General Liability, and Automobile Liability and will provide certificates of insurance to OWNER upon request.

5. Indemnification and Allocation of **Risk**

a. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and consultants in the performance of ENGINEER's services under this Agreement.

b. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other

professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and consultants with respect to this Agreement.

c. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any injuries, losses, damages and expenses caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.

d. In addition to the indemnity provided under paragraph B.6.01.B.5.b. of this Exhibit, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (ii) nothing in this paragraph B.6.01.B.5.d shall obligate OWNER to indemnify any individual or entity to the extent of that individual or entity's own negligence or willful misconduct.

e. The indemnification provision of paragraph B.6.01.B.5.a. is subject to and limited by the provisions agreed to by OWNER and ENGINEER in paragraph B.6.01.B.6, "Limit of Liability," of this Agreement.

6. **LIMIT OF LIABILITY**

TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY, IN THE AGGREGATE, OF ENGINEER AND ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND CONSULTANTS, OR ANY OF THEM TO OWNER AND ANYONE CLAIMING BY, THROUGH, OR UNDER OWNER, FOR ANY AND ALL INJURIES, LOSSES, DAMAGES AND EXPENSES, WHATSOEVER ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO THIS AGREEMENT FROM ANY CAUSE OR CAUSES INCLUDING BUT NOT LIMITED TO THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR WARRANTY, EXPRESS OR IMPLIED, OF ENGINEER OR ENGINEER'S OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND CONSULTANTS, OR ANY OF THEM, SHALL NOT EXCEED THE TOTAL AMOUNT OF \$500,000.

7. **Dispute Resolution**

a. OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes") to mediation.

b. If a party alleges a dispute or controversy with the other party arising out of or relating to the performance of services under this Agreement, then either party shall have the right to request mediation within 20 days after the claiming party has provided the other party with written notice describing the dispute and the claiming party's position with reference to the resolution of the dispute.

c. Except as otherwise agreed, mediation will proceed pursuant to the Construction Industry Mediation Rules of the American Arbitration Association in effect on the Effective Date of the Agreement. A mediator will be appointed within 30 days of receipt of a written request. The mediator will endeavor to complete the mediation within 30 days thereafter.

d. No performance obligation under or related to this Agreement shall be interrupted or delayed during any mediation proceeding except upon written agreement of both parties.

- e. The mediator shall not be a witness in any legal proceedings related to this Agreement.
8. Termination of Contract
Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, OWNER shall pay to ENGINEER all amounts owing to ENGINEER under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.
9. Access
OWNER shall arrange for safe access to and make all provisions for ENGINEER and ENGINEERs Consultants to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
10. Hazardous Environmental Conditions
It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a "Hazardous Environmental Condition," i.e. the presence at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Assignment. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with ENGINEER's activities under this Agreement.
11. Patents
ENGINEER shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.
12. Ownership and Reuse of Documents
All documents prepared or furnished by ENGINEER pursuant to this Agreement are instruments of service, and ENGINEER shall retain an ownership and property interest therein. Reuse of any such documents by OWNER shall be at OWNER's sole risk; and OWNER agrees to indemnify, and hold ENGINEER harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by OWNER or by others acting through OWNER.
13. Use of Electronic Media
a. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

b. When transferring documents in electronic media format, ENGINEER makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Assignment.

c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform

acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

14. Opinions of Probable Construction Cost

a. Construction Cost is the cost to OWNER to construct proposed facilities. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with OWNER's contemplated project, or the cost of other services to be provided by others to OWNER pursuant to of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

b. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator.

15. Opinions of Total Project Costs

a. Total Project Costs are the sum of the probable Construction Cost, allowances for contingencies, the estimated total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, and OWNER's costs for legal, accounting, insurance counseling or auditing services, and interest and financing charges incurred in connection with a proposed project, and the cost of other services to be provided by others to OWNER pursuant to this Agreement.

b. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

16. Force Majeure

ENGINEER shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond ENGINEER's reasonable control.

17. Assignment

Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.

18. Binding Effect

This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.

19. Severability and Waiver of Provisions

Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

20. Survival

All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

21. Headings

The headings used in this Agreement are for general reference only and do not have special significance.

22. Controlling Law

This Agreement is to be governed by the law of the State of Nebraska in which the ENGINEER's principal office is located.

23. Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate **party** at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

This is **EXHIBIT SR-C**, consisting of 1 pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Study and Report Phase Professional Services** dated _____, _____.

Initial:

OWNER _____
ENGINEER _____

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to annual review and adjustment. Reimbursable expense rates in effect on the date of the Agreement are:

Facsimile	\$0.10/page
8-1/2"x11" Copies/black & white	\$0.10/page
8-1/2"x11" Copies/color	\$0.75/page
11"x17" Copies/color	\$1.50/page
Presentation Boards (plot and mount)	\$150.00 each
Report Binders with Custom Index Tabs	\$15.00 each
Blue-Print Copies	/sq.-ft.
Reproducible Copies (Mylar)	/sq.-ft.
Reproducible Copies (Paper)	/sq.-ft.
Mileage (auto)	\$0.36/mile
Computer (CADD or GIS)	\$15.00/hour
Computer (Engineering)	\$10.00/hour
Field Truck Daily Charge	/day
Mileage (Field Truck)	/mile
Field Survey Equipment	/day
Computer CPU Charge	/hour
Personal Computer Charge	/hour
CAD Charge	/hour
CAE Terminal Charge	/hour
VCR and Monitor Charge	/day, \$/week, or \$ _____/month
Video Camcorder	/day, plus \$ _____/tape
Electrical Meters Charge	/week, or \$ _____/month
Flow Meter Charge	/week, or \$ _____/month
Rain Gauge	/week, or \$ _____/month
Sampler Charge	/week, or \$ _____/month
Dissolved Oxygen Tester Charge	/week
Fluorometer	/week
Laboratory Pilot Testing Charge	/week, or \$ _____/month
Soil Gas Kit	/day
Submersible Pump	/day
Water Level Meter	/day, or \$ _____/month
Soil Sampling	/sample
Groundwater Sampling	/sample
Health and Safety Level D	/day
Health and Safety Level C	/day
Electronic Media Charge	/hour
Long Distance Phone Calls	cost
Meals and Lodging	cost

This is ~~EXHIBIT SR-D~~, consisting of _____ pages, referred to in and part of the ~~Agreement between OWNER and ENGINEER for Study and Report Phase Professional Services~~ dated _____.

Initial:

OWNER _____
ENGINEER _____

~~Standard Hourly Rates Schedule~~

~~Standard Hourly Rates are subject to annual review and adjustment. Hourly rates for services in effect on the date of the Agreement are:~~

Billing Class 9	Senior Associate	\$ _____/hour
Billing Class 8	Staff Manager	\$ _____/hour
Billing Class 7	Professional VI	¢ _____/hour
Billing Class 6	Professional V	¢ _____/hour
Billing Class 5	Professional IV	¢ _____/hour
Billing Class 4	Professional III	\$ _____/hour
Billing Class 3	Professional II	¢ _____/hour
Billing Class 2	Technician	¢ _____/hour
Billing Class 1	Technician	\$ _____/hour
Principal		\$ _____/hour
Support Staff		¢ _____/hour

ATTACHMENT "A"									
PAPIO-MISSOURI RIVER NRD									
PAPILLION CREEK WATERSHED STUDY									
FEE ESTIMATE - STAGE II - WATERSHED IMPLEMENTATION PLAN DEVELOPMENT									
TASKS	Project Manager	Sr. Engr./ Technical	Project Engineer	Tech Support	Clerical	Total Hours	Total Labor Cost	Total Exp[1]	Est. Total Cost
TASK 100 - PROJECT MANAGEMENT									
Task 110 Project Management	148		88		18	254	\$32,824		\$32,824
Task 120 Coordination Meetings									
Subtask 120.1 NRD/City Project Coordination Meetings (9 meetings)	36		36			72	\$9,432	\$446	\$9,878
Estimated Task Hours Subtotal	184	0	124	0	18	326			
Estimated Task Cost Subtotal	\$25,760	\$0	\$15,128	\$0	\$1,368		\$42,256	\$446	\$42,702
TASK 200 - FACILITATION/COMMUNICATIONS									
Task 210 Partnership Meetings									
Subtask 210.1 Introductory Meeting	4		6			10	\$1,292	\$10	\$1,302
Subtask 210.2 Attend Other Meetings (9 meetings)	27		18			45	\$5,976	\$89	\$6,065
Task 220 Public Forum Meeting									
Subtask 220.1 Pre-planning Meeting/Correspondence with NRD and City	8		8			16	\$2,096	\$10	\$2,106
Subtask 220.2 Presentation Materials (Assume 3 new boards)	2		8	24	4	38	\$3,216	\$559	\$3,775
Subtask 220.3 Attend Meeting	4		8	8		20	\$2,088	\$10	\$2,098
Task 230 Host Web Site (Continuation)			16			16	\$1,952		\$1,952
Estimated Task Hours Subtotal	45	0	64	32	4	145			
Estimated Task Cost Subtotal	\$6,300	\$0	\$7,808	\$2,208	\$304		\$16,620	\$678	\$17,298
TASK 300 - NPDES STORMWATER COMPLIANCE AND WATERSHED TOOLS									
Task 310 Critical Path Schedule for NPDES Phase I & II Implementation									
Subtask 310.1 Develop Preliminary Critical Path Schedule	32		32	16	10	90	\$10,248		\$10,248
Subtask 310.2 Planning Meetings (Assume 4)	32		32			64	\$8,384	\$86	\$8,470
Subtask 310.3 Develop Critical Path Schedule and Estimated Implementation Costs	48		40	40	24	152	\$18,184		\$18,184
Task 320 Guidance for Use of Watershed Management Tools									
Subtask 320.1 Coordination Meetings (Assume 4)	32		32			64	\$8,384	\$87	\$8,471
Subtask 320.2 Guidance Manual for Watershed Tools (Assume 5 Copies + CD-ROM)	80		24	24	40	168	\$18,824	\$2,619	\$21,443
Subtask 320.3 Training of Selected Staff on Manual Use (Assume 1 Day)	40		24	24		88	\$10,184		\$10,184
Estimated Task Hours Subtotal	264	0	184	104	74	626			
Estimated Task Cost Subtotal	\$36,960	\$0	\$22,448	\$7,176	\$5,624		\$72,208	\$2,792	\$75,000
TASK 400 - MULTI-RESERVOIR ANALYSIS									
Task 410 Hydrologic/Hydraulic Evaluation									
Subtask 410.1 Coordinate with Regulatory Agency			6	8		14	\$1,284		\$1,284
Task 420 Data Collection									
Subtask 420.1 Gather and Evaluate Existing Data			8	60	8	76	\$5,724		\$5,724
Subtask 420.2 Site Reconnaissance	8	8	16	24	4	60	\$6,192		\$6,192
Task 430 Evaluate Impacts of Reservoirs									
Subtask 430.1 Review Baseline Model	2	8	8	20		38	\$3,796	\$110	\$3,906
Subtask 430.2 Modify Hydrologic Model									
Subtask 430.2.1 Size Spillways	2	16	32	120	4	174	\$15,088	\$660	\$15,748
Subtask 430.2.2 Downstream Impacts	2		16	96	4	118	\$9,160	\$528	\$9,688
Subtask 430.2.3 Reservoir Sustainability	2		8	24	4	40	\$3,506		\$3,506
Subtask 430.3 Prepare Draft Technical Memorandum	2	4	24	120	16	166	\$13,284		\$13,284
Task 440 Geotechnical Investigation									
Subtask 440.1 Conduct Meeting		8		8	2	18	\$1,864		\$1,864
Subtask 440.2 Data Collection and Review		20	8	20	4	52	\$5,560		\$5,560
Subtask 440.3 Geotechnical Site Reconnaissance		12				12	\$1,740		\$1,740
Subtask 440.4 Identify Potential Dam Sites	8	16	8	32		64	\$6,624		\$6,624
Subtask 440.5 Prepare Draft Technical Memorandum		24	8	24	8	64	\$6,720		\$6,720
Task 450 Water Quality Investigation									
Subtask 450.1 Conduct Meeting	4			8		12	\$1,112		\$1,112
Subtask 450.2 Gather and Review Existing Data			4	16		20	\$1,582		\$1,582
Subtask 450.3 Site Water Quality Reconnaissance	8		16	16		40	\$4,176		\$4,176
Subtask 450.4 Identify Pollutant Sources			4	48	2	54	\$3,952	\$264	\$4,216
Subtask 450.5 Prepare Draft Technical Memorandum	2	2	4	64	2	74	\$5,626		\$5,626
Task 460 Environmental Investigation									
Subtask 460.1 Conduct Meetings		2	8	16	2	28	\$2,522		\$2,522
Subtask 460.2 Gather and Review Existing Data		2	4	16		22	\$1,882		\$1,882
Subtask 460.3 Resource Evaluation									
Subtask 460.3.1 Wetland Evaluation		2	4	60	2	68	\$5,070	\$330	\$5,400
Subtask 460.3.2 Threatened and Endangered Species		2	4	16	2	24	\$2,034		\$2,034
Subtask 460.3.3 Cultural Resources		2	4	32	2	40	\$3,138	\$726	\$3,864
Subtask 460.4 Prepare Draft Technical Memorandum	4	4	16	40	8	72	\$5,460		\$5,460
Task 470 Social Economic Impacts									
Subtask 470.1 Gather and Review Existing Data		4	8	24		36	\$3,212		\$3,212
Subtask 470.2 Social Economic Value									
Subtask 470.2.1 Determine ROW Needs		2	16	72		90	\$7,210	\$396	\$7,606
Subtask 470.2.2 Determine Structures Impacted		2	40	72		114	\$10,138	\$396	\$10,534
Subtask 470.2.3 Determine Impacts to Existing Infrastructure				72		72	\$4,968	\$396	\$5,364
Subtask 470.3 Prepare Draft Technical Memorandum	4		16	40	8	68	\$5,680		\$5,680
Task 480 Financial Feasibility									
Subtask 480.1 Conduct Meetings	4		4		2	10	\$1,200		\$1,200
Subtask 480.2 Gather and Review Existing Data			2	12		14	\$1,072		\$1,072
Subtask 480.3 Feasibility Level Cost	2		8	96		106	\$7,890	\$528	\$8,408
Subtask 480.4 Prepare Draft Technical Memorandum	4	4	16	24	4	52	\$5,052		\$5,052
Task 490 Technical Memorandum Presentation and Report Preparation									
Subtask 490.1 Present Findings	8		16	24	4	52	\$5,032		\$5,032
Subtask 490.2 Prepare Draft Report (Assume 2 BW Copies + CD-ROM)	8	8	36	80	24	156	\$14,016	\$229	\$14,245
Subtask 490.3 Prepare Final Report (Assume 5 Color Copies with CD-ROMs)	8	8	20	40	20	96	\$9,000	\$2,671	\$11,671
Estimated Task Hours Subtotal	82	162	392	1,444	136	2,216			
Estimated Task Cost Subtotal	\$11,480	\$23,490	\$47,824	\$99,636	\$10,336		\$192,766	\$7,234	\$200,000
STAGE II TOTAL HOURS	575	162	764	1,580	232	3,313			
STAGE II TOTAL COST (ROUNDED)	\$80,500	\$23,600	\$93,200	\$109,000	\$17,600		\$323,900	\$11,100	\$335,000

[1] Assume computer usage at % of technical support hours
and administrative fees for reimbursable expenses

50%
10%

Memo To: Programs, Projects & Operations Subcommittee
Date: 6 June, 2003
From: Jim Becic
Re: Nebraska Wildlife Rehab., Inc. – Rumsey Station Development and Management Agreement – Deadline Extension.

The Rumsey Station Wetland is a high quality urban wetland located in Sarpy County, approximately one mile east of Papillion and ½ mile north of highway 370, between 54th and 66th street. In 1993, as part of the West Branch Papillion Creek channelization project, the P-MRNRD purchased a 52 acre tract that includes the majority of the wetland along with a section of abandoned railroad right-of-way. In early 1995, an additional 4.4 acres of springs that feed the wetland were acquired with a grant from the Nebraska Environmental Trust Fund. Early in 2003, an additional 10 acres of wetland were restored as an initial wetland bank for the NRD.

The primary environmental element of the Rumsey Station project is to restore and preserve this significant wetland within the urban environs of Sarpy County. Restoration and management of the remaining wetlands, wet prairie and upland vegetation will contribute to the site's diversity of habitat types and provide significant water quality benefits. This wetland preservation focus, to include controlled public use trails and interpretive signage, coupled with a significant, environmental education element, will enable schools, environmental groups and individuals to learn about critical habitats, observe the area plants and wildlife or simply enjoy the site's solitude.

In 1995, a concept plan was developed for Rumsey Station and a key element of this concept plan has been the need to identify an "organization" willing to locate to the site and implement a majority of the elements in the concept plan.

The non-profit **Nebraska Wildlife Rehab., Inc** (NWRI) approached the P-MRNRD with a unique proposal that appears to fulfill all of the goals of the concept plan for the site and in August of 1999, the NRD Board approved a DEVELOPMENT AND MANAGEMENT AGREEMENT with NWRI.

The Agreement establishes a number of deadlines for completion of various tasks by the NWRI to include completion of Final Plans and Specifications, Verification of Financing, etc. before any construction activity can commence. Due somewhat to the "donated time" aspect of the services provided as well as the volunteer nature of the organization, the P-MRNRD has approved extending this original Agreement in both 2001 and 2003.

NWRI is again requesting that an additional 12 month extension to the agreement be approved.

It is the staff recommendation that the Subcommittee recommend to the Board an addendum to the Development and Management Agreement Between Paulio-Missouri River Natural Resources District And Nebraska Wildlife Rehab, Inc. For Rumsey Station Wetlands which extends all deadlines by 12 months be approved, and the General Manager authorized to execute the agreements and other related documents as he determines necessary to effectuate the transaction, subject to approval as to form by the District Legal Counsel.

nwri agreement, 2003 extension

DEVELOPMENT AND MANAGEMENT AGREEMENT
BETWEEN
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
AND
NEBRASKA WILDLIFE REHAB, INC.
FOR
RUMSEY STATION WETLANDS

THIS AGREEMENT (hereinafter referred to as “**this Agreement**”) is entered into as of this 3 day of JULY, 2000, by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “**the NRD**”), a governmental subdivision of the State of Nebraska, and **NEBRASKA WILDLIFE REHAB, INC.** (hereinafter referred to as “**NWRI**”), a non-profit corporation organized and existing under the Paws of the State of Nebraska.

WHEREAS, the NRD is the owner of unimproved parcels known collectively as the Rumsey Station Wetlands (hereinafter referred to as “**the Premises**”) consisting of approximately 56.36 acres of land, more or less, on the south side of the West Branch Papillion Creek and west of 54th Street, in the SW ¼ of Section 30, Twp. 14 North, Range 13 East of the 6th P.M., and in the SE ¼ of Section 25, Twp. 14 North, Range 12 East of the 6th P.M., all in Sarpy County, Nebraska, which parcels are more particularly described in the legal description(s) attached hereto collectively as Exhibit “A” and incorporated herein by this reference; and,

WHEREAS, NWRI has proposed that the NRD grant to NWRI a lease permitting NWRI to use the Premises for the purpose of construction, operation, maintenance and

use of a wildlife hospital, environmental education center and other facilities (hereinafter referred to collectively as “the NWRI Facilities”), such proposed lease (hereinafter referred to as “the NWRI Lease”) to be in the form as attached hereto as Exhibit “1” and incorporated herein by reference; and,

WHEREAS, NWRI has proposed that the NRD construct trails, wetland enhancements and other improvements (hereinafter referred to collectively as “the NRD Facilities”) on the Premises; and,

WHEREAS, the NRD is willing to grant to NWRH the NWRI Lease, subject to compliance by NWWH with the terms and conditions hereinafter provided,

NOW, THEREFORE, in consideration of the mutual covenants of the parties, contained herein, it is hereby agreed between the parties as follows:

1. MASTER PLAN FOR NWRI AND NRD FACILITIES. NWWH has prepared, and the NRD has approved, a written master plan for the Premises (hereinafter referred to as “the Master Plan”) a copy of which is attached hereto as Exhibit “2” and incorporated herein by reference, schematically depicting the NWRH Facilities and the NRD Facilities. Within forty-five (45) days after the effective date of this Agreement, the NRD shall pay to Big Muddy Workshop an amount equal to One Hundred percent (100%) of the Big Muddy Workshop’s fees and expenses for preparation of the Master Plan, provided, however, such payment shall not exceed the sum of Twenty-Six Thousand Dollars (\$26,000.00). NWRI shall pay the remainder of such fees and expenses, if any.

2. PRELIMINARY DESIGN OF THE NWRI AND NRD FACILITIES. Within ninety (90) days after the effective date of this Agreement, and with the aid of such architects and engineers as NWRI deems necessary and the NRD approves in writing (hereinafter referred to as “the Architects/Engineers”), which approval shall not

be withheld unreasonably, and at NWRI's sole cost and expense, NWRI shall prepare preliminary plans and specifications for the NWRI Facilities and NRD Facilities shown on the Master Plan (hereinafter referred to as "the Preliminary Plans and Specifications"), and submit the Preliminary Plans and Specifications to the NRD for its approval along with the Architects/Engineer's itemized estimates of the cost of construction of the NWRI Facilities and NRD Facilities shown in the Preliminary Plans and Specifications. If the requisite NRD approval of the Preliminary Plans and Specifications has not been given on or before thirty (30) days after such submission then NWRI may declare this Agreement terminated.

3. FINAL DESIGN OF THE NWRI AND NRD FACILITIES. Within ninety (90) days after the NRD's approval of the the Preliminary Plans and Specifications, and with the aid of the Architects/Engineers, NWRI, at its sole cost and expense, shall prepare final plans and specifications (hereinafter referred to as "the Final Plans and Specifications") for the NWRI Facilities and the NRD Facilities shown in the Preliminary Plans and Specifications, and submit the Final Plans and Specifications to the NRD for its written approval, including the Architects/Engineer's itemized estimates of the respective costs of construction of the NWRI Facilities and of the NRD Facilities shown in the Final Plans and Specifications. If the requisite NRD approval of the Final Plans and Specifications has not been given on or before thirty (30) days after such submission then NWRI may declare this Agreement terminated.

4. INITIAL RULES AND REGULATIONS. On or before thirty (30) days after the NRD's written approval of the Final Plans and Specifications, the NRD shall prepare and submit to NWRI for its written approval initial rules and regulations governing public access to and use of the Premises and the NRD Facilities (hereinafter referred to as "the Initial Rules and Regulations"), which written approval shall not be withheld unreasonably. If the requisite NRWI approval of the Initial Rules and

Regulations has not been given on or before thirty (30) days after such submission then the NRD may declare this Agreement terminated.

5. MONITORING AGENT RESPONSIBILITY. On or before thirty (30) days after the NRD's approval of the Final Plans and Specifications, the NRD shall prepare and submit to NWRI for its written approval a responsibility description for the NWRI Monitoring Agent, referred to in the NWRI Lease (hereinafter referred to as "**the Monitoring Agent Responsibility Description**"), which written approval shall not be withheld unreasonably. If the requisite NWRI approval of the Monitoring Agent Responsibility Description has not been given on or before thirty (30) days after such submission then the NRD may declare this Agreement terminated.

6. VERIFICATION OF FINANCING. Within sixty (60) days after the NRD's approval of the Final Plans and Specifications and of the itemized estimates of the cost of construction of the NWRI Facilities and of the NRD Facilities as shown in the Final Plans and Specifications, but not later than July 1, 2001, NWRI shall submit to the NRD written evidence satisfactory to the NRD that NWRI has obtained construction financing in the amount of the Architects/Engineers's estimates of the costs of construction of the NWRI Facilities shown in the Final Plans and Specifications, or in the amount of one million dollars, whichever amount is greater. Such construction financing may consist of: (a) unencumbered NWRI funds on deposit in a bank authorized to do business in the State of Nebraska, (b) enforceable pledges, grants, and donations of money to NWRI or the NRD for purposes of construction of the NWRI Facilities; and, (c) enforceable pledges, grants, and donations to NWRI or to the NRD of materials and in-kind services usable for construction of the NWRI Facilities, or any combination thereof. Such construction financing may not be secured by liens upon the Premises or upon any of the NWRI Facilities nor NRD Facilities, nor be secured by any rents or profits therefrom, nor permit or contemplate the imposition of construction liens or other encumbrances upon the Premises. If the requisite verification of financing has not been

submitted to the NRD on or before such date then the NRD may declare this Agreement terminated. The identities of anonymous donor(s) providing financing for the NWRI Facilities, or written verification thereof, shall not be disclosed to the public in the absence of such disclosure being ordered by a Nebraska court of general jurisdiction upon a showing of good cause.

7. EXECUTION OF LEASE. After the NRD's approval of the Final Plans and Specifications, after NWRI's approval of the Initial Rules and Regulations and approval of the Responsibility Description, and upon NWRI's submission of the aforesaid verification of financing, the NRD and NWRI shall execute the NWRH Lease granting to NWRH exclusive possession of the Premises. The NWRI Lease shall provide for a term of twenty-five (25) years commencing on the date of execution thereof, and shall grant to NWRH the option to renew the NWRI Lease for three additional consecutive periods of twenty-five (25) years, each.

8. EXHIBITS TO LEASE. The legal description of the Premises, attached hereto as Exhibit "1," shall be attached to the NWRI Lease and incorporated therein by reference prior to the execution of such lease. The Final Plans and Specifications, the Monitoring Agent Responsibility Description and the Initial Rules and Regulations, all as developed pursuant to this Agreement, also shall be attached to the NWRI Lease and incorporated therein by reference.

9. EFFECTIVE DATE OF AGREEMENT. This Agreement shall be effective upon execution hereof by both parties.

10. AUTHORIZED OFFICIALS. The President of NWRI with the approval of the NWRH Board, and the General Manager of the NRD in his discretion, are authorized to take such actions and make such determinations on behalf of their

respective parties as are required or permitted for their respective parties by this Agreement.

11. DURATION. This Agreement shall have permanent duration, commencing upon the execution hereof by the parties.

12. AMENDMENT. The terms and conditions of this Agreement may be amended only in writing by the mutual agreement of the parties.

13. DEFAULT. Should NWRI default in the performing, fulfilling, keeping or observing of any of NWRI's covenants, conditions, provisions or agreements herein contained, or should a petition in bankruptcy be filed by NWRI, or should NWWH be adjudged bankrupt or insolvent by any court, or should a trustee or receiver in bankruptcy or a receiver of any property of NWRI be appointed in any suit or proceeding by or against NWRI, or should this Agreement by operation of law pass to any person other than NWWH, then, and in any of such events, the NRD may, upon thirty (30) days' written notice to NWRH or its attorney, declare this Agreement terminated.

14. ASSIGNMENT. NWRH may not transfer, assign or hypothecate this Agreement nor transfer, assign or hypothecate any of the rights granted thereby.

Executed by NWRI on this 22 day of June, 2000.

NEBRASKA WILDLIFE REHAB, INC., a
Nebraska non-profit corporation

Attest:

By Jay Ferguson
President

Secretary

Executed by the NRD on this 3 day of July, 2000.

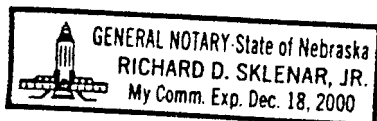
PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By 
General Manager

STATE OF NEBRASKA)
) SS.
COUNTY OF SARPY)

On this 3 day of July, 2000, before me, a Notary Public in
and **for** said County, personally came the above-named STEVEN G. OLTMANS, General
Manager of PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, and
acknowledged the execution of the above instrument as his voluntary act and deed and the
voluntary act and deed of said natural resources district.

WITNESS my hand and Notarial Seal the date last aforesaid.



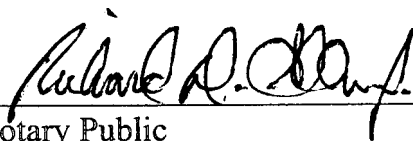

Notary Public

EXHIBIT 1 - NWRI LEASE FORM

LEASE AGREEMENT

BETWEEN

THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

AND

NEBRASKA WILDLIFE REHAB, INC.

FOR

RUMSEY STATION WETLANDS

—

THIS LEASE (hereinafter referred to as **“this Lease”**) is entered into as of this _____ day of _____, 2000, by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as **“the NRD”**), a governmental subdivision of the State of Nebraska, and **NEBRASKA WILDLIFE REHAB, INC.** (hereinafter referred to as **“NWFU”**), a non-profit corporation organized and existing under the laws of the State of Nebraska.

WHEREAS, the NRD is the owner of unimproved parcels known collectively as the Rumsey Station Wetlands (hereinafter referred to as **“the Premises”**) consisting of approximately 56.36 acres of land, more or less, on the south side of the West Branch Papillion Creek and west of 54th Street, in the SW ¼ of Section 30, Twp. 14 North, Range 13 East of the 6th P.M., and in the SE ¼ of Section 25, Twp. 14 North, Range 12 East of the 6th P.M., all in Sarpy County, Nebraska, which parcels are more particularly described in the legal description(s) attached hereto collectively as Exhibit **“A”** and incorporated herein by this reference; and,

WHEREAS, NWFU has proposed that the NRD grant to *NWRI* a lease of the Premises for the purpose of construction, operation, maintenance, repair and replacement of a wildlife hospital, environmental education center and other facilities; and grant to NWRI management responsibility for the Premises; and,

WHEREAS, NWRI also has proposed that the NRD construct wetlands, public trails and other public facilities (hereinafter referred to collectively as “**the NRD Facilities**”) on the remainder of the Premises; and,

WHEREAS, the final plans and specifications for the NWRI Facilities and the NRD Facilities (hereinafter referred to as “**the Final Plans and Specifications**”) are attached hereto collectively as Exhibit “B” and incorporated herein by reference; and,

WHEREAS, the NRD is willing to accept NWRI’s proposals subject to the further provisions of this Lease,

NOW, THEREFORE, in consideration of the mutual covenants of the parties, contained herein, it is hereby agreed between the parties as follows:

1. **LEASE TERM.** The NRD does hereby let to *NWRI* ,and NWRI does hereby lease from the NRD, the Premises in Sarpy County, State of Nebraska, described in the legal description attached hereto as Exhibit “A,” for a term of twenty-five (25) years, commencing at 12:01 A.M. on the _____ day of _____, _____, and ending at 12:01 A.M. on the _____ day of _____, _____, unless sooner terminated as hereinafter provided.

2. **LEASE EXTENSIONS.** The NRD does hereby grant to NWRI the exclusive right to renew this Lease for three (3) consecutive twenty-five (25) year periods after the expiration of the initial lease term. NWRI shall provide to the NRD, at least one year prior to the expiration of the prior lease term, written notice of its intent to exercise its right of renewal.

3. **MANAGEMENT TERM.** The NRD does hereby grant to NWRI the right and responsibility to manage the Premises for a term coincident and coterminous with the aforesaid term of the lease of the Premises.

4. **RENT.** NWRI agrees to pay to the NRD, as annual rent under this Lease, the sum of one dollar (\$1.00), which shall be due and payable on the first day of January of each calendar year during the term of this Lease, if the NRD each year shall demand the same in writing thirty (30) days prior to such due date. As additional rent NWRI agrees to provide certain management services as hereinafter described.

5. **USE OF THE NWRI BUILDING SITE BY NWRI.** NWRI shall use and occupy the Premises solely for the not-for-profit construction, operation, maintenance, repair, replacement and use of a wildlife hospital, environmental education center and other facilities related thereto (hereinafter referred to collectively as “**the NWRI Facilities**”) including, without limitation, the following, to-wit:

- a) facilities for the reception from the public of injured or orphaned wildlife;
- b) containment, rehabilitation and wilding facilities for wildlife;
- c) public education about the natural history of Nebraska native and migratory wildlife;
- d) a leading edge, technology-based educational program providing meaningful and relevant research opportunities for members of the public;
- e) a research station for monitoring environmental change;
- f) facilities for publication of monographs and tracts on wildlife triage, rehabilitation and release;
- g) a regional training center for educators and wildlife rehabilitators;
- h) a wildlife research library and computer facility for the conduct of research related to native Nebraska species; and,
- i) meeting and seminar facilities for community-based organizations and corporations.

6. **NWRI FACILITIES CONSTRUCTION.** Within ninety (90) days after the execution of this Lease, and, with the aid of such contractors and other assistants as NWRI deems necessary, NWRI, at its own cost and expense, shall commence

construction of the NWRI Facilities; and, within two hundred (200) days after the commencement of such construction, NWRI shall substantially complete construction of the NWRI Facilities, such construction to be performed in a good and workmanlike manner, at NWRI's sole cost and expense, and in accordance with the Final Plans and Specifications.

7. **ALTERATIONS TO NWRI FACILITIES.** NWRI, at its own expense, from time to time may make improvements to and other alterations of the NWRI Facilities in accordance with plans and specifications for such alterations prepared by NWRI and approved in writing by the NRD, which approval shall not be withheld unreasonably.

8. **WETLANDS.** NWRI shall insure that it does not at any time fill any wetlands, or disturb any function or purpose of any wetlands, which at any time may be located in the Premises. Prior to commencing construction or alteration of any NWRI facilities in the Premises below contour elevation 1,007.0 feet above m.s.l., NGVD, 1929, NWRI shall prepare and deliver to the NRD a written report identifying any wetlands on the Premises that may be affected by any such activities and detailing the steps which NWRI shall employ to avoid so disturbing the same.

9. **PERMITS.** The NRD makes no warranty as to its title to the Premises. It shall be incumbent upon NWRI to obtain such title insurance, permits, licenses, easements, releases and other documents as may be necessary for NWRI's uses of the Premises.

10. **UTILITIES.** NWRI shall provide and pay for its own gas, electricity and water for the Premises and, at its own cost and expense, shall construct, operate and maintain its own septic or sanitary sewer system.

11. **NRD FACILITIES CONSTRUCTION.** The NRD, at its own cost and expense, shall construct the NRD Facilities shown on the Final Plans and Specifications

and in accordance therewith, such construction shall be performed in a good and workmanlike manner, at such times and in such manner as the NRD determines feasible and consistent with NRD budgetary restraints. At its option and at its own cost and expense, NWRI may construct any or all of the NRD Facilities.

12. **MAINTENANCE OF PREMISES.** NWRI, at its own cost and expense, at all times shall maintain the NWRI Facilities, and all completed NRD Facilities other than wetlands and wetlands enhancements, in a safe, clean, neat and sanitary condition, in good order and repair, as built, and free of trash and litter, for the remainder of the term of this Lease. NWRI shall complete all redecorating, remodeling, alteration and painting required by it during the term of the Lease at its own cost and expense.

13. **NWRI MONITORING AGENT.** NWRI shall provide a Monitoring Agent who shall manage the Premises in accordance with the description of responsibilities attached hereto as Exhibit "C" and incorporated herein by reference, which description may be amended by NWRI from time to time with the written approval of the NRD. The NWRI shall have the sole responsibility for supervision and performance of the NWRI Monitoring Agent.

14. **HUMAN HABITATION.** No part of the Premises shall be used for temporary or permanent human habitation except portions of the NWRI Facilities specially designated in the Final Plans and Specifications as a residence for the NWRI's Monitoring Agent and/or veterinarian.

15. **SIGNS.** NWRI shall not install any outdoor signs on the Premises other than in accordance with plans and specifications prepared by NWRI and approved in writing by the NRD. The NRD shall provide and maintain, at its sole cost and expense, all other necessary and proper outdoor signage for the Premises.

16. **RULES AND REGULATIONS.** Public access to and use of the Premises and the NRD facilities shall be subject to reasonable rules and regulations

adopted and amended by the NRD from time to time with the written approval of NWRI, which approval shall not be withheld unreasonably. Initial rules and regulations governing the Premises and the NRD Facilities, adopted by the NRD and approved by NWRI, are attached hereto as Exhibit "D" and incorporated herein by reference. NWFU and its agents shall make every effort to fully enforce all such rules and regulations.

17. **RISK OF LOSS.** The NRD shall not have any duty to maintain or repair the NWRI Facilities or any other NWRI improvements in the Premises, or any NRD Facilities (other than wetlands and wetlands enhancements), and NWRI shall have the sole risk of loss of such NWRI improvements and NRD Facilities (other than wetlands and wetlands enhancements), from any cause whatsoever.

18. **ASSIGNMENT.** NWRI shall not assign this Lease nor let or sublet the Premises, or any part thereof, to any other party without the written consent of the NRD.

19. **INSURANCE.** NWRI shall keep in full force and effect during the entire term of this Lease a policy of public liability and property damage insurance, with respect to the Premises and the activities conducted by NWRI, in which the limits of public liability shall be not less than \$1,000,000.00 per person and \$2,000,000.00 per occurrence and in which the property damage liability limits shall be not less than \$1,000,000.00. The policy shall name the NRD as a named insured and shall contain a provision that the insurer will not cancel or change the insurance without first giving written notice to the NRD. The insurance shall be placed with a responsible insurance company acceptable to the NRD and a copy of the policy and a certificate of insurance shall be delivered to the NRD from time to time, as the NRD may require. As of every fifth anniversary of the commencement of the original term of this Lease, all of the aforesaid minimum policy limits shall be re-determined, for applicability during the next succeeding five years, by multiplying each such limit amount, in turn, by a fraction the numerator of which is the "Consumer Price Index-Seasonally Adjusted U.S. City Average For All Urban Consumers (1967=100)," published monthly in the "Monthly Labor Review" of the Bureau of Labor

Statistics of the United States Department of Labor ("CPI-U"), for the third month preceding the month in which such fifth anniversary occurs, and the denominator of which is the CPI-U for the month and year in which the original term of this Lease commenced.

20. **COMPLIANCE WITH LAWS.** NWRI shall keep the Premises and conduct its activities therein in a manner which shall be in compliance with all applicable laws, rules and regulations, orders and ordinances of the city, county, state and federal government and any department thereof, and will not suffer or permit the Premises to be used for any unlawful purpose. NWRI will defend, indemnify and hold the NRD harmless from and against any and all fines and penalties that may result from or be due to any infractions of, or non-compliance with, the said laws, rules, regulations, orders and ordinances.

21. **PERSONAL PROPERTY.** All personal property of NWRI or of any of its members kept on the Premises shall be at the sole risk of NWRI.

22. **NRD ENTRY.** The NRD, its agents or representatives, shall have the right to enter any portion of the Premises at all reasonable times for any reasonable purpose.

23. **HOLD HARMLESS.** NWRI agrees to defend, indemnify and hold the NRD harmless from and against any and all claims, demands and causes of action for personal injury, property damage, or property loss arising out of, in the course of, or as a result of the use or occupancy of the Premises by NWRI or any of its officers, agents, employees, contractors, permittees or invitees, except as may be solely and proximately caused by the willful act of the NRD, its officers, agents or employees.

24. **DEFAULT.** Should default be made by NWRI in the performance or observance of any of NWRI's covenants, conditions, provisions or agreements herein contained, or should a petition in bankruptcy be filed by ~~NWRI~~, or should NWRI be adjudged bankrupt or insolvent by any court, or should a trustee or receiver in bankruptcy

or a receiver of any property of NWRI be appointed in any suit or proceeding by or against NWRI, or should the Premises become vacant or abandoned, or should this Lease by operation of law pass to any person other than NWRI, or should the leasehold interest be levied on under execution, then and in any of such events the NRD may, if the NRD so desires, upon thirty (30) days written notice to NWRI or its attorney, declare this Lease terminated, and the NRD may re-enter the Premises upon said notice and hold and enjoy the same thenceforth as if these presents had not been made, without prejudice, however, to any right of action or remedy of the NRD in respect to any breach by NWRI of any of the covenants herein contained. In case the NRD does not elect to terminate this Lease pursuant the foregoing provision of this paragraph, the NRD shall nevertheless have and the NRD is hereby expressly given the right to: re-enter the Premises, with or without legal process, should any of the events specified hereinabove take place or occur; to remove NWRI's signs, and all property and effects of NWRI or other occupants of the Premises; and if the NRD so desires, to re-let the Premises or any part thereof upon such terms, and to such person or persons and for such period or periods as may seem fit to the NRD.

25. **REMOVAL OF PROPERTY.** If NWRI shall not remove all its personal property from the Premises within ten days after the NRD shall become entitled to the possession of the Premises as herein agreed, the NRD may, without notice, remove the same, or any of the same, in any manner that the NRD may choose, and NWRI will pay the NRD, on demand, any and all expenses incurred in such removal, and also storage on said personal property for any length of time during which the same shall be in the NRD's possession or control, or if NWRI shall at any time vacate or abandon the Premises, and leave any goods or chattels in, upon or about the Premises, for a period of ten days after such vacation or abandonment, or after the termination of this Lease in any manner whatsoever, then the NRD shall have the right to sell all or any part of said goods and chattels, at public or private sale, without giving any notice to NWRI, or any notice of sale, all notices required by statute or otherwise being hereby expressly waived, and to

apply the proceeds of such sale, first to the payment of all costs and expenses of conducting the sale or caring for or storing the goods and chattels; and, second, to apply the balance, if any, to any indebtedness due from NWRI to the NRD; and third, to deliver any additional surplus, on demand in writing, to NWRI. It is further agreed that all the goods, chattels, fixtures and other personal property belonging to NWRI, which are, or may be put into the Premises during said term, whether exempt or not from sale under execution and attachment under the laws of the State of Nebraska, shall at all times be bound with a first lien in favor of the NRD, and shall be chargeable for all rent hereunder and the fulfillment of the other covenants and agreements herein contained, which said lien may be enforced in like manner as a chattel mortgage, or in any other manner afforded by law.

26. **SURRENDER AND HOLDOVER.** At the termination of this Lease, by lapse of time or otherwise, NWRI shall forthwith leave, surrender and yield up the Premises in good and substantial order and repair. It is understood and agreed that this Lease shall not extend beyond the term herein granted, and a holding over or continuance in the occupancy of the Premises shall not work an extension of the said lease, but in any and all such cases, NWRI shall be a trespasser or a tenant at will at the option of the NRD, subject to removal by the said the NRD by summary process and proceedings.

27. **EXPENSES BECOME RENT.** In the event of the failure by NWRI to perform any of the covenants, agreements or conditions herein contained, the NRD shall have the right, but shall not be obligated, to pay any sum of money or incur any expense which should have been paid or incurred by NWRI for the performance of any such covenant, agreement or condition. NWRI covenants that in case the NRD, by reason of the failure of NWRI to perform any of the covenants, agreements or conditions herein contained, shall be compelled to pay or shall pay any sum of money or shall be compelled to do or shall do any act which requires the payment of money, then the sum or sums so paid or required to be paid, together with interest, costs and damages, shall be added to

the installment of rent next becoming due and shall be collectible as additional rent in the same manner and with the same remedies as if it had been originally reserved.

28. **NO WAIVER.** The failure of the NRD to insist upon a strict performance of any of the covenants or conditions of this Lease, or to exercise any right or option herein conferred in any one or more instances, shall not be construed as a waiver or a relinquishment for the future of any such covenants, conditions, rights or options, but the same shall remain in full force and effect; and the doing by the NRD of any act or thing which the NRD is not obligated to do hereunder shall not be deemed to impose any obligation upon the NRD to do any such act or thing in the future or in any way change or alter any of the provisions of this Lease.

29. **SURRENDER OF PREMISES.** No surrender of the Premises for the remainder of the term herein shall be binding upon the NRD unless accepted by the NRD in writing.

30. **REMEDIES NOT EXCLUSIVE.** All rights and remedies of the NRD under or in connection with this Lease shall be cumulative and none shall be exclusive of any other rights or remedies allowed by law. No agreements shall be held as changing or in any manner modifying, adding to or detracting from any of the terms or conditions of this Lease, unless such agreement shall be in writing, executed by both parties hereto.

31. **NOTICES.** All notices or other instruments required or authorized to be given or delivered pursuant to any provision of this Lease shall be effectively given or delivered if mailed by registered or certified mail to the NRD at 8901 South 154th Street, Omaha, NE 68138-3621 and to NWRI at 14301 FNB Parkway, Suite 207, Omaha Nebraska, 68154 or to such other address as the parties hereto may designate in a writing given according to this paragraph.

32. **AUTHORITY.** The President of NWRI and the General Manager of the NRD are authorized to take such actions and make such determinations on behalf of their

respective parties as are required or permitted for the respective parties by this Lease and as such officers in their discretion determine necessary.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

**NEBRASKA WILDLIFE REHAB, INC., a
Nebraska non-profit corporation, Lessee**

By _____
President

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT, Lessor**

By _____
General Manager

STATE OF NEBRASKA)
) SS.
COUNTY OF SARPY)

On this ____ day of _____, 2000, before me, a Notary Public in and for said County, personally came the above-named STEVEN G. OLTMANS, General Manager of PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, and acknowledged the execution of the above instrument as his voluntary act and deed and the voluntary act and deed of said natural resources district.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

List of Exhibits

Exhibits to Development Agreement

Exhibit A - legal description of the Premises

Exhibit 1 - NWRI Lease form

Exhibit 2 - NRD-approved Master Plan for NWRI Facilities and NRD Facilities

Exhibits to NWRI Lease

Exhibit A - legal description of the Premises

Exhibit B - final plans and specifications for the NWRI Facilities

Exhibit C - responsibility description for the NWRI Monitoring Agent

Exhibit D - initial rules and regulations for the Premises

**ADDENDUM TO
DEVELOPMENT AND MANAGEMENT AGREEMENT
BETWEEN
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
AND
NEBRASKA WILDLIFE REHAB, INC.
FOR
RUMSEY STATION WETLANDS**

THIS ADDENDUM (hereinafter referred to as “**this Addendum**”) is entered into by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “**the NRD**”), a governmental subdivision of the State of Nebraska, and **NEBRASKA WILDLIFE REHAB, INC.** (hereinafter referred to as “**NWRI**”), a non-profit corporation organized and existing under the laws of the State of Nebraska.

WHEREAS, the NRD and NWRI entered into an Agreement, effective as of July 3, 2000, entitled “DEVELOPMENT AND MANAGEMENT AGREEMENT BETWEEN PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT AND NEBRASKA WILDLIFE REHAB, INC. FOR RUMSEY STATION WETLANDS” (hereinafter referred to as “**the Agreement**”); and,

WHEREAS, among other things, the Agreement provided for the development and management of a wildlife hospital, environmental education center and other facilities (therein referred to collectively as “**the NWRI Facilities**”) on unimproved parcels known collectively as the Rumsey Station Wetlands, consisting of approximately 56.36 acres of land, more or less, on the south side of the West Branch Papillion Creek and west of 54th Street, in the SW ¼ of Section 30, Twp. 14 North, Range 13 East of the

6th P.M., and in the SE ¼ of Section 25, Twp. 14 North, Range 12 East of the 6th P.M., all in Sarpy County, Nebraska (therein described and referred to as **“the Premises”**); and,

WHEREAS, NWRI has requested that the NRD agree to extend by one year certain deadlines provided by the Agreement for the activities of the parties under the Agreement;

NOW, THEREFORE, in consideration of their mutual covenants contained herein, it is hereby agreed between the parties as follows, to-wit:

A. AMENDMENTS. In order to provide the one-year extension of time sought by NWRI, paragraphs 2 and 6 of the Agreement are hereby amended as follows, to-wit:

2. PRELIMINARY DESIGN OF THE NWRI AND NRD FACILITIES. Within one year and ninety (90) days after the effective date of this Agreement, and with the aid of such architects and engineers as NWRI deems necessary and the NRD approves in writing (hereinafter referred to as **“the Architects/Engineers”**), which approval shall not be withheld unreasonably, and at NWRI’s sole cost and expense, NWRI shall prepare preliminary plans and specifications for the NWRI Facilities and NRD Facilities shown on the Master Plan (hereinafter referred to as **“the Preliminary Plans and Specifications”**), and submit the Preliminary Plans and Specifications to the NRD for its approval along with the Architects/Engineer’s itemized estimates of the cost of construction of the NWRI Facilities and NRD Facilities shown in the Preliminary Plans and Specifications. If the requisite NRD approval of the Preliminary Plans and Specifications has not been given on or before thirty (30) days after such submission then NWRI may declare this Agreement terminated.

6. VERIFICATION OF FINANCING. Within sixty (60) days after the NRD’s approval of the Final Plans and Specifications and of the itemized

estimates of the cost of construction of the NWRI Facilities and of the NRD Facilities as shown in the Final Plans and Specifications, but not later than July 1, 2002, NWRI shall submit to the NRD written evidence satisfactory to the NRD that NWRI has obtained construction financing in the amount of the Architects/Engineers's estimates of the costs of construction of the NWRI Facilities shown in the Final Plans and Specifications, or in the amount of one million dollars, whichever amount is greater. Such construction financing may consist of (a) unencumbered NWRI funds on deposit in a bank authorized to do business in the State of Nebraska, (b) enforceable pledges, grants, and donations of money to NWRI or the NRD for purposes of construction of the NWRI Facilities; and, (c) enforceable pledges, grants, and donations to NWRI or to the NRD of materials and in-kind services usable for construction of the NWRI Facilities, or any combination thereof. Such construction financing may not be secured by liens upon the Premises or upon any of the NWRI Facilities nor NRD Facilities, nor be secured by any rents or profits therefrom, nor permit or contemplate the imposition of construction liens or other encumbrances upon the Premises. If the requisite verification of financing has not been submitted to the NRD on or before such date then the NRD may declare this Agreement terminated. The identities of anonymous donor(s) providing financing for the NWRI Facilities, or written verification thereof, shall not be disclosed to the public in the absence of such disclosure being ordered by a Nebraska court of general jurisdiction upon a showing of good cause.


B. CONFIRMATION. Except as amended by this Addendum, the Agreement and all provisions thereof are ratified and confirmed in all respects

C. EFFECTIVE DATE OF ADDENDUM. This Addendum shall be effective upon execution hereof by both parties.

Executed by NWRI on this 16 day of April, 2001.

By _____
President


Margaret Schering
Secretary



President

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**


General Manager

On this 28th day of March, 2001, before me, a Notary Public in and for said County, personally came the above-named STEVEN G. OLTMANS, General Manager of the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, and acknowledged the execution of the above instrument as his voluntary act and deed and the voluntary act and deed of said natural resources district.

 **GENERAL NOTARY-State of Nebraska**
MARTIN P. CLEVELAND
My Comm. Exp. July 31, 2004



Notary Public

**SECOND ADDENDUM TO
DEVELOPMENT AND MANAGEMENT AGREEMENT
BETWEEN
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
AND
NEBRASKA WILDLIFE REHAB, INC.
FOR
RUMSEY STATION WETLANDS**

THIS ADDENDUM (hereinafter referred to as “**this Addendum**”) is entered into by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “**the NRD**”), a governmental subdivision of the State of Nebraska, and **NEBRASKA WILDLIFE REHAB, INC.** (hereinafter referred to as “**NWRI**”), a non-profit corporation organized and existing under the laws of the State of Nebraska.

WHEREAS, the NRD and NWRI entered into an Agreement, effective as of July 3, 2000, entitled “DEVELOPMENT AND MANAGEMENT AGREEMENT BETWEEN PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT AND NEBRASKA WILDLIFE REHAB, ~~INC.~~ FOR RUMSEY STATION WETLANDS” (hereinafter referred to as “**the Agreement**”); and,

WHEREAS, by a FIRST ADDENDUM, the Agreement previously was amended to extend by one year certain deadlines provided by the Agreement; and,

WHEREAS, NWRI has requested that the NRD agree to extend by one additional year the deadline provided by paragraph 6 of the Agreement for the verification of financing

NOW, THEREFORE, in consideration of their mutual covenants contained herein, it is hereby agreed between the parties as follows, to-wit:

A. AMENDMENT. Paragraph 6 of the Agreement, as previously amended, is hereby further amended as follows, to-wit:

6. VERIFICATION OF FINANCING. Within sixty (60) days after the NRD's approval of the Final Plans and Specifications and of the itemized estimates of the cost of construction of the NWRI Facilities and of the NRD Facilities as shown in the Final Plans and Specifications, but not later than July 1, 2003, NWRI shall submit to the NRD written evidence satisfactory to the NRD that NWRI has obtained construction financing in the amount of the Architects/Engineers' estimates of the costs of construction of the NWRI Facilities shown in the Final Plans and Specifications, or in the amount of one million dollars, whichever amount is greater. Such construction financing may consist of: (a) unencumbered NWFU funds on deposit in a bank authorized to do business in the State of Nebraska, (b) enforceable pledges, grants, and donations of money to NWRI or the NRD for purposes of construction of the NWRI Facilities; and, (c) enforceable pledges, grants, and donations to NWRI or to the NRD of materials and in-kind services usable for construction of the NWRI Facilities, or any combination thereof. Such construction financing may not be secured by liens upon the Premises or upon any of the NWRI Facilities nor NRD Facilities, nor be secured by any rents or profits therefrom, nor permit or contemplate the imposition of construction liens or other encumbrances upon the Premises. If the requisite verification of financing has not been submitted to the NRD on or before such date then the NRD may declare this Agreement terminated. The identities of anonymous donor(s) providing financing for the NWRI Facilities, or written verification thereof, shall not be disclosed to the public in the absence of such disclosure being ordered by a Nebraska court of general jurisdiction upon a showing of good cause.

and that, except as so amended by this Addendum, the Agreement as previously amended and all provisions thereof are ratified and confirmed in all respects,

B. EFFECTIVE DATE OF ADDENDUM. This Addendum shall be effective upon execution hereof by both parties.

Executed by NWRI on this 12th day of November, 2002.

NEBRASKA WILDLIFE REHAB, INC., a
Nebraska non-profit corporation

Attest:

By 
President

Secretary

Executed by the NRD on this 15 day of November, 2002.

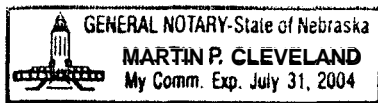
PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

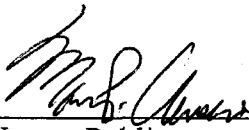
By 
General Manager

STATE OF NEBRASKA)
) SS.
COUNTY OF SARPY)

On this 15th day of November, 2002, before me, a Notary Public in and for said County, personally came the above-named STEVEN G. OLTMANS, General Manager of the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, and acknowledged the execution of the above instrument as his voluntary act and deed and the voluntary act and deed of said natural resources district.

WITNESS my hand and Notarial Seal the date last aforesaid.




Notary Public

Memorandum

To: PPO Subcommittee
From: Paul Woodward, Water Resources Engineer
Date: June 3, 2003
Re: Flood Mitigation Planning and Mapping Assistance Program

A request from the City of Tekamah for financial and technical assistance from the District to revise their existing floodplain map was discussed at the May 2003 Programs, Projects, and Operations Subcommittee. Following the discussion, it was noted that the District does not currently have a program to provide financial assistance for flood hazard mapping or other flood mitigation planning. Therefore, staff was directed at the May 2003 Board Meeting to prepare a draft policy of a Flood Mitigation Planning and Mapping Assistance Program, to include technical and financial assistance for planning and flood hazard mapping. This draft is attached for your review and consideration.

In summary, the program would allow the District to provide financial and technical assistance to National Flood Insurance Program (NFIP) communities within the District for flood mitigation planning and new or revised floodplain mapping. It is proposed that financial assistance from the District be 50% of the non-federal and non-state (local) cost up to a maximum of \$50,000 in District funds for these eligible activities.

The program outlines possible federal or state funding opportunities for these activities. For example, the Nebraska Department of Natural Resources currently offers Flood Mitigation Assistance funding to communities for flood mitigation planning and projects. Once developed, these plans may identify any number of flood protection activities including levees, channel improvements, dams, property acquisition, flood hazard mapping, or public education. In addition, the District recently agreed with FEMA to become a Cooperating Technical Partner (CTP) in an effort to update floodplain maps within its jurisdiction.

There is a need to assist National Flood Insurance Program (NFIP) communities by encouraging them to prepare flood mitigation plans and to update existing floodplain maps. By doing so, we protect the future effectiveness of the District's numerous flood control structures, provide better tools to manage development in floodplains, and increase opportunities to receive state and federal funding for projects.

Staff recommends that the Subcommittee recommend to the Board that the proposed District Policy 17.39 - Flood Mitigation Planning and Mapping Assistance Program be adopted, subject to approval as to form by District Legal Council.

If you have any questions or concerns, please contact me at 444-6222 or pwoodward@papionrd.org.

17.39 District Program – Flood Mitigation Planning and Mapping Assistance

Program. The Flood Mitigation Planning and Mapping Assistance Program is an authorized program of the District to provide technical and financial assistance to governmental entities located within the District to help identify flood prone areas and plan projects to reduce flood risk and damage.

A) Criteria for Assistance:

- 1) Assistance in flood mitigation planning and mapping requires sponsorship by a city, town, village, county, municipality or other unit of local government with the authority and capability to carry out the Flood Mitigation Plan and/or adopt any new or revised National Flood Insurance Program (NFIP) Flood Hazard Studies and Maps.
- 2) The Sponsor must participate in the NFIP and be in “good-standing” status.
- 3) All Flood mitigation planning and floodplain mapping must conform with all federal, state and local laws, standards or guidelines.

B) Eligible Activities:

- 1) Preparation of a Flood Mitigation Plan.
- 2) Preparation of or revisions to NFIP Flood Hazard Studies and Maps.

C) Funding Assistance:

- 1) The Sponsor or the District must apply for and receive federal or state cost share to assist in the implementation of this program. This assistance may be available through, but is not limited to:
 - a) Flood Mitigation Assistance.
 - b) FEMA Cooperating Technical Partners Program (CTP) or other Flood Map Modernization Assistance.
- 2) The District will reimburse 50% of the local (non-federal or non-state) cost up to a maximum of \$50,000 in District funds for each such eligible activity.

D) District Responsibilities:

- 1) Administer the Flood Mitigation Planning and Mapping Assistance Program.
- 2) Management shall review, prioritize and approve applications for assistance when the cost share amount is \$20,000 or less for each such eligible activity. The approval of the Board is required where the cost share is between \$21,000 and

\$50,000 for each such eligible activity, or, when the amount requested in applications exceeds the amount budgeted for this program.

- 3) The NRD reserves the right to review and approve or reject plans, reports, maps, specifications, and or implementation schedules.
- 4) The District will retain the services of contractors necessary for developing flood hazard mapping under the CTP program.

E) Sponsor Responsibilities:

- 1) The sponsor shall submit an application for each such eligible activity on forms provided by the NRD along with a cover letter describing the need for a Flood Mitigation Plan and/or flood plain mapping.
- 2) The sponsor shall execute an agreement with the NRD which outlines proposed activities for each application.
- 3) The sponsor shall retain the services of contractors necessary for eligible activities, other than those supported by the CTP program.
- 4) The sponsor must agree to implement the Flood Mitigation Plan and adopt any new or revised NFIP Flood Hazard Studies and Maps that result from activities funded with NRD assistance.

[Prepared June 3, 2003]

paa30603.pol

Memorandum

To: PPO Subcommittee
From: Paul Woodward, Water Resources Engineer
Date: June 3, 2003
Re: Amendment to Dam Site 6 Agreement

According to Section 10 of the Second Amendment to the Amended Agreement between the Horgan Development Company (HDC), P-MRNRD, and Sanitary and Improvement District No. 425 (SID 425), the SID and HDC are to let the contract(s) for construction of the Trail System and Fishing Facilities by June 30, 2003. However, HDC and the SID are requesting an extension from the NRD for the time to construct these amenities. This extension along with a future reimbursement schedule is detailed in the Third Amendment to the Amended Agreement which is enclosed for your review and consideration.

In summary, the P-MRNRD would agree to extend the deadline for letting a contract to construct the remaining Trail System and Fishing Facilities to June 30, 2005 and would not reimburse HDC the remaining \$345,600 previously agreed upon until 60 days after a contract is let (FY04 thru FY06). Please see the attached review comments from Paul Peters dated June 2, 2003. District legal council comments on this proposed agreement are attached.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Third Amendment to the Amended Agreement with Horgan Development Company and SID 425 for the Dam Site 6-Bennington Lake Project, subject to approval as to form by District Legal Council.

If you have any questions or concerns, please contact me at 444-6222 or pwoodward@pacionrd.org.

**THIRD AMENDMENT TO AMENDED AGREEMENT
DAM SITE 6 - BENNINGTON LAKE PROJECT**

This Third Amendment to Amended Agreement (this "Third Amendment") is made and entered into this ____ day of _____, 2003, by and among PAPIO-MISSOURI NATURAL RESOURCES DISTRICT ("the NRD"); HORGAN DEVELOPMENT COMPANY, a Nebraska corporation ("HDC"); and SANITARY AND IMPROVEMENT DISTRICT NO. 425 OF DOUGLAS COUNTY, NEBRASKA ("the SID").

Preliminary Statement

The NRD, HDC and the SID have entered into an Agreement Dam Site 6 - Bennington Lakes Project being executed by the NRD and HDC on August 28, 1997, and by the SID on March 30, 1998, which Agreement was modified, amended and superceded in its entirety by an Amended Agreement Dam Site 6 - Bennington Lakes Project executed by the NRD on April 16, 1998, and by HDC and the SID on April 29, 1998, as amended by an Amendment to Amended Agreement Dam Site 6 - Bennington Lakes Project executed by the NRD on August 26, 1998, and by HDC and the SID on August 13, 1998, and by a Second Amendment to Amended Agreement Dam Site 6 - Bennington Lake Project executed by the NRD on October 17, 2000, and by HDC and the SID on October 13, 2003 (as amended, the "Agreement").

The Agreement sets forth the cooperative arrangements between the NRD, HDC, and the SID in the design, construction, operation and maintenance of certain improvements relating to the so-called Bennington Lakes Project, including, without limitation, the following (the "Cooperative Project Improvements"): the Dam, the Dam Complex, the Reservoir, Sediment Retention Structure, the Wetlands, the Wetlands Complex, the Trails System, the Channel Improvements, the Improved Channel, the Treatment Facility, the Treatment Facility Complex, the SID Open Space Improvements, the Spillway Complex, the NRD Open Space Improvements, and the Fishing Facilities, all of which Cooperative Project Improvements are described in the Agreement. The Agreement further specifies the NRD's agreements to make financial contributions towards the cost of certain of the Cooperative Project Improvements.

HDC and the SID have completed all of their obligations under the Agreement for construction of the Cooperative Project Improvements, except for the Trails System and Fishing Facilities. HDC and the SID have requested an extension for the time to construct the Trail System and Fishing Facilities, and the parties desire to memorialize their agreements with respect to such extension.

NOW, THEREFORE, in consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Any terms used in this Third Amendment with an initial capitalized letter which are not otherwise defined herein, shall have the meaning ascribed to them by the Agreement.

2. Section 10 of the Agreement is hereby amended by changing the date in said Section 10 from June 30, 2003, to June 30, 2005.

3. Section 12(g) is hereby amended in its entirety to provide as follows:

(g) For the NRD's fiscal year 2004 to 2006 (July 1, 2003 - June 30, 2006), a payment in the amount of \$345,600, such payment to be due and payable by the NRD to HDC on the later of the following dates:

(1) October 15, 2003

(2) 60 days after HDC or SID let the contract(s) for construction of the Trail System and the Fishing Facilities.

4. The NRD, HDC, and the SID have approved preliminary plans for the construction of the Trails System and a concept plan for the construction of the Fishing Facilities as identified on Exhibits "A" and "B" attached hereto and incorporated herein by this reference. Final plans and specifications for the Trail System and Fishing Facilities shall be submitted to the NRD on or before September 30, 2004, which plans and specifications will substantially conform with the preliminary plans. The NRD's approval of the final plans and specifications will not be unreasonably withheld or delayed.

5. This Third Amendment shall amend and supplement the Agreement which, except as amended and supplemented herein, shall remain in full force and effect in accordance with its terms. In the event of any conflict between the terms of this Third Amendment and the terms of the Agreement, the terms of this Third Amendment shall control.

This Third Amendment is executed by the NRD on this _____ day of _____, 2003.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By: _____
Steven G. Oltmans, General Manager

This Third Amendment is executed by HDC on this _____ day of _____, 2003.

HORGAN DEVELOPMENT COMPANY, a
Nebraska corporation

By: _____
Robert P. Horgan, President

This Third Amendment is executed by the SID on this ____ day of _____, 2003.

SANITARY AND IMPROVEMENT DISTRICT
NO. 425 OF DOUGLAS COUNTY, NEBRASKA

ATTEST:

By: _____
Robert P. Horgan, Chairperson

Clerk

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this ____ day of _____, 2003, before me, a Notary Public, personally came Steven G. Oltmans, 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 acknowledged the same to be his 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 DOUGLAS)

On this ____ day of _____, 2003, Robert P. Horgan,, President of HORGAN DEVELOPMENT COMPANY, a Nebraska corporation, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said corporation.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

STATE OF NEBRASKA)

) ss.

COUNTY OF DOUGLAS)

On this ____ day of _____, 2003, before me, a Notary Public, personally came Robert P. Horgan, Chairperson of the Board of Trustees of SANITARY AND IMPROVEMENT DISTRICT NO. 425 OF DOUGLAS COUNTY, NEBRASKA, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and acknowledged the same to be his 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

00160027

Paul F. Peters, P.C.
Taylor, Peters & Drews
Suite 940 Omaha Tower
2120 South 72nd Street
Omaha, NE 68124-2374
(402) 391-3712 FAX (402) 391-3714
E-mail: paul.peters@mindspring.com

To: Paul Woodward, Project Manager
Papio-Missouri River Natural Resources District

Date: June 3, 2003

Subject: Third Amendment to Amended Agreement - Dam Site 6 Bennington Lakes Project

This responds to your e-mail memo of May 29, 2003 forwarding your proposed revisions to the Third Amendment to the Amended Agreement received from Mr. James Buser, attorney for the SID and HDC.

Without comment on the advisability of the Third Amendment to Amended Agreement or your amendments thereto, I note the following:

a.

Paragraph 2 of the Third Amendment to Amended Agreement as amended by Mr. Buser (strike-out and single underlining) would amend Section 10 of the Agreement as follows:

10. CONSTRUCTION OF REMAINING FACILITIES. On or before June 30, ~~2003~~2005, the SID and HDC will let the contract(s) for construction of the Trails System and the Fishing Facilities and shall retain and compensate the Engineers to observe such construction. Such facilities shall be constructed by the SID and HDC in conformance with the final plans and specifications approved by the NRD, which approval shall not be withheld unreasonably. The NRD, at its own cost and expense and as funds become available, will design and construct primitive trails and establish vegetation in the Wetlands.

Thus, the effect of the Third Amendment to Amended Agreement as so amended would be to postpone the deadline for the SID and HDC's letting of a contract for construction of the Trails System and the Fishing Facilities.

b.

Paragraph 3 of the Third Amendment to Amended Agreement as amended by Mr. Buser (strike-outs and single underlining) and further amended by you (double strikeout and double underlining) would amend Section 12 of the Agreement as follows:

12. NRD CONTRIBUTIONS. The NRD shall contribute to HDC and the SID installment payments cumulating the total amount of \$2,845,600 as the NRD's contribution towards the costs of the Dam, the Reservoir, the Sediment Retention Structure, the Trails System, the Fishing Facilities, and the Channel Improvements, as follows:

* * *

(g) For the NRD's fiscal year 2004 to 2006 (July 1, 2003 – June 30, ~~2004~~ 2006), a payment in the amount of \$345,600, such payment to be due and payable by the NRD to HDC on ~~the later of the following dates~~ later of the following dates:

(1) October 15, 2003

(2) ~~60 days after HDC shall have submitted to the NRD paid contractor invoices (additional to the invoices theretofore submitted) in such amounts for costs incurred for the design and construction of the Dam, the Reservoir, the Sediment Retention Structure, the Trails System, the Fishing Facilities, and the Channel Improvements. 60 days after HDC or SID let the contract(s) for construction of the Trail System and the Fishing Facilities.~~

(3) ~~30 days after the Engineers have certified to the NRD in writing that the Dam, the Sediment Retention Structure, the Trails System, the Fishing Facilities, and the Channel Improvements are finally completed in accordance with the Contract Documents.~~

Thus, the effect of the Third Amendment to Amended Agreement, as so amended, would be to change the conditions, including due date, for the NRD's final \$345,600 contribution installment.

c.

Paragraph 4 of the Third Amendment to Amended Agreement, as proposed by Mr. Buser, and as amended by you (strikeout and double underlining), would provide a new (unnumbered) provision of the Agreement providing as follows:

The NRD, HDC, and the SID have approved preliminary plans for the construction of the Trails System and a concept plan for the construction of the Fishing Pier Facilities¹ as identified on Exhibits "A" and "B" attached hereto and incorporated herein by this reference. Final plans and specifications for the Trail System and Fishing Pier Facilities shall be submitted to the NRD on or before September 30, 2004,² which plans and specifications will substantially conform with the preliminary plans. The NRD's approval of the final plans and specifications will not be unreasonably withheld or delayed.

Thus, the effect of paragraph 4 of the Third Amendment to Amended Agreement, as so amended by you, would be to make recitations of agreed fact and set September 30, 2004 as the deadline for the SID and HDC's submission to the NRD of the final plans and specifications for the Trail System and Fishing Facilities.

¹ The term "Fishing Facilities" was used in the prior project agreements and earlier in the Third Amendment to Amended Agreement.

² It is noted that paragraph 6 of the original Amended Agreement provided as follows with respect to the production of final plans and specifications for the Trail System and Fishing Facilities:

6. FINAL PLANS AND SPECIFICATIONS. Upon receipt by the SID and HDC of the NRD's written comments upon the preliminary plans and specifications, the SID and HDC shall retain and compensate the Engineers for the preparation of a final comprehensive plan, including, without limitation, **final plans and specifications for the Dam, the Reservoir, the Channel Improvements, the Sediment Retention Structure, the Trails System, the Treatment Facility, and the Fishing Facilities;** and, upon completion of such final plans and specifications and approval of the same by the SID and HDC, such final plans and specifications **shall be submitted to the NRD for written approval.** The NRD shall have a period of 30 days to review such final plans and specifications 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. The NRD shall have sole responsibility for the future cost and expense of its preparation of preliminary and final plans and specifications for future public Open Space Improvements in the emergency spillway portion of the Dam Complex. (Bold for emphasis).

MEMORANDUM

TO: Programs, Projects and Planning Subcommittee
FROM: Dick Sklenar
SUBJECT: Renewal of Water Purchase Agreement for Ft. Calhoun
DATE: May 27, 2003

Attached to this memorandum is the Fourth Amendment to Agreement for Sale of Water by the Papio-Missouri River Natural Resources District (P-MRNRD) to the City of Ft. Calhoun, NE., and Agreement to Create a Joint Water Project Board. A letter from the Mayor of Ft. Calhoun requesting that the Agreement for the sale of water be extended for a period of twenty-five years is attached as well. The current Agreement expires this month. There are no other changes or modifications to the Agreement that is being requested by the City. The Washington County Rural Water System currently provides water service to this community.

The staff recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to sign the Fourth Amendment to the Agreement for Sale of Water by the P-MRNRD to the City of Ft. Calhoun, NE.

FOURTH AMENDMENT

To

AGREEMENT FOR SALE OF WATER BY THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT TO THE CITY OF FT. CALHOUN, NEBRASKA, AND AGREEMENT TO CREATE A JOINT WATER PROJECT BOARD

This Fourth Amendment is made and entered into this _____ day of _____, 20__, by and between the CITY OF FORT CALHOUN, a municipal corporation of the State of Nebraska, hereinafter referred to as "the City", and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a governmental subdivision of the State of Nebraska, hereinafter referred to as "the NRD".

WITNESSETH:

WHEREAS, the NRD and the City have entered into an Agreement dated the 20th day of May, 1978, providing for the sale of water to the City by the NRD, establishing a point of delivery for such water, and establishing certain pressure and volume minimums, hereinafter termed "the Agreement"; and,

WHEREAS, the NRD and City have approved and executed a First Amendment to the Agreement dated March 8, 1979, to provide, inter alia, for delivery of water by the NRD to the City at a substitute point of delivery at certain substitute pressures and volumes; and,

WHEREAS, the NRD and the City have approved and executed a Second Amendment to the Agreement dated the 10th day of September, 1979, to provide, inter alia, for substitute membership on the Joint Water Project Board; and,

WHEREAS, the NRD and the City have approved and executed a Third Amendment to the Agreement dated the 3rd day of November, 1980, to provide for certain minimum water pressures at the point of delivery in the City of Fort Calhoun, and to provide for a date of commencement of service under the Agreement; and,

WHEREAS, the City has requested that the term of the Agreement for sale of water be extended for a period of twenty-five (25) years from and after the date hereof, and the NRD is agreeable to such extension;

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto, the proper authorization by duly enacted resolutions of the governing bodies of the respective parties hereto enter into the engagements herein contained, and under the authority of Section 14-2130, R.R.S. Nebraska, Reissue of 1997, it is mutually agreed between the City and the NRD as follows:

1. That the term of the AGREEMENT FOR SALE OF WATER, made and entered into by and between the parties on May 20, 1978, shall be extended to the day twenty-five (25) years from and after the date of this FOURTH ADDENDUM.

2. Except as otherwise amended by the First Amendment, the Second Amendment, the Third Amendment, and this Fourth Amendment, the Agreement dated May 20, 1978, is ratified and confirmed in all respects.

IN WITNESS WHEREOF, The City of Fort Calhoun, Nebraska, and the Papio-Missouri River Natural Resources District have caused this Fourth Amendment to be executed by their duly authorized officers, in accordance with resolutions of the governing bodies of each party hereto.

Dated this _____ day of _____, 20__.

THE CITY OF FORT CALHOUN, NEBRASKA

By: _____

Mayor

Attest:

City Clerk

PAPIO –MISSOURI RIVER NRD

By: _____

General Manager

Attest:

CITY OF FORT CALHOUN
110 SOUTH 14TH STREET
FORT CALHOUN, NE 68023
PHONE: 402-468-5303 FAX: 402-468-5399

May 22, 2003

Mr. Steven G. Oltmans, General Manager
Papio-Missouri River Natural Resources District
8901 South 154th Street
Omaha, Nebraska 68138-3621

RE: Addendum to Agreement for Sale of Water


Dear Mr. Oltmans,

On behalf of the ~~City~~ of Fort Calhoun, we are requesting an ~~extension of~~ the Agreement ~~dated May 20, 1978~~ for ~~an additional 25~~ years of water supply by the ~~Papio- Missouri~~ Natural Resources District.


Aside from the request to extend the agreement for another 25 years, we have no other changes to the agreement ~~at this time~~.

This request for renewal of the 25 year Water Project Agreement **is** a result of motion **and** unanimous vote by the City Council at the regular City Council Meeting held on **Monday**, May 19, 2003.

Sincerely,


Paul L. Oestmann
Mayor

ATTEST:


Linda Welsher
City Clerk/Treasurer

MEMORANDUM

TO: Program, Planning and Projects Subcommittee

FROM: Dick Sklenar

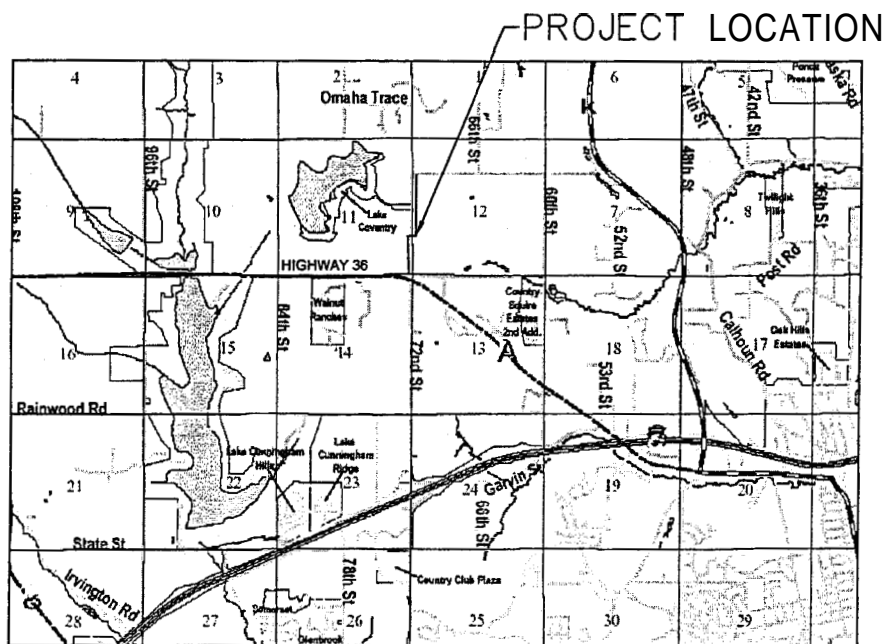
SUBJECT: Washington Rural Water/Water Main Addition

DATE: May 29, 2003

On May 28, 2003 bids were open for the construction of a new water line along 72nd Street between Northern Hills Drive and HWY 36. Team Bank is providing most of the financing for the construction of the water line that **will** eventually serve a convenience store and a residence.

The following bids were received for this work:

NAME OF FIRM	BID AMOUNT
Denny's Trench Inc.	\$33,135.50
Thompson Construction	\$44,985.50



The engineers opinion (HGM Associates, Inc.) of probable construction cost for this work was \$29,448.00. The timetable for completion is July 31, 2003.

It is recommended that the Subcommittee recommends to the Board of Directors that the firm of Denny's Trench Inc. be awarded the work for a watermain addition along 72nd Street in the amount of \$33,135.50 and that the General Manager be authorized to execute a contract with said firm for the work.



May 28, 2003

Mr. ~~Dick~~ Sklenar, Special Projects ~~Manager~~
Papio-Missouri River NRD
8901 South 154th Street
Omaha, NE 68138

Subject: Washington County Rural Water System
72nd Street Water Main Extension
HGM Project No. 71033
Bid Recommendation

Dear Dick,


Two bids were received on ~~May~~ 28, 2003 for the Washington County Rural Water System, 72nd Street Water ~~Main Extension~~. A copy of the tabulation of bids is attached.

The low bid for water main extension was submitted by Denny's Trench Inc. ~~m~~ the amount of \$33,135.50. The engineer's opinion of probable construction cost for the work was \$28,046.00. The majority of the cost difference is ~~m~~the furnishing and installation of the PVC pipe. PVC pipe prices have increased recently due to the volatility of oil prices.

We recommend the contract be awarded to Denny's Trench Inc. Although their bid is higher than the engineer's opinion of cost, the bids were competitive and rebidding the Project will likely have similar results.

Please call ~~if~~ you have ~~any~~ questions.

Sincerely,
HGM Associates Inc.



Chris J. Koepig, P.E.
Project Manager

Enclosure

