

**Programs, Projects & Operations
Subcommittee Meeting
May 10, 2005
8:00 p.m.
Agenda**

Programs, Projects & Operations:

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

Alternate Members: Dorothy Lanphier
Jim Thompson

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

1. Meeting Called to Order – Chairperson John Conley
2. Quorum Call
3. Adoption of Agenda
4. Proof of Publication of Meeting Notice
5. Review and Recommendation for Equestrian Use of Existing Mo-Pac Trail from Springfield South to Louisville – Gerry Bowen
6. Review and Recommendation on Interlocal Agreement with the City of Papillion on Operation and Maintenance of Walnut Creek Recreation Area – Dan Hoins, Papillion City Administer, and Steve Oltmans
7. Review and Recommendation on Development Agreement for Shadow Lake Flood and Sediment Control Projects – Nancy Pridal, Lamp-Rynearson Associates and Paul Woodward
8. Review and Recommendation on Letter of Agreement with Corps of Engineers for District Flood Hazard Mitigation Plan – Paul Woodward
9. Review and Recommendation on Equipment Purchases/Replacements for FY 2006 – Jean Tait
10. Discussion of Directors Lanphier's Request that Staff Provide Two Alternatives to Compensate for Not Using Competitive Bidding on Cost Share Projects, pursuant to Proposed Policy 15.9 – Purchasing – Cost Shared Project – Marlin Petermann
11. Other Items of Interest
12. Adjourn

Memo

To: Programs, Projects, and Operations Subcommittees

Subject: MoPac Trail – Equestrian Usage of the Trail

Date: May 3, 2005

From: Gerry Bowen

At the April 14, 2005 Board meeting, staff was asked to prepare a cost estimate for adapting the Mopac Trail between Springfield and the Platte River for equestrian usage (see attachment).

The conversion is estimated to cost approximately \$66,000. This includes selective clearing on an additional 1.4 miles of the right-of-way (12 feet wide), replacing the two bridge decks with planks, adding railing to direct users onto the bridges, installing drainage structures to facilitate equestrian usage, and fencing the east side of the right-of-way north of Buffalo Road (Springfield Creek forms a natural barrier on the west side).

Several factors were considered and are listed as follows.

1. The separate equestrian trail would be located on the east side of the District's trail corridor. Springfield Creek forms a natural barrier on the west side north of Buffalo Road.
2. In six locations, additional drainage work is needed to create a better transition between the District's trail corridor and adjacent properties.
3. The Sarpy County Fair Board has voted to not allow use of the fairgrounds as a staging area for equestrian use. A trail head would be needed at the Springfield end (north) of the trail.
4. The District's parking lot will have limited use as a trailhead for equestrian use due the reluctance of horses to cross under Highway 50 on the existing trail, and the dangers of crossing Highway 50 at-grade.
5. Both the Springfield and Buffalo Creek channels are too steep to allow a creek crossing. Erosion of the creek bank may adversely affect the bridge stability at these locations.
6. It is proposed that the trail utilize the same surface through the Ash Grove property. Additional right-of-way would be necessary, some wetlands would have to be filled and mitigated if a separate surface were to be created.

Staff recommends that the District provide 50% cost sharing for the adaptation of the Mopac Trail for equestrian usage. The equestrian community will be asked to raise the other funds privately. Also, it is recommended that a Citizens' Equestrian Advisory Committee be formed to raise the private funds necessary for the adaptation of the Mopac for equestrian uses, and for advising the District on other equestrian issues. It is recommended that the committee be no larger than five members.

Management recommends that the Subcommittee recommend to the Board that the District provide 50% cost share on the adaptation of the Mopac Trail corridor for equestrian usage on a separate trail from pedestrian/bicycle trail users, subject to the availability of a equestrian trailhead at the north end of the trail (Springfield), and that a Citizens Equestrian Advisory Committee be formed to assist with fundraising and the adaptation of the trail.

5/2/2005				
Mopac Trail Equestrian Usage Cost Estimate				
Item	Units	\$/unit	Amount	Estimated cost
Clearing & Grubbing	acres	\$6,250.00	1.4	\$ 8,750.00
Drainage Structures	number	\$5,000.00	6	\$ 30,000.00
Bridge Resurfacing (replace with planks)	number	\$2,500.00	2	\$ 5,000.00
Bridge approach railing	feet	\$20.00	120	\$ 2,400.00
Fencing	feet	\$1.50	7700	\$ 11,550.00
Seeding	acres	\$1,000.00	1.8	\$ 1,800.00
Signage	lump sum	\$1,000.00	1	\$ 1,000.00
Sub Total				\$ 60,500.00
Contingency (10%)				\$ 6,050.00
Total				\$ 66,550.00

Memo

To: Programs, Projects, and Operations Subcommittee

Subject: Interlocal Agreement with the City of Papillion for Operation and Maintenance of the Walnut Creek Lake and Recreation Area (Dam Site 21)

Date: 05-04-05

From: Randy Lee, Walnut Creek Park Superintendent

The Papio-Missouri River Natural Resources District (NRD) has operated and maintained the Walnut Creek Lake and Recreation Area (Recreation Area) since it's opening in March of 1999. At that time an interlocal agreement (attached) was entered into between the NRD and the City of Papillion (City) that defined the responsibilities of both parties for the Recreation Area and the West Branch Levee project that was constructed through the City. The City was responsible for up to 25% (\$500,000 max.) of the NRDs project costs for the Papillion levee, while the NRD, with assistance from the state, funded the land acquisition, design, and construction of the Flood Control Dam and Recreation Area at Walnut Creek. With this agreement the city knowingly would eventually assume responsibility for the Recreation Area after substantial development had occurred within the watershed and the City grew around the park. The total capital investment in the Recreation Area to date is near \$8 million, with operating costs averaging approximately \$200,000 annually.

The proposed interlocal agreement consummates the transfer of the Recreation Area from the NRD to the City. Major provisions of the agreement are as follows:

- Transfer of land ownership and O&M responsibilities to occur October 1, 2007
- NRD will continue to operate and maintain the Walnut Creek flood control dam and retain easements for the flood pool upstream of the dam, at it's own cost and expense
- City will assume operation and maintenance of the Recreation Area and all recreation facilities, at it's own cost and expense

In summary, the proposed agreement provides for the transfer of the ownership, operation and maintenance of the Walnut Creek Lake and Recreation Area, except for the flood control dam, from the NRD to the City of Papillion on October 1, 2007.

Management recommends that the subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Interlocal Cooperation Act Agreement for Operation and Maintenance of Walnut Creek Lake and Recreation Area (Dam Site 21) with the City of Papillion, subject to approval by the Nebraska Natural Resources Commission and also subject to changes deemed necessary by the General Manager and approved as to form by District Legal Counsel.

INTERLOCAL COOPERATION ACT AGREEMENT

Between

THE CITY OF PAPILLION, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

For

COMPREHENSIVE FLOOD CONTROL FOR THE CITY OF PAPILLION

T H I S A G R E E M E N T (hereinafter referred to as "this Agreement) is made by and between the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (hereinafter referred to as "the DISTRICT") and THE CITY OF PAPILLION, NEBRASKA (hereinafter referred to as "the CITY") pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 R.R.S., 1943, et seq.

R E C I T A L S:

WHEREAS, that portion of the West Branch Papillion Creek and tributaries system which extends from 72nd Street to 90th Street now poses a serious and recurrent flood threat to the CITY; and,

WHEREAS, the present flood threat to the CITY requires that an unreasonably large acreage of land be set aside as floodplain, thus preventing the full economic utilization thereof; and,

WHEREAS, the CITY and the DISTRICT endorse and desire to establish a comprehensive plan and program providing flood control, outdoor recreational opportunities, necessary road improvements, and other public benefits; such plan to consist of (1) a project

for levee and channel improvements and providing a recreational (bike/pedestrian) trail along the channel of the West Branch of the Big Papillion Creek, from 72nd Street to 90th Street (hereinafter referred to as "the West Branch Improvements"); (2) the multi-use flood control, recreation, trails, and road project heretofore proposed for an area immediately southwest of the CITY (hereinafter referred to as "the Site 21 Improvements"); and (3) a project for recreational trails along Walnut Creek, connecting the trails in the West Branch Improvements with the trails in the Site 21 Improvements (hereinafter referred to as "the Walnut Creek Connector Trail").

N O W, T H E R E F O R E, for and in consideration of the foregoing recitals and their mutual covenants hereinafter expressed, the parties agree as follows:

1. ESTABLISHMENT OF COMPREHENSIVE PROGRAM: The parties do hereby establish a Comprehensive Flood Control Program for the CITY (hereinafter referred to as "the Program").

2. PROGRAM PARTICIPANTS: The Program shall be a joint undertaking by and between the CITY and the DISTRICT, without any separate entity being created, and the duties and responsibilities of the parties shall be as defined by this Agreement.

3. GOALS AND OBJECTIVES OF THE PROGRAM: The goals and objectives of the Program shall be to design, construct, operate and maintain multi-use facilities hereinafter described, for the following purposes:

a. To reduce, by at least 20%, the monetary value of the average annual damages caused to property in and adjacent to the CITY (72nd to 90th Streets) by recurrent flooding of the West Branch of the Big Papillion Creek;

b. To reduce, by at least 50%, that portion of the CITY (currently approximately 200 acres) required by the Federal Emergency Management Agency (hereinafter referred to as "FEMA") to be designated as 100-year floodplain; and,

c. To reduce, by at least 75%, that area of the CITY (currently approximately 100 acres) which FEMA requires be designated as floodway.

d. To provide public outdoor recreational opportunities, public open space, and outdoor educational opportunities that feasibly may be achieved in the design of such multi-use facilities.

4. MULTI-USE FACILITIES: As used in this Agreement, the phrase "multi-use facilities" is deemed to mean and collectively refer to the following: (1) the West Branch Improvements; (2) the Site 21 Improvements; and (3) the Walnut Creek Connector Trail.

5. WEST BRANCH IMPROVEMENTS: Within the limits of available funds, the DISTRICT shall begin design of the West Branch Improvements in 1992 and complete construction of the West Branch Improvements by July 1, 1996, for the purpose of achieving the goals and objectives of the Program.

a. Design: The flood control portion of the West Branch Improvements shall be designed and constructed by the

DISTRICT in accordance with the design criteria and specifications of the DISTRICT for 100-year flood control. The recreational trail portion of the West Branch Improvements shall be designed and constructed by the DISTRICT in accordance with the specifications adopted by the DISTRICT for other recreational trails constructed by the DISTRICT.

b. Cost-sharing: The CITY shall reimburse the DISTRICT in an amount equal to twenty-five percent (25%) of the sum of (1) the DISTRICT's expenditures for design and construction work performed by or for the DISTRICT on the West Branch Improvements and (2) the DISTRICT's expenditures for land rights (exclusive of attorneys fees); provided, however, the total of all such reimbursements shall be limited to and shall not exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000); and the DISTRICT shall be responsible to pay the remainder of such costs without CITY reimbursement. To provide for the CITY's reimbursement of such costs the parties shall follow the following procedure:

(1) From time to time, as actual monetary expenditures are made by the DISTRICT for land rights (exclusive of attorneys fees), and for design and construction work performed by or for the DISTRICT on the West Branch Improvements, the DISTRICT shall transmit to the CITY written notifications of the amounts of such expenditures and shall describe in each such written notification the identities of the persons furnishing

such work and to whom such amounts were paid; and,

(2) Within 45 days after receipt by the CITY of such a written notification, the CITY shall reimburse the DISTRICT in the amount of Twenty-Five Percent (25%) of the DISTRICT expenditures described in such written notification, subject to the limitation, above, that the total of all such reimbursements shall be limited to and shall not exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000).

(3) For CITY budgeting purposes, the DISTRICT shall make a reasonable effort to keep the CITY informed as to the amounts and dates of anticipated major expenditures for which reimbursement from the CITY will be due under this Agreement.

c. Land Acquisition: Lands, easements and rights-of-way for the West Branch Improvements shall be obtained by the DISTRICT; which shall hold title thereto; provided, however, the CITY shall donate to the DISTRICT such easements and rights-of-way over CITY-owned park land and CITY-owned rights-of-way which the DISTRICT determines necessary for the West Branch Improvements.

d. Operation and Maintenance: After completion and acceptance by the DISTRICT of the West Branch Improvements, the DISTRICT, at the DISTRICT's sole cost and expense, shall permanently operate, maintain, repair and replace such improvements, as the District determines necessary; provided,

however, commencing on completion and acceptance by the DISTRICT of the West Branch Improvements, the CITY, at the CITY's sole cost and expense, shall permanently (1) regulate, (2) perform weekly trash pickup and removal on, and (3) regularly mow the area adjacent to the trail on, those portions of the West Branch Improvements located inside the corporate limits of the CITY.

6. SITE 21 IMPROVEMENTS: The DISTRICT shall design and construct the Site 21 Improvements as soon as may be feasible, within the limits of available funds, and for the purpose of achieving the goals and objectives of the Program.

a. Design: The Site 21 Improvements shall be designed and constructed by the DISTRICT in accordance with design criteria and specifications established by the DISTRICT.

b. Cost-sharing: The DISTRICT shall not be entitled to seek contribution or reimbursement from the CITY for any portion of the cost of the design or construction of the Site 21 Improvements.

c. Land Acquisition: Lands, easements and rights-of-way necessary for the Site 21 Improvements shall be provided by the DISTRICT at the DISTRICT's sole expense and without reimbursement or contribution by the CITY; Provided, however, the CITY shall donate to the DISTRICT all easements and rights-of-way over any CITY-owned park land and CITY-owned rights-of-way which the DISTRICT determines necessary for the Site 21 Improvements.

d. Operation and Maintenance: After completion and acceptance by the DISTRICT of the Site 21 Improvements, the DISTRICT, at the DISTRICT's sole cost and expense, shall permanently operate, maintain, repair and replace the flood control portions of such improvements (consisting of the dam and its embankments, the principal and emergency spillways, and the portions of the lake covered by the waters of the temporary flood pool, as designed), and shall operate, maintain, repair, replace, and regulate the recreational and road portions of such improvements (consisting of all portions of the Site 21 Improvements other than the flood control portions thereof) until the CITY determines that it can feasibly undertake such responsibility, whereupon the CITY shall commence to permanently operate, maintain, repair, replace and regulate the recreational and road portions of the Site 21 Improvements at its own cost and expense.

e. In drafting the site plan for the Site 21 Improvements, the DISTRICT shall thereon designate a 50-foot-wide easementway, and donate to the CITY a permanent easement over, under and across such easementway, for a future gravity sanitary sewer line to be constructed, operated, maintained, repaired, and regulated by the CITY at the CITY'S sole cost and expense, such easementway to run generally from south to north across Site 21 and easterly of the lake and dam proposed as part of the Site 21 Improvements. The CITY, at its sole cost and expense, shall provide the plans and specifications

for such sewer line and set preliminary grades for such sewer line. During construction of the Site 21 Improvements the DISTRICT, at its sole cost and expense, shall excavate the easementway so that the completed sewerline will be no deeper than 18 feet below the grade specified in the CITY's aforesaid plans and specifications, whereupon, the DISTRICT, subject to reimbursement by the CITY on demand for all of the cost and expense thereof, shall order its contractor to construct that portion of the sewer line intended to be located within the immediate vicinity of the SITE 21 dam and spillway embankment in accordance with the CITY's aforesaid plans and specifications for such sewer line, and cap the ends of such sewer line prior to covering it. After the CITY's sewer line is in place, the DISTRICT shall make every reasonable effort to minimize the size and value of any improvements constructed by the DISTRICT in such easementway; provided, however, any such improvements shall be repaired or replaced by the CITY if damaged or destroyed during construction, operation, maintenance, repair or replacement by the CITY of such sewer line. The CITY shall be the sole authority in determining what hook-ups, if any, may made to said sewer line, the manner in which such hook-ups shall be made, and the costs to be recovered from such hook-ups.

7. WALNUT CREEK CONNECTOR TRAIL: The DISTRICT shall design and construct the Walnut Creek Connector Trail as soon as may be feasible, within the limits of available funds, and for the purpose

of achieving the goals and objectives of the Program.

a. Design: The Walnut Creek Connector Trail shall be designed and constructed by the DISTRICT in accordance with the specifications adopted by the DISTRICT for other recreational trails constructed by the DISTRICT.

b. Cost-sharing: The DISTRICT shall not be entitled to seek contribution or reimbursement from the CITY for any portion of the cost of the design or construction of the Walnut Creek Connector Trail.

c. Land Acquisition: Lands, easements and rights-of-way necessary for the Walnut Creek Connector Trail shall be provided by the DISTRICT at the DISTRICT's sole cost and expense and without reimbursement or contribution by the CITY; provided, however, the CITY shall donate to the DISTRICT all easements and rights-of-way over any CITY-owned park land and CITY-owned rights-of-way which the DISTRICT determines necessary for such improvements.

d. Operation and Maintenance: After completion and acceptance by the DISTRICT of the Walnut Creek Connector Trail improvements, the CITY, at the CITY's sole cost and expense, shall permanently (1) regulate, (2) perform weekly trash pickup and removal on, and (3) regularly mow the area adjacent to the trail on, those portions of the Walnut Creek Connector Trail Improvements located inside the corporate limits of the CITY.

8. Zoning. The CITY shall notify the DISTRICT of each and

every request for re-zoning, variance or waiver submitted to the CITY involving real property within the contemplated construction sites of any of the multi-use facilities referred to in this Agreement.

9. Floodway and Floodway Fringe Designation. Upon final completion and acceptance of both the West Branch Improvements and the Site 21 Improvements the CITY shall petition FEMA to modify the CITY's Flood Insurance Study and FIRM maps to reflect the beneficial effect of such improvements. The DISTRICT shall assist the CITY by providing technical information to facilitate such petition.

10. Duration. This Agreement shall have permanent duration, commencing upon the occurrence of the signatures of both parties being affixed hereto.

11. Severability. In the event any portion of this Agreement may be held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability shall not affect the remainder of this Agreement and the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of this Agreement so as to render it valid, reasonable, and enforceable.

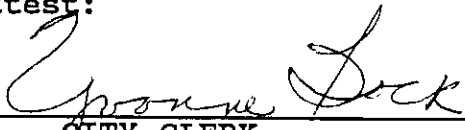
I N W I T N E S S W H E R E O F, the parties have executed this Agreement on the dates hereinafter indicated pursuant to authorizing resolutions duly adopted at regularly-called meetings of their governing bodies.

Executed by the CITY OF PAPILLION, NEBRASKA, this 27th day
of June, 1991.

THE CITY OF PAPILLION, NEBRASKA

By 
MAYOR

Attest:


CITY CLERK

Executed by the PAPIO-MISSOURI RIVER NATURAL RESOURCES
DISTRICT this 17th day of MAY, 1991.

PAPIO-MISSOURI RIVER NATURAL RESOURCES
DISTRICT

By 
GENERAL MANAGER

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INTERLOCAL COOPERATION ACT AGREEMENT

Between

THE CITY OF PAPILLION, NEBRASKA

And

THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

For

**OPERATION AND MAINTENANCE OF WALNUT CREEK LAKE AND
RECREATION AREA (DAM SITE 21)**

THIS AGREEMENT (hereinafter referred to as “**this AGREEMENT**”) is entered into by and between the **CITY OF PAPILLION, NEBRASKA** (hereinafter referred to as “**the CITY**”) and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “**the NRD**”) (the NRD and the CITY hereinafter being referred to as “**the PARTIES**”), and is made pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1997, et seq.)

RECITALS:

WHEREAS, the NRD has established and constructed, and currently is operating, maintaining, repairing, managing and regulating the Dam Site 21, Walnut Creek Lake and Recreation Area Project (hereinafter referred to as “**the PROJECT**”), a multi-purpose flood control and recreational project of the NRD, on a parcel of land west of 96th Street and south of Highway 370 in Sarpy County, more particularly described in the legal description attached hereto as **Exhibit “A”** and incorporated herein by reference (such parcel of land hereinafter being referred to as “**DAM SITE 21**”); and,

WHEREAS, The PROJECT is sited in or near the -proposed site for the U.S. Army Corps of Engineers’ formerly proposed Papillion Creek and Tributaries Lakes Project Dam Site 21, that was and is a major component and integral part of the planned flood control for the Papillion Creek watershed; and,

WHEREAS, the PROJECT, as established and constructed by the NRD, and as now being operated, maintained, repaired, managed and regulated by the NRD, consists of (a) a flood control dam embankment and spillways (hereinafter referred to collectively as “**the DAM**”), on and in DAM SITE 21; (b) an impoundment of water behind the DAM known as the Walnut Creek Reservoir (hereinafter referred to as “**the RESERVOIR**”), on and in DAM SITE 21; and (c) public recreational and park facilities features on and in DAM SITE 21, such public recreational features comprising and being known collectively as the Walnut Creek Recreation Area (hereinafter referred to as “**the RECREATION AREA**”); and,

WHEREAS, the CITY has expressed a willingness to assume and undertake, at the CITY’S sole cost and expense, the operation, maintenance, repair, replacement, management and regulation of the RESERVOIR and of the other improvements comprising the RECREATION AREA, and the operation, maintenance, repair, replacement, management and regulation of the trail and other recreational improvements situated on the DAM and in the RECREATION AREA, if the NRD will to continue to perform, at the NRD’S sole cost and expense, the operation, maintenance, repair, replacement of the DAM, and the non-recreational appurtenances thereto,

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

1. PROJECT BENEFITS. The parties do hereby find and determine that the CITY’S operation, maintenance, repair, replacement and regulation of the PROJECT, except the DAM and the non-recreational appurtenances thereto; and, that the NRD’S operation, maintenance, repair, replacement of the DAM and the non-recreational appurtenances thereto, will be predominantly of general benefit to the CITY and the NRD, respectively, with only an incidental special benefit.

2. PROJECT PARTICIPANTS. The undertakings of the CITY and the NRD, reflected in this AGREEMENT, will be performed by the respective PARTIES without any separate entity being created, and the duties and responsibilities of the PARTIES with respect to the PROJECT shall be as defined by this AGREEMENT.

3. TRANSFER DATE. On October 1, 2007 (hereinafter referred to as “**the TRANSFER DATE**”) the NRD shall convey and transfer to the CITY by full warranty deed (hereinafter referred to as “**the TRANSFER DEED**”) all of the real estate comprising DAM SITE 21, subject to easements of record and the existing lease of a portion of DAM SITE 21 by the Papillion Area Concert Band (hereinafter referred to as “**the PACB LEASE**”).

4. TRANSFER DEED. The TRANSFER DEED shall be in the form as attached hereto as **Exhibit “B”** and incorporated herein by reference, or in such other form as the PARTIES may agree upon in writing, and such deed shall include the reservation by the NRD of permanent easements and restrictive covenants in favor of the NRD and its successors, over and across all of the real estate comprising DAM SITE 21, such easements and restrictive covenants to:

- a) Reserve and grant to the NRD the permanent right to enter DAM SITE 21 during flood emergencies and during all other reasonable times; the permanent right to use the roads in DAM SITE 21 as the NRD deems necessary; the permanent and exclusive right to operate, maintain, repair, replace, manage and regulate the DAM and the non-recreational appurtenances thereof, together with such future flood control improvements as the NRD deems necessary and the CITY may approve in writing (such approval to not be unreasonably withheld or delayed); and, to include the NRD’S right to use any and all unimproved portions of DAM SITE 21 for the borrow of earthen material for use in operation, maintenance, repair, replacement of the DAM and the non-recreational appurtenances thereto. The CITY shall have the right to construct, operate and maintain a public

pedestrian and bicycle trail and other recreational improvements, approved in writing by the General Manager of the NRD, in, on, over and across the DAM, with the provision that the CITY shall be required from time-to-time to re-locate any of such improvements as may interfere with the NRD'S operation, maintenance, repair, replacement, management or regulation of the DAM and the non-recreational appurtenances thereto.

b) Reserve and grant to the NRD the permanent power, privilege, right and authority to periodically flow and overflow waters, sediment, and flood debris detained by the DAM in the RESERVOIR, upon all areas of DAM SITE 21 (such areas hereinafter being collectively referred to as “**the REGULATED FLOOD POOL**”) which, at once, are located within the watershed of the DAM and, have a ground surface elevation lower than 1086.6 feet above mean sea level, referenced to the National Geodetic Vertical Datum of 1929 (hereinafter referred to as “**NGVD**”), which elevation the PARTIES agree is approximately one foot (1') above the mean sea level elevation of the 500-year flood pool of the RESERVOIR. Such permanent easement and restrictive covenant also shall generally prohibit the construction or maintenance, within the REGULATED FLOOD POOL, of structures, fixtures or other improvements without the prior written approval of the NRD; provided, however, it shall not prevent the CITY from:

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

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

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

c) Reserve and grant to the NRD the permanent power, privilege, right and authority to periodically flow and overflow waters, sediment, and flood debris detained by the DAM, upon those areas of DAM SITE 21 (such areas hereinafter being collectively referred to as “the MAXIMUM POOL”) which, at once, are located within the watershed of the DAM and have a ground surface elevation lower than 1,092.0 feet above mean sea level, NGVD. Such permanent easement and restrictive covenant also shall prohibit the CITY from placing any earthen fill or other fill in any area of the MAXIMUM POOL except that limited filling in the REGULATED FLOOD POOL that is permitted by the prior sub-paragraph.

d) Reserve and grant to the NRD the right to periodically adjust the elevation of the permanent pool of the RESERVOIR in order to perform necessary operation, maintenance, repair or replacement of the DAM.

5. OPERATION AND MAINTENANCE OF PROJECT. On and after the TRANSFER DATE:

a) The CITY, at its own cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the PROJECT, except the DAM and the non-recreational appurtenances thereto, all as the CITY in its sole discretion determines necessary, in accordance with any applicable and generally-accepted engineering practices and any applicable provisions of Contract No. 51 between the NRD and the Nebraska Natural Resources Commission (now Nebraska Department of Natural Resources), such contract being attached hereto as Exhibit “C” and incorporated herein by reference (hereinafter referred to as “**CONTRACT NO. 51**”).

b) The NRD, at its own cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the DAM and the non-recreational appurtenances thereto, all as the NRD in its sole discretion determines necessary, in accordance with any applicable and generally-accepted engineering practices and any applicable provisions of CONTRACT NO. 51; provided, however, the CITY shall perform grounds keeping of the DAM, such as mowing and maintenance of grass and other ornamental vegetation, and debris cleanup.

6. PROJECT RISK OF LOSS. The CITY shall have and bear the sole risk of loss of or damage to the PROJECT, except the DAM and the non-recreational appurtenances thereto, regardless whether such loss or damage results from flood or other casualty whatsoever.

7. INDEMNIFICATIONS AND ASSUMPTION OF NRD'S OBLIGATIONS. Except as otherwise specifically provided in this AGREEMENT:

a) The CITY shall defend and indemnify the NRD and hold the NRD harmless (1) from and against any and all costs of operation, maintenance, repair, replacement, management and regulation of the PROJECT, except the DAM, the non-recreational appurtenances thereto, and the other features of the PROJECT that exist strictly for flood control purposes; (2) from and against all costs associated with the PACB LEASE; (3) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of (i) the operation, maintenance, repair, replacement, management and regulation of the PROJECT, except the DAM, the non-recreational appurtenances thereto, and the other features of the PROJECT that exist strictly for flood control purposes; (ii) the use of the PROJECT by members of the public; or, (iii)

negligence or other actions or inactions of the CITY, its employees, officers, contractors and agents in the operation, maintenance, repair, replacement, management or regulation of the PROJECT (except as may be caused solely by the negligence of the NRD or its employees, officers, contractors or agents); and, (4) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising from the post-TRANSFER DATE introduction in DAM SITE 21 of asbestos or any form thereof, or any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances introduced in DAM SITE 21 after the TRANSFER DATE, including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination introduced in DAM SITE 21 after the TRANSFER DATE (except costs and expenses relating to any such substances or materials introduced by the NRD or its employees, officers, contractors or agents).

b) For all aspects of the operation, maintenance, repair, replacement, management and regulation of the PROJECT, except those relating to the DAM and the non-recreational appurtenances thereto, the CITY agrees to assume all obligations and responsibilities imposed upon the NRD by CONTRACT NO. 51.

c) The NRD shall defend and indemnify the CITY and hold the CITY harmless (1) from and against any and all costs of operation,

maintenance, repair, replacement, management and regulation of the DAM and the non-recreational appurtenances thereof; and (2) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of (i) the operation, maintenance, repair, replacement, management and regulation of the DAM and the non-recreational appurtenances thereof; or (ii) caused by the negligence or other actions or inactions of the NRD, its employees, officers, contractors and agents in the operation, maintenance, repair, replacement, management or regulation of the DAM and the non-recreational appurtenances thereof (except as may be caused solely by the negligence of the CITY or its employees, officers, contractors or agents).

8. ASSIGNMENT. The CITY may not assign any of its rights or duties expressed in this AGREEMENT in whole or in part to any person without the prior written consent of the NRD or, as applicable, without the prior written consent of the Natural Resources Commission in accordance with Article 13 of CONTRACT NO. 51.

9. APPROVALS BY CITY AND NRD. Except as otherwise expressly stated in this AGREEMENT, (a) where this AGREEMENT speaks of approval and consent by the CITY such approval is understood to be manifested by the determination and action of the Mayor of the CITY or his designated representative, and (b) where this AGREEMENT speaks of approval and consent by the NRD such approval is understood to be manifested by the determination and action of the General Manager of the NRD or his designated representative.

10. RECYCLED MATERIALS. In its operation, maintenance, repair, replacement, management and regulation of DAM SITE 21 the CITY shall utilize recycled or recycleable materials and products whenever feasible and practical.

11. EFFECTIVE DATE. This AGREEMENT shall be in force and effect from and after its execution by the PARTIES and approval by the Natural Resources Commission.

12. TERM. This AGREEMENT shall have permanent duration.

13. NON-DISCRIMINATION. The PARTIES shall not, in the performance of this AGREEMENT, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, disability, color, sex, age, political or religious opinions, affiliations or national origin.

14. APPLICABLE LAW. Each party to this AGREEMENT shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance and terms of this AGREEMENT. Each party hereto shall, whenever applicable, require performance under the Fair Labor- Standards Act.

15. SEVERABILITY. In the event any portion of this AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any such invalidity or unenforceability shall not affect the remainder of this AGREEMENT and the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of this AGREEMENT so as to render it valid, reasonable, and enforceable.

16. CAPTIONS. Captions used in this AGREEMENT are for convenience and not for use in the construction of this AGREEMENT.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT on the dates hereinafter indicated pursuant to authorizing resolutions duly adopted at regularly called meetings of their governing bodies.

The CITY has executed this AGREEMENT on _____, 2005.

THE CITY OF PAPILLION, NEBRASKA

By _____
Mayor

Attest:

City Clerk

The NRD has executed this AGREEMENT on _____, 2005.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

The NEBRASKA DEPARTMENT OF NATURAL RESOURCES has
approved this AGREEMENT on _____, 2005.

**NEBRASKA DEPARTMENT OF NATURAL
RESOURCES**

By _____
Director

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2005, 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 he 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

**Walnut Creek Lake and Recreation Area
Equipment Summary FY 07 Estimated Value**

John Deere 5310 Tractor 1999 \$18,000.00

Attachments:	J.D. MX 10 Mower	\$4,000.00
	J.D. Quick Attach Forks	\$1,000.00
	J.D. Quick Attach Loader Bucket	\$2,600.00
	J.D. Rear Implement Quick Attach	\$500.00
	3 Pt. Auger	\$250.00
	3 Pt. 20' Boom Sprayer	\$2,500.00

J.D. 2005 Gator Diesel 1999 \$6,000.00
30 gal Spray rig w/ boom and hose system \$500.00

Toro 325 Diesel front running mower Diesel 72"1999 \$6,000.00
Toro Mid "Z" mower 62"2001 \$4,000.00

Deleted: J.D. 36" Walk behind mower
2003 \$2,000.00****

F250 Pick Up Diesel w/ Meyer snow plow \$10,000.00

Deleted: F350 Pick Up Diesel w/
Dump Box retained ****

Grizzley Pontoon Boat w/ 20 hp Mercury \$5,000.00

Deleted: 15' Towmaster
Trailer
\$3,000.00****

Misc. Tools:

Cutting Torch Portable	\$150.00
Cutting Torch shop unit	\$1,000.00
Miller Matic 200 wire feed welder	\$1,500.00
Ingersoll Rand Compressor	\$400.00
Honda Generator	\$500.00
16" Stihl Chainsaw	\$250.00
Back Pak Blower	\$250.00
2 - Stihl Weedeaters	\$200.00 ea.

Bergey Wind Generation System \$10,500.00

Office:

3 Desks	\$2,500.00
3 Chairs	\$300.00
2 Computers, Copier, Fax, Scanner	\$4,000.00

\$81,900.00

Deleted: \$86,900.00
Deleted: ****

O & M Headquarters Utilities F.Y. 04 Gas---\$553.14, Electric---\$1109.24

Deleted: **Papillion Equipment
needs total \$81,900**

CONTRACT NO. 51

NEBRASKA RESOURCES DEVELOPMENT FUND

CONTRACT BETWEEN THE NEBRASKA
NATURAL RESOURCES COMMISSION AND THE
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
FOR
A GRANT FOR CONSTRUCTION OF THE

PAPIO SITE 21 PROJECT

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NEBRASKA RESOURCES DEVELOPMENT FUND

THIS CONTRACT, is entered into by and between the Nebraska Natural Resources Commission (hereinafter called the Commission) and the Papio-Missouri River Natural Resources District (hereinafter called the Sponsor).

WITNESSETH, That:

WHEREAS, on the 3rd Day of January, 1991, the Sponsor submitted an application to the Commission for a grant from the Nebraska Resources Development Fund for financial assistance with the construction of a recreation and flood control project on Walnut Creek near Papillion, Nebraska, and,

WHEREAS, the Commission, in accordance with the recommendations of the Director of Natural Resources (hereinafter called the Director), has determined that the costs for which such assistance was so requested, except the costs for the items listed in Article 20 of the agreement, are eligible costs for state grant funding in accordance with the provisions of Section 2-1586 to 2-1595, R.R.S., 1943; and,

WHEREAS, expenditure by the Commission of any funds for the project is contingent upon the prior execution of an agreement with the Sponsor setting forth the terms and conditions for utilization of such funds.

NOW THEREFORE THE PARTIES TO THIS CONTRACT DO HEREBY AGREE to the terms and conditions of this contract as follows:

1. TERM OF CONTRACT

This contract will become effective on the date last signed hereinafter and will remain in effect for the designed life of the project which is hereby

established as 50 years from the date of the last final project inspection conducted pursuant to Article 5.b. of this contract.

2. GRANT DISBURSEMENTS

a. Basic Conditions:

All grant money disbursed to the Sponsor pursuant to this contract shall be disbursed solely for the purpose of reimbursing the Sponsor for eligible project costs necessarily incurred in the development of the project as such costs are described in the Sponsor's application and feasibility report, including any amendments thereto which have been approved by the Commission; provided that eligible project costs do not include costs incurred for the items listed in Article 20 of this agreement.

Unless the Commission approves a transfer of unused obligated funds from one separable component to another, any funds now or hereafter apportioned and set aside by the Commission for one separable component of the project may not be used to reimburse the Sponsor for the costs of any other separable component except as necessary in accordance with Article 2.d. to achieve or maintain the appropriate ratio between eligible project costs paid by the Sponsor and those paid by the Commission.

Shifts of funds within a separable component may be made only with approval by the Director. In determining whether to approve or disapprove such requests, the Director shall compare the estimated project costs contained in the project application and feasibility report with the actual or estimated costs at the time of the request.

Funds which have been or are hereafter apportioned and set aside by the Commission for the project shall remain set aside for such project until

the Sponsor has received all reimbursement to which it is entitled unless:

(1) the project is abandoned or significantly delayed; (2) the Commission has reasonable grounds for concern that the project or any portion of it may not be completed due to public opposition, litigation, or the loss of other state, local or federal funds needed to complete the project; (3) the Commission fails to receive a reappropriation of unexpended funds; (4) the appropriation for the Resources Development Fund is reduced by subsequent legislative act; or (5) the Commission determines the project no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's rules and regulations. If the Commission determines at any time that any of these conditions have occurred, any funds apportioned and set aside for the project which have not been disbursed may be deemed by the Commission to be released.

The Sponsor acknowledges that, notwithstanding Commission approval of a total tentative allocation in the amount of four million, one hundred eighty-four thousand, four hundred nineteen dollars and fifty cents (\$4,184,419.50) or 75 percent of the total eligible local project cost (\$5,579,226.00), whichever is less, the Sponsor shall not be entitled to reimbursement during any fiscal year in excess of the amount, if any, then actually apportioned and set aside for the project by the Commission.

The Sponsor also acknowledges that Commission action in any fiscal year to apportion and set aside funds for the project will be dependent upon the availability of funds and the priority rating established for the project by the Commission.

b. Statement of Costs:

The Sponsor will submit no more often than once each month, on a form which will be supplied by the Commission, a properly documented statement of costs for which reimbursement is sought pursuant to the terms of this contract. This statement of costs shall be signed by the Sponsor's authorized representative. Final authority for determining which costs are eligible for reimbursement and for determining what constitutes proper documentation of such costs shall rest with the Director. In the absence of specific direction of the Director, proper documentation shall consist of a copy of all bills or charges submitted to the sponsor for which reimbursement is requested and a copy of any available canceled check issued in payment of such bills or charges. In the event the Sponsor requests reimbursement for costs for which it does not have a copy of a bill or canceled check or other documentation, the Sponsor shall submit an affidavit signed by the Sponsor's authorized representative certifying the nature of the work performed or materials supplied for which reimbursement is requested; the separable component or components for which such work was performed or materials supplied; and, if applicable, the date and amount of payment made therefor.

c. Disbursements:

(1) All requests for reimbursement of costs incurred by the Sponsor shall be reviewed immediately. If additional documentation of costs incurred by the Sponsor is deemed necessary by the Director, the Sponsor shall be so notified within fifteen days after receipt of the request for reimbursement. Within thirty days after receipt of any request deemed by the Director to be properly documented, the Director shall transmit payment in the amount of the

appropriate percentage of the documented costs, minus any costs deemed by the Director to be ineligible for reimbursement in accordance with Article 2.b. The appropriate percentage of the documented costs shall be determined by comparing the eligible project costs paid theretofore by the Sponsor and the Commission with the percentage of total project costs for which the Sponsor is eligible pursuant to this agreement. The Commission shall not be held responsible for delays in payment which occur as a result of causes beyond its control.

(2) Under no circumstances shall the total amount of payment under this agreement exceed four million, one hundred eighty-four thousand, four hundred nineteen dollars and fifty cents (\$4,184,419.50) or 75 percent of the total eligible local project cost, whichever is less.

d. Reimbursements

Within the amounts approved by the Commission, the Sponsor shall not be entitled to reimbursement of costs paid, accrued or authorized prior to July 1, 1992. Costs paid, accrued or authorized by the Sponsor for portions of project development in excess of those portions for which funds have been set aside shall be incurred at the risk of the Sponsor and the Sponsor shall not be entitled to reimbursement of such costs at any time without specific Commission approval for such reimbursement. To the extent that any of such costs are otherwise eligible and do not exceed those identified or estimated in the project application and feasibility report for the portion of project development, the Sponsor may, however, apply all such costs toward satisfaction of the required local share of total project costs if such costs are documented by the Sponsor in the manner provided in Article 2.b. The

final authority for approving all such costs for such purposes shall rest with the Director.

3. WITHHOLDING OF GRANT DISBURSEMENTS

The sponsor shall not begin land rights acquisition activities without approval by the Director if the Director and the Department of Water Resources, if applicable, have not approved the final plans and specifications for construction of the project or the portion thereof for which funds are requested. The Sponsor shall not solicit construction bids for the project or portion thereof for which funds are requested until the Director and the Department of Water Resources, if applicable, have approved the final plans and specifications.

If it appears during the review, of the final project plans or during any prior or subsequent review or inspection of the project plans or construction, or during any review of project cost information that: (1) the plans and specifications for the project are not being followed; (2) the plan for development or any work performed on the project is not based on sound technical principles or practices; (3) the project or any portion thereof no longer meets the criteria of sections 2-1586 to 2-1595, R.R.S., 1943, or the Commission's Rules and Regulations; or (4) there is or has been non-compliance with any of the terms of this agreement; the Director shall immediately bring such variances to the Sponsor's attention and may refuse to disburse any funds for the project until such time as the variances are corrected and the project is brought into conformance with all appropriate standards.

4. BASIC OPERATION AND MAINTENANCE STANDARDS

The Sponsor shall cause the project to be operated in an efficient and economical manner; shall provide for the making of all repairs, renewals, and replacements necessary to the efficient operation of the same; and shall cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. All operation, replacement, and maintenance for said project shall be applied in such a manner by the Sponsor so as to accomplish the project purposes as set forth in the Sponsor's application and feasibility report including any amendments thereto which have been approved by the Commission.

5. INSPECTIONS OF PROJECT BY THE COMMISSION

a. The Director or authorized representative shall have the right to inspect the work being performed and the facilities being constructed at any time during the construction of the project and to inspect the project and the operation and maintenance thereof at any time after its completion.

b. The Sponsor shall arrange for and notify the Director of the final inspection of the project by the Sponsor pursuant to each construction contract at least ten (10) days prior to the date of the inspection. Such date may be arrived at by mutual agreement between the sponsor and the Director.

6. CHANGES IN COST OR SCOPE OF PROJECT

The Sponsor shall promptly report all increases in the cost of the project or any separable component of the project, and any proposed additions, deletions or modifications of any separable component of the project, or any change in the purpose or purposes of the project by submitting to the

Commission an amendment to the formal application and feasibility report. Commission approval of any change in the scope, purpose, or plan for development for the project, and any increase in the tentative allocation for the project shall be required.

7. PROHIBITION AGAINST DISPOSAL OR LEASE OF PROJECT LANDS OR FACILITIES WITHOUT COMMISSION PERMISSION

The Sponsor shall not sell, lease, transfer, exchange, mortgage, or encumber in any manner whatsoever all or any portion of any real or other property or any facilities necessarily connected or used in conjunction with the project without the prior permission of the Commission.

Any real property purchased in fee title with assistance from the Resources Development Fund cannot be leased or used in any other way to generate income without the prior approval of the Commission. Whenever any such income is generated with the approval of the Commission, or whenever the property or any portion thereof is sold, the Commission may either require the Sponsor to promptly pay the Commission the same percentage of all proceeds as the percentage of the original purchase price paid from the Resources Development Fund or reduce the amount of any future payment(s) to the Sponsor by the amount of the Commission's share of the income generated.

If at any time and for any reason real property purchased in fee title with assistance from the Resources Development Fund is to be sold by the Sponsor, the Sponsor shall at least thirty (30) days in advance notify the Commission of the proposed sale and shall consult with the Director and obtain his or her concurrence in the procedures and arrangements for such sale. The Commission shall have the right to reject any offer or bid for such property.

8. STATE TO BE HELD HARMLESS FROM PROJECT DAMAGE

The Sponsor hereby agrees to hold and save the State of Nebraska, the Commission, and their officers, agents, and employees free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due to or incident to, either in whole, or in part and whether directly or indirectly, the design, construction, operation, repair, maintenance, assistance or failure of the project, or any of its works or facilities.

9. REMEDIES NOT EXCLUSIVE

The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

10. AMENDMENTS

This contract may be amended in writing at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law.

11. OPINIONS AND DETERMINATIONS

Where the terms of this contract provide for action to be based upon the opinion, judgment, approval, agreement, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such to be arbitrary or capricious.

12. CONTRACTING OFFICER OF THE COMMISSION

For the purposes of this contract, the Contracting Officer of the Commission shall be the Director and his successors, or their duly authorized representatives. Except as may be otherwise provided by this contract or by

applicable laws, rules, or regulations, the Contracting Officer shall be responsible for all discretionary acts, opinions, judgments, approvals, agreements, reviews, and determinations required of the Commission under the terms of this contract.

13. ASSIGNMENT

No assignment or transfer of this contract or any part hereof, rights hereunder, or interest herein by the Sponsor shall be valid unless and until it is approved by the Commission and made subject to such reasonable terms and conditions as the Commission may impose.

14. WAIVER OF RIGHTS

It is the intention of the parties that from time to time either party may waive any of its rights under this contract. Any waiver of rights with respect to a default or any other matter arising in connection with this contract shall not be deemed to be a waiver with respect to any other default or matter.

15. APPLICABLE RULES AND REGULATIONS

Both parties shall abide by the Rules and Regulations governing the Administration of the Resources Development Fund which rules are attached hereto as Appendix A and incorporated herein by reference.

16. FORFEITURE AND REPAYMENT OF FUNDS

Violation of any of the provisions of this contract by the Sponsor or failure of the Sponsor to complete the project in the manner described in the Sponsor's application and feasibility report, including any amendments thereto which have been or are hereafter approved by the Commission may result in the forfeiture of any funds not disbursed. In addition, if for any reason the

Papio Site 21 Project is not completed as described in the Sponsor's project application and feasibility report, including any amendments thereto which have been or are hereafter approved by the Commission, the Commission may recover from the Sponsor any or all funds disbursed.

17. INSPECTION OF BOOKS, RECORDS, AND REPORTS

The duly authorized representatives of any party shall have the right to inspect and make copies of any books, records, or reports of any other party pertaining to this contract or related matters during regular office hours. Each party shall maintain and make available for such inspection accurate records of all of its costs, disbursements, and receipts with respect to its activities under this contract.

18. REPORTS PRIOR TO DISBURSEMENT

In addition to the receipt of requests for disbursements of funds, the Director may from time to time request in writing a report from the Sponsor on the progress being made in project development. Time of submittal of said report shall be determined by the Director after consultation with the Sponsor.

19. SUIT ON CONTRACT

Each of the parties hereto may sue and be sued with respect to this contract.

20. PROJECT COSTS NOT FUNDED

Certain project costs have been found to be ineligible for NRDF funding assistance. These costs are:

Amphitheater w/stage	\$30,000
Electric service for amphitheater	50,000
Roadway/Parking for soccer and softball fields	105,000
Swimming beach	11,500
Softball fields and soccer fields	116,500
1/2 of 96th St., Hwy. 370 to Schram Rd.	113,430
Concrete pavement of Schram Rd., 96th St. to RV Campground	172,800
	<u>\$599,230</u>
+20% contingency allowance:	<u>119,846</u>
Total Ineligible Cost:	\$719,076

21. COSTS AND BENEFITS RELATING TO SWIMMING

Upon the sponsor's provision of water quality data deemed to be acceptable by the Department of Environmental Control, the Commission may increase the project allocation for swimming beach costs (\$11,500 total cost). In addition, the benefits estimated for swimming (\$79,262/yr.) could then be added to the total project benefits.

22. RECOGNITION OF COMMISSION ASSISTANCE

Upon project completion the Sponsor shall erect a sign at the entrance or primary activity area of the project that credits the Natural Resources Commission and the Nebraska Resources Development Fund. The sign shall be well-constructed, easily read, and at least 15 square feet in size. The Sponsor shall be responsible for the maintenance and replacement of the sign during the project life period.

23. AERIAL PHOTOGRAPH OF COMPLETED PROJECT

Within two (2) years following project completion, the Sponsor shall supply the Commission with one (1) 11" X 14" professional color aerial photograph of project for NRC Conference Room and three (3) 5" X 7" prints of same for portfolio.

PAPIO-MISSOURI RIVER
NATURAL RESOURCES DISTRICT

NEBRASKA NATURAL
RESOURCES COMMISSION

By



By


Director of Natural ResourcesTitle GENERAL MANAGER

Date

August 17, 1992

Date

August 24, 1992**APPROVED**

AS TO FORM & CONTENT
BY NEBR. NATURAL RESOURCES
COMMISSION LEGAL COUNSEL

JRC DATE 8-24-92

APPENDIX A

[Handwritten signature]
JUL 19 1990

NEBRASKA NATURAL RESOURCES COMMISSION

TITLE 256 - *Regulations Governing The
Administration Of The
Resources Development Fund*

APPROVED

[Handwritten signature]
JUL 19 1990

[Handwritten signature]
GOV'T

APPROVED

ROBERT M. SPIRE
ATTORNEY GENERAL

JUL 5 1990
BY *[Handwritten signature]*
Assistant Attorney General

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TITLE 256 NNRC - ADMINISTRATION OF THE RESOURCES DEVELOPMENT FUND

Chapter 1 - GENERAL PROVISIONS

001 Purpose and Effect of Rules. These rules and regulations are adopted for the purpose of carrying out the provisions of Sections 2-1586 to 2-1595, R.R.S., 1943. Under no circumstances shall these rules and regulations be construed as a limitation or restriction upon the exercise of any proper discretion that is vested in either the Director or the Natural Resources Commission, nor shall they in any event be construed to deprive the Director or the Commission of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data or information which may be required for the proper administration of Sections 2-1586 to 2-1595, R.R.S., 1943.

002 Definitions. As used in these rules and regulations, the terms listed below shall have the meanings noted:

002.01 Act. "Act" shall mean Sections 2-1586 to 2-1595, R.R.S., 1943, and any and all amendments, additions, or deletions which may be made thereto;

002.02 Applicant. "Applicant" shall mean any state agency or political subdivision applying for financial assistance under the Act;

002.03 Commission. "Commission" shall mean the Nebraska Natural Resources Commission created pursuant to Section 2-1504, R.R.S. 1943;

002.04 Director. "Director" shall mean the Director of Natural Resources as provided in Section 2-1504.03, R.R.S. 1943;

002.05 Fund. "Fund" shall mean the Nebraska Resources Development Fund created by Section 2-1587, R.R.S. 1943;

002.06 Governing Body. "Governing Body" shall mean the individual or group of individuals which are empowered by law to govern the business of an applicant;

Title 256

Chapter 1

002.07 Intangible Benefits. "Intangible Benefits" shall mean benefits, either primary or secondary, that cannot be expressed in monetary terms;

002.08 Political Subdivision. "Political Subdivision" shall mean any political subdivision of the State of Nebraska to which has been granted the authority to develop water and related land resources, including, but not limited to a natural resources district, irrigation district, public power and irrigation district, reclamation district, groundwater conservation district, county, and any municipal corporation, village, or city, whether operating under home rule charter or under the general laws of the State of Nebraska;

002.09 Primary Benefits. "Primary Benefits" shall mean net values attributable to a project of increases in products and services and of reductions in costs, damages, or losses of primary beneficiaries;

002.10 Program and/or Project. "Program and/or Project" shall mean any structural or non-structural undertaking for which assistance from the Fund is requested. Unless the context otherwise requires, no distinction is intended between such terms and they may be used interchangeably for purposes of administration of these rules and regulations.

002.11 Project Engineer or Project Director. "Project Engineer or Project Director" shall mean any engineer, engineering firm, or other person, persons or firm retained by the sponsor to provide professional engineering or other professional or technical services during the planning, design, and construction of the project;

002.12 Secondary Benefits. "Secondary Benefits" shall mean net values to persons other than primary beneficiaries as a result of economic activity induced by or stemming from a project;

002.13 Sponsor. "Sponsor" shall mean the state agency or political subdivision primarily responsible for the development, administration, operation and maintenance of a program or project for which assistance from the Fund is requested;

Title 256

Chapter 1

002.14 State Agency. "State Agency" shall mean any agency, board, commission or other office of state government to which has been granted the authority to develop the state's water and related land resources.

002.15 Tangible Benefits. "Tangible Benefits" shall mean benefits, either primary or secondary, that can be expressed in monetary terms.

003 Types of Assistance. Eligible applicants for financial assistance from the Fund may receive such assistance in the form of grants, loans, or through the direct acquisition by the state of interests in eligible programs and projects. The form of assistance which may be allocated to a program or project shall be determined utilizing the following criteria:

003.01 Grants. Allocations from the Fund may be made as grants to applicants when it is determined that such an allocation will not be reimbursed from revenue or receipts and when the program or project, or separable portion thereof, appears to be of general public benefit thereby making reimbursement of such money from local tax funds inappropriate or impossible, or when the funds are intended for a state or local contribution to a program or project requiring such contribution to meet the requirements for a matching federal grant. If only a portion of the project meets the above criteria, only that portion will be eligible for a grant. In determining the appropriateness of a grant the considerations of the Director and the Commission shall include the extent of the area over which the anticipated benefits will accrue and whether equitable distribution of the costs of the program or project can be accomplished without a grant.

003.02 Loans. Allocations may be made from the Fund as loans to applicants for any program or project or any part thereof consistent with the purposes of the Act which will directly generate revenue or receipts or which can be anticipated to culminate in a program or project which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment from local tax funds appropriate.

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Chapter 1

003.03 Acquisition of State Interests. Interests in water and related land resources projects may be acquired by the Commission in the name of the state with moneys from the Fund when the public benefits obtained from the project or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. The Commission may also acquire interests in water resources projects in the name of the state to meet future demands for usable water.

003.04 Allocations to State Agencies. No grant or loan shall actually be made to state agencies for programs or projects determined to be eligible for funding unless:

003.04A The allocation is for the purpose of reserving land for a future resource development project, or;

003.04B The allocation has been approved by the Legislature by earmarking appropriations to the Fund for that purpose.

004 Eligible Projects. Moneys from the Fund may be used to (a) participate in locally sponsored projects; (b) participate in projects sponsored or financially assisted by the federal government, and; (c) finance state-sponsored projects. The types of projects and programs eligible for funding and the respective forms of such funding are as follows:

004.01 Structural Measures. Structural measures which may be eligible for allocations from the Fund in the form of grants and/or loans include measures designed for flood control; pollution abatement; fish and wildlife enhancement and preservation; outdoor recreation, irrigation development; irrigation rehabilitation; groundwater recharge; water supply for any beneficial use including domestic, agricultural, and manufacturing uses; streamflow augmentation; stream bank stabilization; and erosion and sediment control.

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004.02 Non-structural Measures. Non-structural measures which may be eligible for financial assistance from the Fund in the form of grants and/or loans include: Flood damage reduction; fish and wildlife enhancement and preservation; outdoor recreation; reservation of lands for future resources development projects; and other water and related land resources programs. Projects whose primary purposes are research or data gathering shall not be eligible for assistance.

005 Interest Rate. The rate of interest payable on loans from the Fund shall be determined annually prior to October 1 of each fiscal year. Except as otherwise provided herein, such rate of interest shall be computed by averaging the yields, as determined by the "Moody's" rating and classification system, of Aaa State-Local Bonds issued nationally for the three previous fiscal years and by rounding off such average to the nearest one-eighth percent. For loans for the rehabilitation or betterment of surface water irrigation projects, the Commission may reduce the rate of interest to not less than three percent if (1) the amount of the loan is \$500,000 or less; (2) the repayment period is ten years or less; (3) the project sponsor has not previously received a reduced interest loan from the Fund; and (4) the director and the Commission determine that the proposed project will make water available for public use or will provide other public benefits. The rate of interest payable on a loan for a specific program or project shall be the rate in effect for the fiscal year in which the Director recommends approval of the program or project for a loan allocation. Such rate shall remain in effect throughout the repayment period determined to be appropriate for such program or project.

006 Deferred Interest. When, in the Commission's judgment, a construction or preconstruction period (not exceeding five years next following the initial allocation) is justified, no payment on the interest or principal on such loans is required during that period, but interest shall begin accruing on all loan allocations immediately with disbursement. Repayment shall commence no later than one full year following completion of project construction. Any deferred interest may be apportioned over the repayment period. The repayment period will not exceed the project life or fifty years, whichever is less.

APPROVED

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E. B. Nelson
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APPROVED
DON STEPHENSON
ATTORNEY GENERAL
BY *H. C. ... Paul*
DATE *May 5, 1992*

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Chapter 2 - APPLICATION PROCEDURES AND REQUIREMENTS

001 Filing Fees. No filing fee is required to accompany any project proposal or any application for assistance under the Act.

002 Filing Location. All project proposals, applications or other documents or instruments supplied by an applicant in connection with a request for financial assistance from the Fund shall be filed with the Director.

003 Application Procedure. It is recommended that each formal application for financial assistance from the Fund be preceded by a Project Proposal. An applicant may include the cost to the applicant of the feasibility report, the contents of which are specified by section 2-012 as a portion of the project costs of any project for which funding in an amount of less than \$100,000 is requested. Such cost may also be included as a portion of the project costs of any project for which funding in excess of \$100,000 is requested if, and only if, a project proposal has been previously submitted.

004 Information Required in Project Proposal. If the applicant decides to submit a Project Proposal, twenty-five copies shall be filed unless otherwise directed by the Director. The Project Proposal shall include the following information:

004.01 Name and address of applicant;

004.02 Applicant's authorized representative and his name and address;

004.03 A description of the proposed project and the desired accomplishments;

004.04 The primary purpose of the proposed project;

004.05 Other purposes of the proposed project;

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004.06 A statement of urgency and need for the proposed project;

004.07 The applicant's most recent financial statement or budget document;

004.08 The estimated costs of the project;

004.09 The expected benefits from the proposed project;

004.10 The anticipated funding or other assistance from other sources;

004.11 The type and approximate amount of state assistance to be requested;

004.12 A discussion of probable environmental effects which shall include the applicant's plans to determine the potential impact of the proposed project on any threatened or endangered species or the critical habitat of any such species. Copies of any applicable correspondence with the Game and Parks Commission shall be included, if available.

004.13 The estimated schedule of construction of the project, and;

004.14 A discussion of alternatives for accomplishing the purpose of the project.

004.15 An indication whether liability insurance or contractor bonding will be required.

005 Details of Project Proposals. The information required in Project Proposals shall be in such detail as directed by the Commission and Director. Appropriate guidelines for assistance in Project and Program Proposal preparation shall be prepared and distributed to all state agencies or political subdivisions expressing a need for such assistance.

006 Omissions in Project Proposal. If the Commission desires additional information on a Project Proposal, it will so notify the applicant. If the

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Director determines that a Project Proposal is not complete, or if additional information is required, the Director will notify the applicant of such omissions. The applicant shall be expected to correct any such omission or provide any additional information requested within 60 days following notification.

007 Review by Commission and Director. Upon receipt of a properly completed Project Proposal, the Director shall review it forthwith, make a preliminary evaluation, and advise the Commission within 90 days: (1) that the Director recommends the Sponsor be authorized to proceed with preparation of a formal application and feasibility report; or (2) that, based upon the submitted proposal, the Director does not recommend the Sponsor prepare an application and feasibility report. The reasons for any negative recommendation shall be stated. If the Director recommends proceeding, he or she shall also indicate the type of funding for which the project may be eligible and a cost-share range within which a funding recommendation is probable if the project is later determined to be eligible for funding. The Director may make any additional recommendations regarding the contents of the formal application and feasibility report he or she deems appropriate. Any such recommendations shall be forwarded to the Sponsor by the Commission. Upon receipt of the Director's recommendations, the Commission shall advise the applicant: (1) that it is authorized to proceed with preparation of a formal application and feasibility report; or (2) that it is recommended that an application and feasibility report not be prepared; the reasons for a negative recommendation shall be stated.

008 Public Hearing and Notification. Except for projects requesting less than \$100,000 from the Fund, the applicant shall conduct at least one public hearing on all aspects of the proposed project or program prior to submission of the formal application and feasibility report. Notice of the hearing shall be provided to the general public by the publication, at least ten days prior thereto, in a newspaper or newspapers of general circulation within the project or program area. A copy of such notice will be provided to the Director. Information gained from the hearing, including a summary of testimony presented, is to be forwarded with the application.

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009 Time to Complete Formal Applications. Upon notice by the Commission of its findings on the Project Proposal, the Applicant shall be given a period of one year to complete a formal application, and feasibility report. If an application is not completed within one year, or within such additional time as the Commission may grant for good cause shown, the Commission may request the filing of a new Project Proposal.

010 Form of Formal Application and Feasibility Report. Applicants for financial assistance from the Fund shall file twenty copies of an application and feasibility report. Such application shall contain a specific request for each type of assistance applied for in a specified amount. The contents of such application and feasibility report shall include all items required by sections 2-011 to 2-018 unless otherwise directed by the Director. Feasibility reports shall be prepared at the initial expense of the applicant and with the assistance of licensed engineers, financial consultants, economists, recreation planners, wildlife specialists, or other consultants if deemed necessary by the Director following his or her evaluation of the Project Proposal. Costs of preparation of the feasibility report incurred by the applicant may be included if consistent with section 2-003.

011 Contents of Formal Application. Except to the extent that such information has previously been indicated through submission of a Project Proposal, the formal application shall include the following information:

011.01 A cover letter from the applicant submitting the Feasibility report, the contents of which are specified by section 2-012;

011.02 The name and address of the applicant's authorized representative;

011.03 An outline of the initial development and background of the project;

011.04 An explanation of the need and urgency of the project;

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011.05 A description of project goals and purposes;

011.06 A general discussion of alternative plans considered including a comparison of the technical, economic, and environmental aspects of each alternative with the plan chosen; and

011.07 A statement whether money from other sources is available or has been sought.

012 Contents of Feasibility Report. Contents of the feasibility report are to be of sufficient detail to demonstrate the technical, economic and financial feasibility, as well as the legal soundness, of the proposed project. Additionally, the expected positive and adverse environmental and ecological consequences of the project shall be therein demonstrated. The extent of detail necessary in the feasibility report will depend upon the type, purpose, and complexity of the project. Upon completion of any project proposal review, the Director will, to the extent deemed necessary advise the applicant as to:

012.01 The criteria utilized to evaluate the technical, economic, financial, legal, and environmental aspects of the project;

012.02 The informational detail to be contained in the feasibility report.

013 Technical Feasibility.

013.01 A structural project shall be considered technically feasible when it can and will be designed, constructed, and operated to accomplish the purpose(s) for which it was planned utilizing accepted engineering and other technical principles and concepts. Technical data and information to be provided in the feasibility report should include, but is not limited to, the following:

013.01A A detailed discussion of the plan of development selected for the project;

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013.01B A description of all field investigations made to substantiate the feasibility report;

013.01C Maps, drawings, charts, tables, etc., used as a basis for the feasibility report;

013.01D A description of the water and land rights associated with the project and pertinent water supply and water quality information, if appropriate;

013.01E A detailed discussion of each component of the final plan preparation including, when applicable:

013.01E1 Required geologic investigation;

013.01E2 Required hydrologic data;

013.01E3 Design criteria for final design including, but not limited to, soil mechanics, hydraulic, hydrologic, structural, embankments and foundation criteria.

013.02 A non-structural project shall be considered to be technically feasible when it can and will be designed and carried out to accomplish the purpose(s) for which it was planned. Data necessary to establish the technical feasibility should include, but is not limited to the following:

013.02A A detailed discussion of the plan of development designed for the project, including techniques to be utilized in all aspects of the project;

013.02B A description of field or research investigations utilized to substantiate the project conception;

013.02C A description of the water and/or land rights necessary for project continuation, if applicable;

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013.02D A discussion of the anticipated effects, if any, of the proposed project upon the development and/or operation of existing or envisioned structural measures including a brief description of any such measure.

014 Economic Feasibility. Except as otherwise specified by subsection 014.04 or subsection 014.05 of this section, a project is economically feasible if primary, tangible benefits exceed project costs. In addition, for projects for which \$100,000 or more is requested from the Fund, each project's purpose in a multi-purpose project must provide benefits equal to or greater than its separable or specific cost as specified by the Director and there must be no known means of accomplishing the same purpose or purposes more economically. The Director and the Commission may also require that separable project features or increments have benefits which equal or exceed their costs. All costs and benefit data reported by the applicant will be based upon current data and sources for all data must be documented. Certain commodity prices, recreation benefit prices, and wildlife prices will be prescribed by the Director. The Director may also prescribe other cost and benefit information necessary for completion of the feasibility report. The period of analysis for economic feasibility studies shall be fifty (50) years or the life of the project, whichever is less.

014.01 Cost Information. The report shall include all relevant cost information including, but not limited to, all actual or anticipated costs for the feasibility study, the engineering and inspection costs, capital construction costs, annual operation and maintenance costs, and annual replacement costs. Cost information shall also include the estimated construction period as well as the estimated project life.

014.02 Benefit Information. Only primary tangible benefits may be counted in providing the monetary benefit information. In a multi-purpose project, the benefits will be estimated for each purpose and displayed by year for the project life. Intangible and secondary benefits of the proposed project or program should be described for consideration and evaluation by the Director and the Commission. Benefit measurement techniques and criteria shall be provided to the applicant by the Director.

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014.03 Cash Flow Stream. All benefit and cost data will also be presented in a table form to indicate the annual cash flow for the life of the project, not to exceed 50 years. A form for so indicating the annual cash flow shall be supplied by the Director.

014.04 Rate-of-Return on Investment. The cost and benefit data expressed in the cash flow stream will be utilized by the Director to calculate the rate-of-return on the investment. The rate-of-return on the investment is the discount rate applied to future benefits and costs at which costs and benefits become equal and the net present worth of the project cash flow is zero. The Commission may prescribe a minimum rate-of-return for a project to be considered economically feasible.

014.05 Other Methods. In the case of proposed programs or projects for which there is no generally accepted method for calculation of primary, tangible benefits, the economic feasibility of such program or project shall be demonstrated by such method as the Director and the Commission deem appropriate.

015 Financial Feasibility. A project is financially feasible if sufficient funds can be made available to complete the project, and if sufficient annual revenues can be obtained to repay the reimbursable costs and to operate, maintain, and replace the project. When a loan is involved, financial feasibility requires assurance that the projects can be adequately operated, maintained, and replaced and that the loan can be repaid during the repayment life of the project. Financial data supplied by the applicant shall include the applicant's most recent financial statement, budget document or other documentation necessary to illustrate the following:

015.01 The legal limit of the rate of taxation by the applicant and the rate currently being levied;

015.02 The limit of property that can be locally taxed by the applicant;

015.03 The level and trend of actual valuation;

015.04 The rate of local delinquency;

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015.05 The legal limit of revenue and general obligation bond indebtedness;

015.06 Any debts, including bonded indebtedness and those resulting from contractual or other obligations.

If a loan is requested, applicant shall also supply a complete year-by-year repayment schedule in such detail as directed by the Director.

016 Environmental Acceptance. A project is considered to be environmentally acceptable when:

016.01 The Director has found that the project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of the critical habitat of any such species; and

016.02 The plan of development minimizes, in a manner satisfactory to the Director, any adverse impacts on the natural environment and adequately addresses existing cultural resources.

In addition to any proposed mitigation measures, if applicable, all aspects of the proposed project which can be anticipated to result in environmental enhancement shall be considered in determining whether the plan of development does minimize adverse impacts. To assist the Director in determining environmental acceptance, the applicant will demonstrate the probable environmental and ecological consequences of the project by addressing all areas of study identified on the environmental acceptance form (NRC/NRDF Form 02Ev1).

017 Federally Assisted Projects. When assistance from the Fund is requested for participation in a project planned by an agency of the federal government, the federally prepared plan of work can be submitted by the applicant for the purpose of complying with Sections 2-013, 2-014, and 2-016 and shall be submitted at the request of the Director. The Director does,

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however, reserve the right to reject all or a portion of any such plan of work on the grounds that the information provided therein is insufficient or inadequate for full evaluation of the proposed project's eligibility for assistance from the Fund.

018 Required Legal Data. The applicant shall assure the Director and the Commission that all legal requirements have or can be met prior to the allocation of any funds for the proposed program or project. Legal data submitted by the applicant in the feasibility report shall include the following:

018.01 Citation(s) to the legal authorities relied upon by the applicant to undertake or participate in the proposed program or project.

018.02 An explanation, with appropriate documentation of legal authorities, of the applicant's intention to finance that part of the project or program for which assistance from the Fund is not requested.

018.03 A showing that the applicant has or can acquire all necessary land rights and water rights.

018.04 Copies of any available proposed or executed contracts for construction or consultant services necessary for construction of the proposed program or project and included as part of the total cost of the project.

018.05 A listing of any permits, licenses, or other approvals required for the proposed project, their current status, and estimated schedule for compliance.

018.06 An explanation of the sponsor's plan to require consultants, contractors, and sub-contractors to obtain liability insurance or bonding to ensure the proper design and construction of the project.

018.07 An analysis of the sponsor's potential liability for damages from the project, including dam failure, overflow, or seepage of water and an

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explanation of the sponsor's plan to protect itself from any such liability.

018.08 A certified copy of a resolution of the applicant requesting financial assistance from the Commission and containing a finding that the applicant cannot finance the project from other available state or federal sources.

018.09 Such other information, plans, and specifications as are requested by the Director or the Commission and which are reasonably necessary for an adequate understanding of the project.

018.10 A notarized statement executed by the applicant's official representative that the facts contained in the application are true and correct to his or her best knowledge and belief.

019 Omissions in Application. If an application submitted to the Director is not complete or if additional information is required, the Director will so notify the applicant. If the application is not completed within 90 days after the notice, unless the Director extends this time for good cause shown, the Director will return the application to the applicant without making any findings on the application and without prejudice to the submission of a new application at any future time.

020 Use of Commission Data. Any pertinent data of the Commission made available to applicants for use in preparing applications and feasibility reports will be furnished at cost.

Title 256--NATURAL RESOURCES COMMISSION

Chapter 3 - ACTION BY THE DIRECTOR

001 Review and Report by the Director. On receipt of a completed application and feasibility report required by Chapter 2 of these rules and regulations, the Director shall review the application and feasibility report and shall within six months of receipt prepare a report containing his or her findings and recommendations with respect to the application and will file such report with the Commission. Copies of the Director's report will be furnished to the applicant. The Director's report shall include the following items:

001.01 A recommendation of approval or rejection of the program or project for funding eligibility.

001.02 If approval is recommended, a recommendation that the allocation be made in the form of a grant, loan, acquisition of state interest, or combination thereof.

001.03 If a program or project is recommended for loan assistance, a recommendation of the appropriate repayment period.

001.04 A recommended degree of assistance for each type of allocation recommended by the Director which shall be developed with assistance from a subcommittee of the Commission's Program Committee.

001.05 Any conditions which the Director recommends be placed on project design, construction, operation, or maintenance to ensure the consistency of the project with the Act and with other state policies, plans and programs.

002 Committee Findings and Public Hearings. To assist the Director in making his or her review and report, the Director may refer the application and feasibility report, or any parts thereof, to such review committees as he or she may establish. In addition, the Director may, at his or her discretion, conduct one or more public hearings at such location (s) as he or she shall choose for the purpose of receiving public testimony on all

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aspects of the proposed program or project. The record of any such public hearing shall constitute a part of the Director's report to the Commission.

003 Considerations in Passing on Applications. In passing on applications, the Director shall consider:

003.01 The needs of the area to be served by the program or project and the benefit to be received from the program or project by the area served.

003.02 The availability of revenue to the applicant from all sources.

003.03 Whether the program or project is of such general public benefit that state financial assistance is justified.

003.04 The relationship of the program or project to the overall statewide water and related land needs.

003.05 Other factors relating to the nature of the project and the appropriate level of financial assistance.

004 Required Findings of Fact. Prior to making any report to the Commission recommending approval of a program or project for funding eligibility, the Director shall make the following findings of fact:

004.01 The plan does not conflict with any existing Nebraska State land plan.

004.02 The proposed program or project is technically, economically, and financially feasible based upon standards contained within these rules and regulations or otherwise adopted and supplied to the applicant by the Commission.

004.03 The plan for development of the proposed program or project is satisfactory.

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004.04 The plan of development minimizes any adverse impact on the natural environment.

004.05 The applicant is qualified, responsible, and legally capable of carrying out the program or project.

004.06 In the case of a loan, the borrower has demonstrated the ability to repay the loan, and there is assurance of adequate operation, maintenance, and replacement during the repayment life of the project.

004.07 The plan considers other plans and programs of the state in accordance with the provisions of Sections 84-135, Reissue Revised Statutes of Nebraska, 1943, and resources development plans of the political subdivisions of the state.

004.08 The project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of the critical habitat of any such species.

Title 256--NATURAL RESOURCES COMMISSION

Chapter 4 - COMMISSION ACTION AND REQUIREMENTS

001 Action on the Report of the Director. Unless the Commission requests additional information from the applicant, it shall no later than its second regular meeting following submission of the report by the Director, act to approve or reject the findings of fact made by the Director pursuant to section 3-004 and the recommendations of the Director; provided, however, that no action shall be taken until a delegation composed of Commission members has visited the project site and reported the results of its tour to the Commission or the appropriate committee of the Commission. Action on recommendations made by the Director pursuant to subsections .01 and .02 of section 3-001 shall be in accordance with such recommendations unless action to the contrary is approved by each Commission member eligible to vote on the specific recommendation under consideration. A Commission member shall be ineligible to participate in the action of the Commission concerning an application for a grant or a loan only if such member is a member of the governing body or otherwise represents the applicant for financial assistance. All Commission members shall be eligible to vote on programs and projects involving state acquisition of interests in projects pursuant to Section 2-1590, R.R.S., 1943. If the Commission determines, following review of the application, feasibility report, and the Director's report, that the proposed program or project is eligible for financial assistance from the Fund, the Commission shall determine a tentative dollar figure for such assistance. Tentative allocations shall also be established for each separable component of the project, as determined in accordance with section 4-006. In establishing its tentative allocations, the Commission may take into consideration the recommendations of the Director pursuant to subsection .04 of section 3-001, the nature of the project and the factors associated with it, the total amount of money available in the Fund, and the number of and total tentative dollar allocations for other programs and projects previously determined eligible. No tentative grant allocation shall exceed an amount equal to seventy-five percent (75%) of the portion of the estimated project costs which the local sponsor would be required to provide if financial assistance from the Fund was not available. The Commission may vary the maximum allowable cost-share rate for different categories of projects. No tentative loan allocation or combination loan and grant allocations shall exceed an amount equal to ninety percent (90%) of such portion of the estimated project costs.

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002 Project Totals Exceeding Balance in Fund. Although the total of previously approved allocations exceeds the amount of funds then available in the Fund, the Commission may approve the eligibility of additional projects and establish tentative dollar allocations for such projects if such projects are otherwise eligible for financial assistance and if such approval and tentative allocations are otherwise consistent with state law. Notwithstanding any such approval, a sponsor shall not under any conditions be entitled to reimbursement for any project costs until funds have been apportioned and set aside in accordance with sections 4-005, 4-007, or 4-008 for reimbursement of costs incurred by the sponsor on such project. Costs paid, accrued or authorized by a sponsor prior to funds being set aside for such projects and costs paid, accrued or authorized by a sponsor for portions of project development in excess of those portions for which funds have been set aside, including application and engineering costs, shall be incurred at the risk of the sponsor and such sponsor shall not be entitled to reimbursement of such costs at any time without specific Commission approval for such reimbursement. Such costs may, however, be used by the sponsor to satisfy in whole or in part the sponsor's share of the total costs of the project if funds for remaining project costs are later apportioned and set aside for such project in accordance with sections 4-005, 4-007, or 4-008.

003 Applicability of Priority System. Regardless of the status of the Fund at the time of Commission approval of the eligibility of a project, the extent, if any, to which financial assistance will be provided to such project in any one fiscal year shall be in accordance with and contingent upon the availability of funds and Commission action apportioning and setting aside funds for such project in such fiscal year in accordance with sections 4-005, 4-007, or 4-008.

004 Continued Funding. In order to assure continued funding of projects with no separable components and of separable project components which are not further separable, the Commission, when it first apportioned and sets aside in accordance with sections 4-005, 4-007, or 4-008 funds for such project or project component, shall set aside an amount equal to the appropriate percentage of the total cost of the project or the component

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even if it is not anticipated that all of such funds could be expended during the next ensuing fiscal year. Funds thus apportioned and set aside shall, as soon as costs have been incurred by the sponsor subsequent to such apportionment, remain set aside and be committed for such project or project component until the sponsor has received all reimbursement to which it is entitled unless:

004.01 The project is abandoned or significantly delayed;

004.02 The Commission has reasonable grounds for concern that the project or any portion of it may not be completed due to public opposition, litigation, or the loss of other state, local or federal funds needed to complete the project;

004.03 The Commission fails to receive a reappropriation of unexpended funds;

004.04 The appropriation for the Resources Development Fund is reduced by subsequent legislative act; or

004.05 The Commission determines the project no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's rules and regulations.

If the Commission determines at any time that any of these conditions have occurred, any funds apportioned and set aside for the project which have not been disbursed may be deemed by the Commission to be released. In order that the maximum practicable assurance of continued funding may be provided to sponsors of uncompleted projects which have previously been apportioned funds for one or more separable components, two separate priority lists will be established annually. These priority lists will include all projects and project components accepted by the Commission in the manner provided in section 4-005 and only such projects and project components. The first list shall include separable project components which are components for projects for which funds for other separable components have previously been apportioned and set aside. The second list shall include all other projects and separable project components.

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Whenever funds are apportioned and set aside pursuant to sections 4-005 or 4-008, such funds shall first be apportioned to and set aside for project components in the first priority list, and shall then be apportioned and set aside for projects and project components in the second priority list.

005 Determination of Fiscal Year Financial Needs.

005.01 No later than March 31 of each year each sponsor willing to utilize and capable of utilizing either an initial or an additional apportionment of funds for a project which has been determined eligible for funding shall submit a report to the Commission indicating as follows:

005.01A If the project has no previously identified separable components and no request is made for identification of any such components, the report shall indicate the estimated time schedule for beginning and completing the project.

005.01B If the project has separable components, the report shall indicate the component or components for which the sponsor is requesting an apportionment and the estimated time schedule for commencing and completing such component or components.

005.01C If desired by the sponsor, the report may also include a request for the identification of separable components for a project with no previously identified separable components or for the separation of one or more previously identified separable components into additional separable components. Any such request shall be accompanied by an estimate of the costs for completing all separable components for which identification is requested. For those components for which apportionment of funds is desired, the information required by part B of this subsection shall also be provided.

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005.01D The extent of any opposition to completion of the project, or any separable component, including whether any lawsuits to prevent its completion have been instituted or are anticipated, whether any problems are being experienced or are anticipated in obtaining sufficient funds to meet the sponsor's financial obligations for the project, and any other factors desired, the information which may affect the sponsor's ability to complete the project.

005.02 The Commission shall at its first meeting following March 31 of such year review such reports. Before apportioning and setting aside funds for the next fiscal year, the Commission shall accept, accept in part, or reject the reports thus submitted. The reports shall not be rejected or accepted only in part unless:

005.02A The Commission determines, based upon the information available to it, that it is unreasonable to expect that a project or project component is capable of being commenced within the next ensuing fiscal year,

005.02B The request for apportionment includes funds for more than one separable component of the project and one or more of such separable components could in the opinion of the Commission be delayed without significant adverse effect on the total project, or

005.02C The Commission has reasonable grounds for concern that the project, or any portion of it, may not be completed. Reasonable grounds for concern shall include, but not be limited to, opposition to completion of the project including current or anticipated lawsuits or the unavailability or loss of local or federal funds needed to complete the project.

005.03 After taking action on the reports, the Commission shall to the extent such reports are accepted, determine in which of the priority lists established in accordance with section 4-004 each project or portion thereof is to be placed. Approval of requests for identification

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of new separable components shall be in accordance with section 4-006. Thereafter, the Commission shall, based upon the uncommitted funds available and in accordance with the priority order specified in section 4-004 determine the priority list or lists for which the appropriate amount from the Fund may be apportioned and set aside in the next ensuing fiscal year for all projects and project components included in such list or lists. That amount of funds shall then be apportioned and set aside for all such projects and project components. The apportionment of funds for projects included within any priority list for which apportionment to all projects is not possible in the amounts determined in accordance with this section shall be determined in accordance with section 4-007.

006 Separable Components. If a project plan provides that development of the project will take place on two or more land areas not contiguous to each other, the project portion planned for each such land area shall constitute a separable component of the project. Projects for which total project development will take place all on one contiguous land area and separable components of projects of the type described above may also have separable components. A project component shall be deemed to be any distinguishable phase of project development including such phases as land rights acquisition, project construction, and related facilities development. The extent to which such components constitute separable components for any project shall be determined by the Commission after consultation with the sponsor. In the event that any project is determined to have separable components, the Commission shall take action to identify such separable components and to determine the estimated costs of completing each such component.

007 Establishing Priorities Among Projects on a Priority List. In the event that insufficient funds are available in any fiscal year to apportion funds to all projects and project components in the appropriate percentage of the estimated costs of those accepted in accordance with section 4-005, the Commission shall prior to July 1 of such year establish priorities among the projects and project components in each priority list for which apportionments to all those listed are not possible. To provide guidance to the Commission in the establishment of such priorities, a multiple criteria

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point system shall be employed, with consideration given to the following criteria.

- 007.01 The rate-of-return on the investment;
- 007.02 The water and related resources needs addressed by the project;
- 007.03 The economic impact of the project on the local and/or regional economy;
- 007.04 The environmental impact of the project;
- 007.05 The support for or opposition to the project;
- 007.06 The urgency of need for the project;
- 007.07 The extent of benefit provided by the project.

The Commission shall establish a range of points which may be assigned to each criteria and may delegate to a staff committee the authority to assign points to all projects and project components on one or more of the criteria to be considered. The sponsors of all projects which will be considered in such priority establishment shall be notified in advance of the criteria to be considered and the point range assigned to each criterion and such sponsors shall be invited to appear before the Commission to address the manner in which their projects relate to such criteria prior to any assignment of points by the Commission and/or the Commission staff. As the multiple criteria point system is intended to provide guidance only, the Commission shall not be bound by the relative priority rating resulting from the cumulative totals of such point assignments, but may in establishing the final priority ratings make such adjustments as it deems appropriate to best carry out the purposes of the Act and to make the most efficient utilization of the funds which are available.

After establishing the final priority ratings, the Commission shall, to the extent that uncommitted funds are available, apportion and set aside

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for projects in the order in which they appear on such priority list the amounts determined in accordance with section 4-005.

008 Adjustments in Apportionments. A sponsor may at any time during the fiscal year submit reports containing an update of the information contained in the report submitted in accordance with section 4-005. A sponsor of a project for which no report was submitted in accordance with section 4-005 may also at any time submit a report containing the information required by such section. At the first Commission meeting following August 1, November 1, and February 1 of each year, the Commission shall review all such reports, if any, which have been submitted since the last such review, and any other relevant information available to it and shall, if appropriate, make adjustments in the amount apportioned and set aside for any project for that fiscal year. No amount previously apportioned and set aside in accordance with sections 4-005 or 4-007 shall be decreased unless:

008.01 The sponsor has indicated a decrease in needs;

008.02 The Commission, based on information contained in the sponsor's report submitted in accordance with section 4-005 or other information available to it, finds that there are reasonable grounds for concern that the project or any separable component may not be completed;

008.03 The Commission is abandoned or significantly delayed;

008.04 The Commission fails to receive a reappropriation of unexpended funds;

008.05 The appropriation for the Resources Development Fund is reduced by subsequent legislative act, or;

008.06 The Commission determines the project no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's rules and regulations.

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In case of any such findings, the Commission may modify, suspend or revoke any previous action to apportion and set aside funds for the project or any separable component. Provided, however, any action to modify, suspend, or revoke any previous apportionment shall not affect the sponsor's right to reimbursement for costs which it has incurred or for which it has become legally obligated prior to such Commission action. In addition, such action shall not affect the sponsor's right to reimbursement for the cost of land or interests in land acquired through condemnation actions commenced prior to the Commission action to modify, suspend, or revoke an apportionment. If available funds allow and if all projects for which reports have been submitted in accordance with section 4-005 have funds apportioned and set aside for such projects, the Commission may also apportion and set aside funds for one or more projects for which no report was submitted in accordance with section 4-005.

009 Limitation on Reimbursements. A sponsor shall not be reimbursed during any fiscal year in any amount in excess of the amount apportioned and set aside for the sponsor's project in accordance with sections 4-005, 4-007 and 4-008.

010 Review and Approval of Final Plans. Prior to the actual disbursement of any funds for construction for the project or for any portion thereof, the Director shall review the final plans for the proposed program or project or the portion for which funds are requested. If it appears during such review or during any prior or subsequent review or inspection of the project plans or construction, or during any review of project cost information that:

010.01 The plans and specifications for the project are not being followed;

010.02 The plan for development or any work performed on the project are not based on sound technical principles or practices;

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010.03 The project or any portion thereof no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's Rules and Regulations; or

010.04 There is or has been non-compliance with any of the terms of the contract between the Sponsor and the Commission;

The Director shall immediately bring such variances to the Sponsor's attention and may refuse to disburse any funds for the project until such time as the variances are corrected and the project is brought into conformance with all appropriate standards.

011 Limitation on Allocation. The amount actually disbursed for a program or project, or a separable component of a project, shall not exceed the dollar amount of the tentative allocation for the program, project or separable component approved by the Commission pursuant to section 4-001 or a dollar amount equal to the same percentage of the actual project costs as the tentative allocation represented to the estimated project costs, whichever is less, without specific Commission approval; except that funds apportioned and set aside for one separable component but not disbursed may be used to reimburse the Sponsor for the costs of another separable component even though such reimbursement may exceed the amount apportioned and set aside for that component if necessary in accordance with section 4-002 to achieve or maintain the appropriate ratio between eligible project costs paid by the Sponsor and those paid by the Commission.

012 Contractual Arrangements. State funds will not be advanced to any applicant pursuant to an approved loan or grant until a contract between the applicant and the Commission setting forth terms and conditions of such loan or grant has been executed.

013 Disbursements. The Director shall disburse, no more often than once each month, such funds from those apportioned and set aside to a program or project as are necessary to reimburse, in the proper proportion, all eligible costs incurred by the applicant in carrying out the program or

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project since the next preceding disbursement, if any. All such costs shall be documented by the applicant in such manner as is directed by the Director prior to the disbursement of any funds. In the event that a program or project has been approved for combination grant and loan allocations, each disbursement shall, unless otherwise specified by the Commission constitute a disbursement of loan and grant funds in the same proportion as the totals of the allocation approved.

014 Inspection During Construction. The Commission and Director shall have the privilege of inspecting the construction of any project at any time in order to ensure that plans and specifications are being followed, and that the works are being constructed in accordance with sound engineering and technical principles and practices, but such inspection shall never subject the State of Nebraska to any action for damages. The Director shall bring to the attention of the sponsor and the project engineer any variances from the approved plans and specifications. The Sponsor and the project engineer or project director shall initiate necessary corrective action.

015 Changes in Scope of Approved Projects. The Sponsor shall promptly report all increases in the cost of a project, or any separable component of the project, and any proposed additions, deletions, or modifications of any separable component, or any change in the purpose or purposes of the project by submitting to the Commission an amendment to the formal application and feasibility report. Commission approval of any change in the scope, purpose, or plan for development of the project, and any increase in the tentative allocation for the project, or any separable component, shall be required. Any proposed change in the scope, purpose, or plan of development for the project, any request for an increase in the allocation for the project, or any cost increase, regardless of whether an increase in the tentative allocation for the project is requested, may at the discretion of the Commission be referred to the Director for his or her review and recommendation regarding whether the project still meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's rules and regulations.

ANNOTATION

Title 256

Section 2-1586 et. seq.,
R.R.S. 1943

JS APPROVED
JUL 19 1990
Ray A. Orr
GOVERNOR

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL
JUL 5 1990
BY *L. Ray W. Jones*
Assistant Attorney General

Memorandum

To: Programs, Projects, and Operations Subcommittee
From: Paul Woodward, Water Resources Engineer
Date: May 4, 2005
Re: Development Agreement for Shadow Lake Flood and Sediment Control Projects

In the enclosed Development Agreement with the City of Papillion, 370 L.L.C., SID 267, Shadow Lake Development L.L.C., and SID 264, the District would agree to cost-share with developers for the design and construction of a flood detention structure (Shadow Lake) and a grade control structure (Midland Lake) on Midland and South Midland Creek just South of Highway 370 between 72nd and 84th Street southeast of Papillion. An attached map describes the project layout as well as the proposed developments.

The District has had a long term interest in a watershed project on this property. Although not identified as one of the 21 flood control reservoir sites by the Corps, it was targeted as the location for one of the grade control/sediment structures (S-30) under the USDA's Papio PL 566 Watershed Plan. Under that plan, the USDA-NRCS will provide 100% of the construction costs, if the District provides the right-of-way. The District is helping secure the USDA funding, and thus resulted in providing in the proposed agreement that the NRD fund 100% of that structure (Midland Lake Dam). The cost-share provisions in the agreement for constructing the flood control reservoir (Shadow Lake Dam) were patterned after the District's Small Dams Program, where the landowner provides the land rights and 25 % of the costs of construction.

The Shadow Lake Dam will control runoff from nearly 1,500 acres (2.3 sq. mi.) of land presently transitioning to residential subdivisions. It will provide 480 acre-feet of flood storage (to the crest of the auxiliary spillway-100 yr.) and protect the immediately downstream proposed Papillion Promenade mall, NE Hwy 370, existing residential and commercial development and other property in the Papio basin. It will also help in solving channel maintenance problems being experienced along this West Branch Papio tributary, in particular at its mouth where District flood control levees and channel improvements are located.

Below is a summary of the provisions of this agreement and the responsibilities of the District:

- ☐ Shadow Lake Development will hire an engineer to prepare preliminary plans and specifications for both structures.
- ☐ The District would retain HDR Engineering for quality control and assurance of the plans and specifications, construction contract, and construction observation.

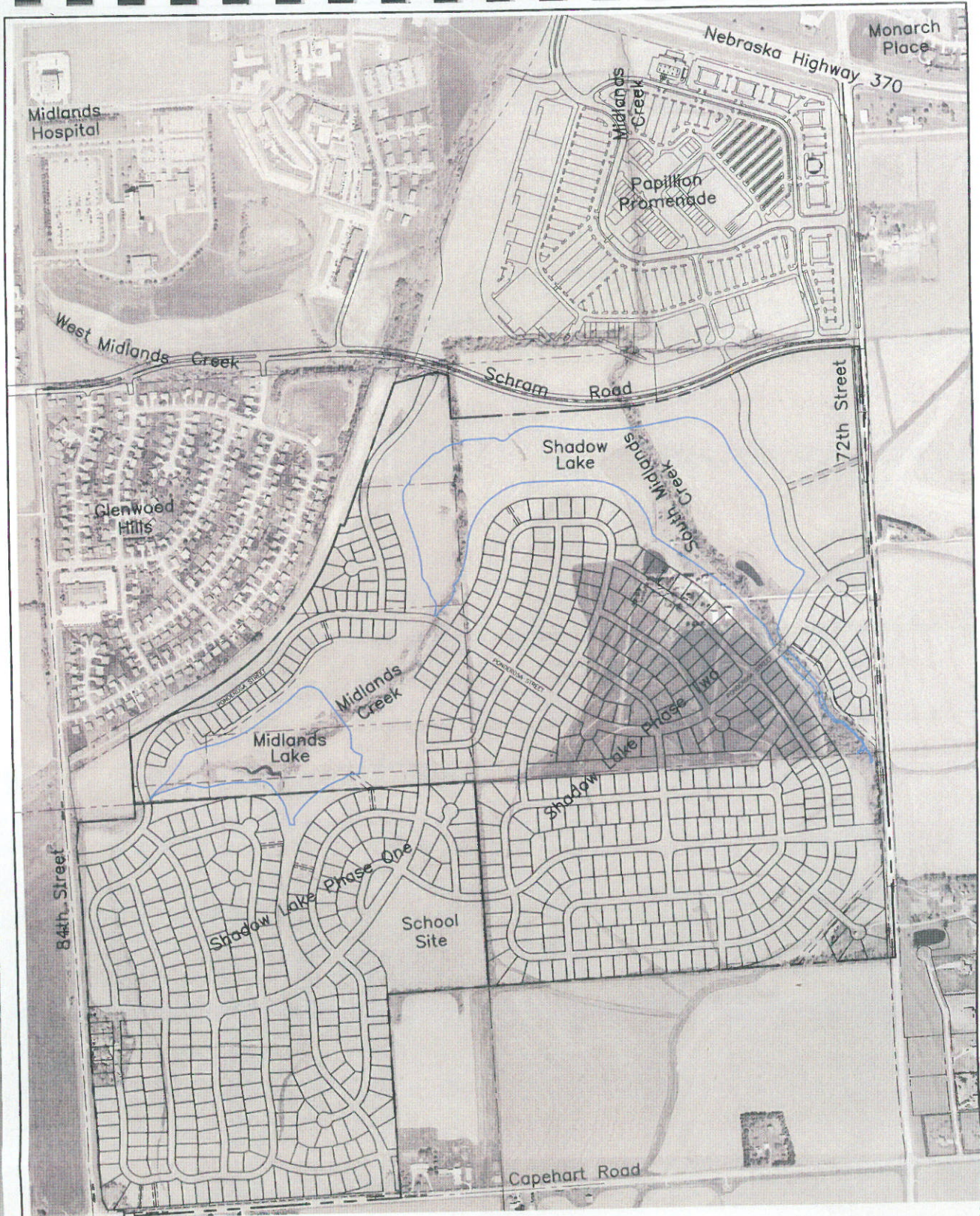
- ❑ All preliminary and final plans and specifications would be subject to review by the City of Papillion, HDR and the NRD subsequent to final approval by the NRD and the City.
- ❑ Shadow Lake Development or SID 264 would bid a construction contract, upon approval by the NRD, for both projects. The District would retain the right to review bids received prior to the developer or SID awarding the contract.
- ❑ Both 370 L.L.C. and Shadow Lake Development will grant the District permanent easements to pond water and sediment behind both Shadow Lake and Midland Lake Dam as well as the right to operate and maintain each dam. All necessary land right will be provided by the developer at no cost to the District.
- ❑ The SIDs and eventually the City will be responsible for maintaining the actual lakes and recreation areas.
- ❑ The maximum NRD contribution is \$3,357,278 which is 75% of the estimate cost of Shadow Lake and 100% of the estimated cost for Midland Lake. The District will be responsible for 1/3 of the actual expended costs in FY 06 and 2/3 of the actual expended costs in FY 07. Any remaining funds required will be paid in FY 08. 370 L.L.C. or SID 267 (Papillion Promenade) will provide the other 25% of the needed cost-share to construct Shadow Lake.

In conclusion, the District would provide 75% of the costs to design construct Shadow Lake and 100% of the cost to design and construct Midland Lake for a maximum total of \$3,357,278. All land rights would be provided by the developers and they/SIDs would also maintain the lake and recreation areas in the future. The District would operate and maintain both dams.

Expense Item	Cost in Millions			
	Shadow Lake SID 264	Promenade SID 267	P-MRNRD	Total
Right of Way	3.378			3.378
Construction & Engineering		1.367	3.357 *	4.724

* Anticipated that \$1.166 Federal USDA funding will be obtained for Midlands Lake Dam (formerly USDA PL 566 Site S-30), leaving \$2.191 million for the NRD to fund.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Development Agreement with the City of Papillion, 370 L.L.C., SID 267, Shadow Lake Development L.L.C., and SID 264 for the Shadow Lake Flood and Sediment Control Projects, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Council, and take such other and further actions as necessary to effectuate such agreement.



SHADOW LAKE SITE MAP



04031\dwg Location Map.dwg



Lamp, Rynearson & Associates, Inc.

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(Ph) 402.496.2498
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job number-1aaka
04031.22-042
date
03/18/2005
drawn by
RJK
designer
JMB

FIGURE 2

EASEMENT AREAS (SHADOW LAKE)

- BELOW NORMAL POOL
(Below 1050.0 Ft.) = 34.8 AC
- FLOOD POOL
(Between 1050 Ft.
And 1061.3 Ft.) = 16.6 AC
- TOP OF DAM
(Between 1061.3 Ft.
And 1066.0 Ft.) = 8.1 AC

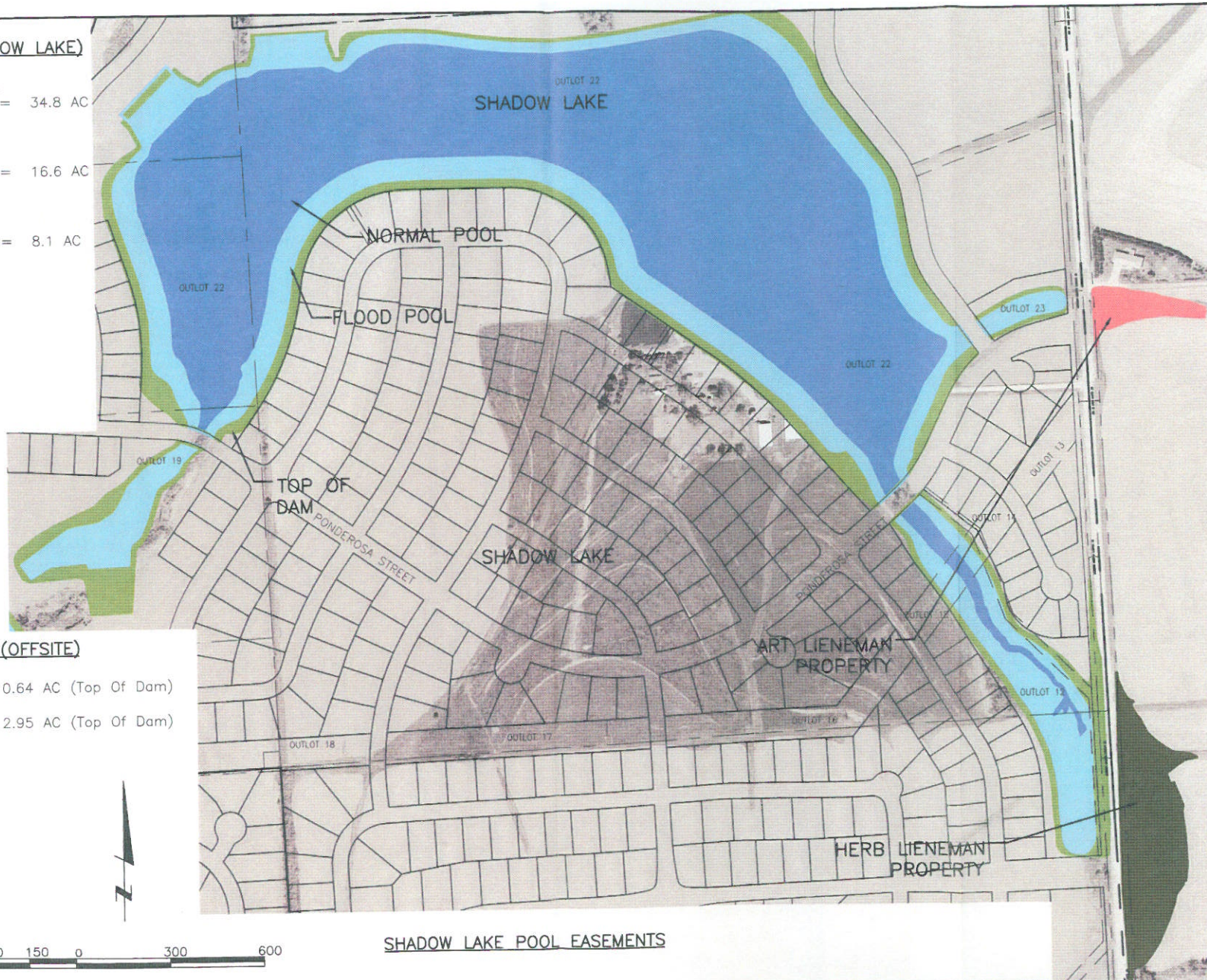
EASEMENT AREAS (OFFSITE)

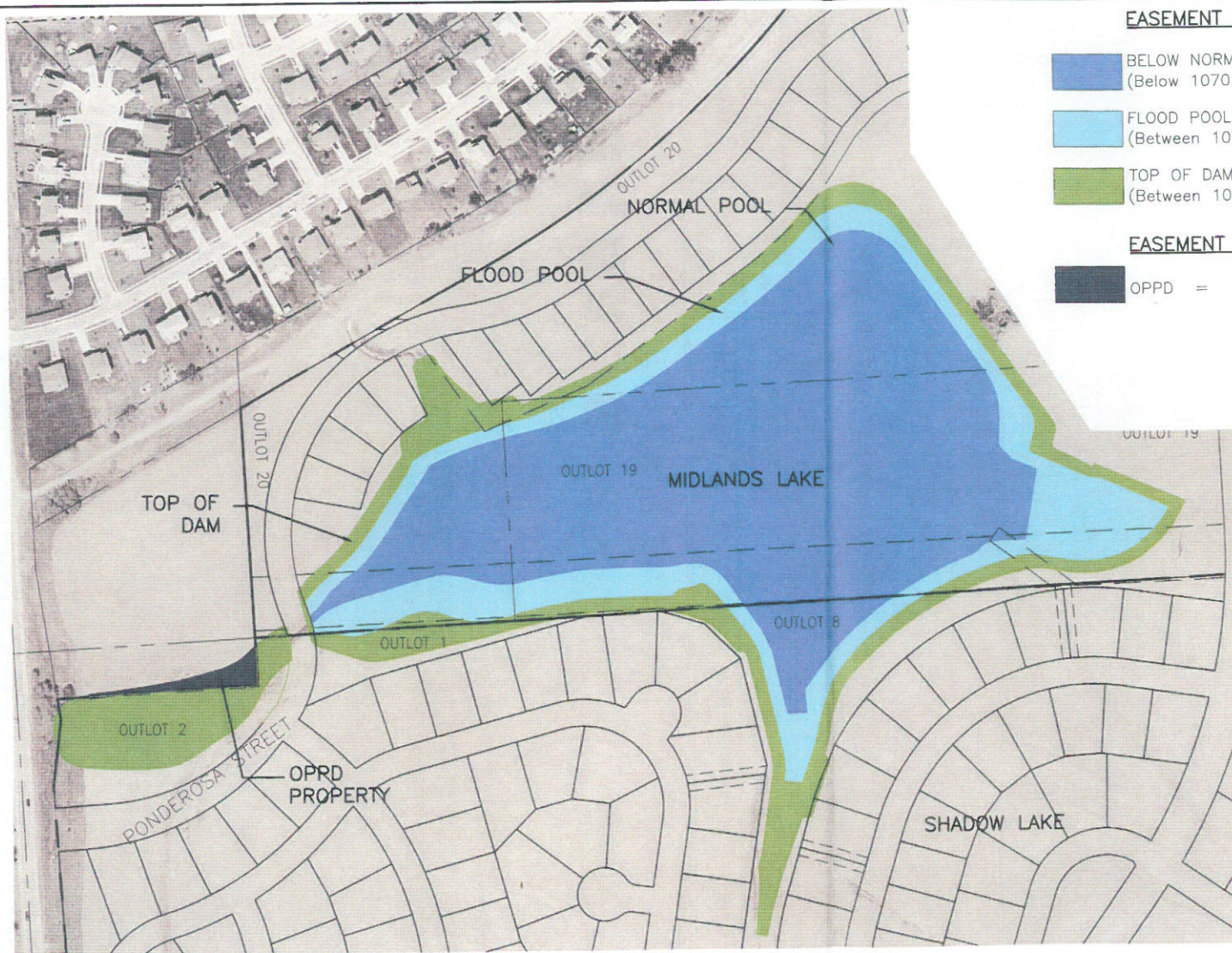
- ART LIENEMAN = 0.64 AC (Top Of Dam)
- HERB LIENEMAN = 2.95 AC (Top Of Dam)

300 150 0 300 600



SHADOW LAKE POOL EASEMENTS





EASEMENT AREAS (SHADOW LAKE)

	BELOW NORMAL POOL (Below 1070.0 Ft.)	=	11.5 AC
	FLOOD POOL (Between 1070 Ft. And 1080.1 Ft.)	=	3.7 AC
	TOP OF DAM (Between 1080.1 Ft. And 1086.0 Ft.)	=	4.6 AC

EASEMENT AREAS (OFFSITE)

	OPPD	=	0.2 AC (Top Of Dam)
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MIDLANDS LAKE POOL EASEMENTS

FIGURE 7

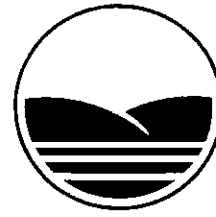
job number: lake
04031.22-0
date: 03/18/2005
drawn by: RJK
designed: MPM

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Omaha, Nebraska 68154-2027

104031\dwg\Dam Surface Areas.dwg

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT



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OMAHA, NE 68138-3621
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FLOOD CONTROL PAPIO WATERSHED				
LAKE	WATERSHED		LAKE SURFACE	PUBLIC AREA
	ACRES CONTROLLED	SQ. MILES	AREA (acres)	Around Lake (acres)
NEWPORT LANDING	3,136	4.9	340	40 *
CUNNINGHAM	10,944	17.1	390	1,050
STANDING BEAR	3,840	6.0	135	396
CANDLEWOOD	1,216	1.9	32	8
ZORINSKY	10,496	16.4	255	768
WEHRSPANN	8,384	13.1	246	940
WALNUT CREEK	1,984	3.1	105	450
SHADOW LAKE	1,472	2.3	34	16
TOTAL	41,472	64.8	1,537	3,668

* *Prairie View Rec Area.*

Notes: Papio watershed has a total of 250,000 Acres.

Approximately **100** square miles in Washington County

Approximately **200** square miles in Douglas County

Approximately **100** square miles in Sarpy County.

Methods currently used to reduce flood threats in the Papio watershed are::

- Storage Reservoir
- Channel Improvements
- Floodway Purchase of buildings & land
- Conservation practices on agriculture land

DEVELOPMENT AGREEMENT

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

SHADOW LAKE FLOOD AND SEDIMENT CONTROL PROJECTS

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

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

RECITALS

WHEREAS, 370 LLC is the developer of Papillion Promenade, a commercial real estate development and subdivision (hereinafter referred to as “**PAPILLION PROMENADE**”) as surveyed, platted and recorded in Section ___, Township ___ North, Range ___ East of the 6th P.M. in Sarpy County, Nebraska; and,

WHEREAS, SID 267 is being or has been formed by 370 LLC for the purpose of constructing, operating and maintaining public infrastructure in PAPILLION PROMENADE; and

WHEREAS, SLD LLC is the developer of Shadow Lake, a residential real estate development and subdivision as surveyed, platted and recorded in Section ___, Township ___ North, Range ___ East of the 6th P.M. in Sarpy County, Nebraska, (hereinafter referred to as “**SHADOW LAKE**”) adjacent to PAPILLION PROMENADE; and,

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

WHEREAS, Midlands Creek, a hydrologically uncontrolled tributary of the West Branch of the Papillion Creek, flows in a northerly direction through SHADOW LAKE and PAPILLION PROMENADE; and,

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

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

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

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

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

owned by others (all such tracts of land, referred to in the DESIGN REPORT as the Dam Footprint Easement, the Auxiliary Spillway Return Flow Easement, and the Principal Spillway Easement,” hereinafter being referred to collectively as “the **SHADOW LAKE RESERVOIR COMPLEX**”), the SHADOW LAKE RESERVOIR to be permanently operated, maintained, repaired, replaced, managed and regulated by SLD LLC and SID 264; and,

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

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

WHEREAS, any public trail or other public recreation facilities (hereinafter referred to as “the **RECREATION FACILITIES**”), designed and

constructed in the SHADOW LAKE DAM COMPLEX or SHADOW LAKE RESERVOIR COMPLEX or in the MIDLANDS LAKE DAM COMPLEX or MIDLANDS LAKE RESERVOIR COMPLEX, would be the responsibility of SLD LLC and SID 264 to construct, operate, maintain, repair, replace, manage and regulate; and,

WHEREAS, it is anticipated that, upon the formation of SID 264, such sanitary and improvement district will execute this AGREEMENT, thereby adopting and becoming bound by all of its covenants, terms and conditions and thereby becoming one of the PARTIES; and that, upon the formation of SID 267, such sanitary and improvement district also will execute this AGREEMENT, thereby adopting and becoming bound by all of its covenants, terms and conditions and thereby becoming one of the PARTIES.

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

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

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

2. **DUTIES OF THE PARTIES.** The design, construction, operation, maintenance, repair, replacement, management and regulation of the COOPERATIVE PROJECTS will be undertaken by the PARTIES as hereinafter

provided, without any separate entity being created, and, the duties and responsibilities of the PARTIES with respect thereto shall be as defined and limited by this AGREEMENT.

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

4. SANITARY AND IMPROVEMENT DISTRICTS. On or before _____ 2005:

a) SLD LLC shall take all such actions, at its own cost and expense, as necessary to form SID 264, in accordance with the law of the State of Nebraska, and obtain the valid execution of this AGREEMENT by SID 264, failing which any of the PARTIES, upon thirty (30) days written notice to the other PARTIES, may terminate this AGREEMENT; and,

b) 370 LLC shall take all such actions, at its own cost and expense, as necessary to form SID 267, in accordance with the law of the State of Nebraska, and obtain the valid execution of this AGREEMENT by SID 267, failing which any of the PARTIES, upon thirty (30) days written notice to the other PARTIES, may terminate this AGREEMENT.

5. THE ENGINEERS. On or before _____, SLD LLC and SID 264 shall, by written engineering contract(hereinafter referred to as "the **ENGINEERING DESIGN CONTRACT**"), retain, and subsequently fully compensate at their own expense, engineering consultants (hereinafter referred to as "the **ENGINEERS**"), approved by the NRD (such approval to not be withheld or delayed unreasonably), to design the COOPERATIVE PROJECTS and to prepare plans and specifications and contract documents for, and administer

construction of, the COOPERATIVE PROJECTS. The ENGINEERING DESIGN CONTRACT shall require that the ENGINEERS maintain separate accounting for the engineering fees and costs relating to the SHADOW LAKE DAM and the SHADOW LAKE RESERVOIR, on the one hand, and for the engineering fees and costs relating to the MIDLANDS LAKE DAM and the MIDLANDS LAKE RESERVOIR, on the other hand.

6. **PRELIMINARY PLANS AND SPECIFICATIONS.** On or before _____, 2005, the ENGINEERS shall complete the preparation of proposed preliminary plans and specifications for construction of the COOPERATIVE PROJECTS (hereinafter referred to as “the **PRELIMINARY PLANS**”), subject to the following:

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

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

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

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

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

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

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

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

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

e) The PRELIMINARY PLANS for the MIDLANDS LAKE RESERVOIR shall be drawn in accordance with design criteria provided by the General Manager of the NRD and shall include, without limitation, a detailed grading plan for such excavation of earth from the reservoir pool portion of the MIDLANDS LAKE RESERVOIR COMPLEX as may be necessary to insure adequate capacity in the MIDLANDS LAKE RESERVOIR for silt-retention, such excavation to result in the MIDLANDS LAKE RESERVOIR having a minimum capacity of 160.0 acre feet of storage below elevation 1,070.0 feet above mean sea level, NGVD.

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

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

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

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

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

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

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

i) The total costs of the COOPERATIVE PROJECTS, including the costs of engineering, design, construction and construction administration (but excluding right-of-way costs) but not including the estimated costs of any enlargement or modification of the SHADOW LAKE DAM'S embankment cross-sections, spillway

works or other features that, considering generally accepted dam engineering practices, exist solely to accommodate the DAM ROAD (the costs of the SHADOW LAKE DAM without the DAM ROAD hereinafter being referred to as “the **SHADOW LAKE MINIMAL DAM COSTS**”); and,

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

i) Neither the RECREATIONAL FACILITIES nor the DAM ROAD shall, for any purposes relating to this AGREEMENT, be deemed to be components or portions of the COOPERATIVE PROJECTS that are the subjects of this AGREEMENT.

7. **NRD’S ENGINEERING CONSULTANT.** The NRD will retain the firm of HDR Engineering, Inc. (hereinafter referred to as “the **NRD’S ENGINEERING CONSULTANT**”) to consult with the NRD concerning the PRELIMINARY PLANS, the FINAL PLANS, and observation of construction of the COOPERATIVE PROJECTS. In all computations of engineering fees pursuant to this AGREEMENT, the fees of the NRD’S ENGINEERING CONSULTANT shall be included. The NRD’S ENGINEERING CONSULTANT shall maintain separate accounting for the engineering fees and costs relating to the SHADOW LAKE DAM and the SHADOW LAKE RESERVOIR, on the one hand, and for the engineering fees and costs relating to the MIDLANDS LAKE DAM and the MIDLANDS LAKE RESERVOIR, on the other hand. The first \$100,000.00 of the fees and costs of the NRD’S ENGINEERING CONSULTANT shall be an attributable cost of the COOPERATIVE PROJECTS and apportioned

between the SHADOW LAKE DAM and the SHADOW LAKE RESERVOIR, on the one hand, and the MIDLANDS LAKE DAM and the MIDLANDS LAKE RESERVOIR, on the other hand, as reasonably determined by the NRD'S ENGINEERING CONSULTANT. The remaining fees and costs of the NRD'S ENGINEERING CONSULTANT shall be the sole responsibility of the NRD.

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

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

10. APPROVAL OF FINAL PLANS FOR PROJECT. Upon the ENGINEERS' completion of the proposed FINAL PLANS, the FINAL PLANS shall be submitted to the NRD and the CITY for their separate written approvals, such separate approvals to not be withheld or delayed unreasonably. The NRD

and the CITY each shall have the additional right to review and approve subsequent amendments to the FINAL PLANS, such approvals to not be withheld or delayed unreasonably.

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

12. CONSTRUCTION CONTRACT. On or before _____, 2006, SLD LLC and SID 264 shall deliver to the NRD copies of the proposed contract between SLD LLC and SID 264, on the one hand, and the CONTRACTOR, on the other hand, for construction of the COOPERATIVE PROJECTS (such contract, together with the FINAL PLANS, hereinafter being referred to collectively as “the **CONSTRUCTION CONTRACT**”). The NRD shall have a period of 30 days to review the CONSTRUCTION CONTRACT and to approve or disapprove the same in writing or suggest amendments thereto, and shall have an additional period of 30 days to review and approve subsequent amendments thereto. Such approvals shall not be withheld or delayed unreasonably. The CONSTRUCTION CONTRACT shall require separate accounting for the costs of construction of the SHADOW LAKE DAM and the SHADOW LAKE RESERVOIR, on the one hand, and for the costs of construction of the MIDLANDS LAKE DAM and the MIDLANDS LAKE RESERVOIR, on the other hand.

13. THE PROJECT CONTRACTOR. On or before _____, SLD LLC and SID 264 shall use their/its competitive

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

14. CONTRACTOR INSURANCE AND BONDING. The CONSTRUCTION CONTRACT shall require:

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

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

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

15. CONTRACTOR’S WARRANTIES. As the NRD may request, SLD LLC and SID 264 shall enforce all bonds and warranties given by the CONTRACTOR and its subcontractors in the CONSTRUCTION CONTRACT.

16. CONSTRUCTION OF COOPERATIVE PROJECTS. Within 30 days after the NRD'S approval of the CONSTRUCTION CONTRACT, or at such other time as all the PARTIES may agree in writing, SLD LLC and SID 264 shall sign the CONSTRUCTION CONTRACT; and, subsequent thereto, the COOPERATIVE PROJECTS shall be constructed by the CONTRACTOR in conformance with the CONSTRUCTION CONTRACT, including the FINAL PLANS, approved by the NRD and the CITY. Construction of the COOPERATIVE PROJECTS shall be finally completed on or before _____, 2006.

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

18. CLOSING. 370 LLC and SID 267 and SLD LLC and SID 264 shall respectively and timely acquire, and at a closing (hereinafter referred to as "the **CLOSING**") to be held on or before _____, or on such other date as may be agreed upon by the PARTIES, 370 LLC and SID 267 and SLD LLC and SID 264 shall, without further consideration, grant or convey to the respective PARTY hereinafter stated, the lands, easements and rights of way comprising the PROJECT LAND RIGHTS over the lands necessary for the construction, operation, maintenance, repair, replacement, management and regulation of the COOPERATIVE PROJECTS, to wit:

19. PROJECT LAND RIGHTS. At the CLOSING and without further consideration:

a) 370 LLC and SID 267 shall grant to SLD LLC and SID 264 a temporary easement, in the form as attached hereto and incorporated herein by reference as Exhibit “___” or in such other form as may be determined by agreement of such PARTIES, over and across the portion of the SHADOW LAKE DAM COMPLEX lying in PAPILLION PROMENADE, legally described in the FINAL PLANS, such easement, to generally grant to SLD LLC and SID 264 the right to construct the SHADOW LAKE DAM in such portion of PAPILLION PROMENADE, and use any portion of the SHADOW LAKE RESERVOIR COMPLEX lying in PAPILLION PROMENADE, legally described in the FINAL PLANS, for the borrow of earthen material for use in construction of the SHADOW LAKE DAM.

b) 370 LLC and SID 267 shall grant to the NRD a permanent easement, in the form as attached hereto and incorporated herein by reference as Exhibit “___” or in such other form as may be determined by agreement of such PARTIES, over and across the portion of the SHADOW LAKE DAM COMPLEX lying in PAPILLION PROMENADE, such portion to be legally described in the FINAL PLANS, such easement, generally granting to the NRD the right to operate, maintain, patrol, repair, replace, manage and regulate the SHADOW LAKE DAM in such portion of the SHADOW LAKE DAM COMPLEX.

c) SLD LLC and SID 264, shall grant to the NRD a permanent easement, in the form as attached hereto and incorporated herein by reference as Exhibit “___” or in such other form as may be determined by agreement of such PARTIES, over and across the portion of the SHADOW LAKE DAM COMPLEX lying in SHADOW LAKE, such portion to be legally described in the FINAL PLANS, such easement, generally granting to the

NRD the right to operate, maintain, patrol, repair, replace, manage and regulate the SHADOW LAKE DAM in the SHADOW LAKE DAM COMPLEX.

d) SLD LLC and SID 264 shall grant to the NRD permanent easements and restrictive covenants, in the form as attached hereto and incorporated herein by reference as Exhibit “___” or in such other form as may be determined by agreement of such PARTIES, generally granting to the NRD the right to flow and back up SHADOW LAKE RESERVOIR water and sediment upon, and inundate, all that land (hereinafter referred to as “the **SHADOW LAKE REGULATED FLOOD POOL**”) which, at once, is located within the watershed of the SHADOW LAKE DAM and, after completion of construction of the SHADOW LAKE DAM and the SHADOW LAKE RESERVOIR in accordance with the designs approved by the NRD, will have a ground surface elevation lower than 1,061.3 feet above mean sea level, NGVD, which elevation the PARTIES agree is intended to be approximately one foot (1.0’) above the mean sea level elevation of the 500-year flood pool of the SHADOW LAKE RESERVOIR. Such permanent easement and restrictive covenant also shall generally prohibit the placement of any earthen fill or other fill in any areas of the SHADOW LAKE REGULATED FLOOD POOL that, either now or hereafter, have a ground surface elevation lower than 1,061.3 feet above mean sea level, NGVD and prohibit the construction or maintenance, within such SHADOW LAKE DAM REGULATED FLOOD POOL, of structures, fixtures or other improvements; provided, however, it shall not prevent:

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

ii) Excavation or filling of earth or rock in the SHADOW LAKE REGULATED FLOOD POOL in order to construct, operate and

maintain within the SHADOW LAKE REGULATED FLOOD POOL sheet-pilings, revetments or other temporary or permanent shoreline erosion prevention and bank protection devices or methods;

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

e) SLD LLC and SID 264 shall grant to the NRD permanent easements and restrictive covenants, in the form as attached hereto and incorporated herein by reference as Exhibit “___” or in such other form as may be determined by agreement of such PARTIES, generally granting to the NRD the right to flow and back up water and sediment upon, and inundate, all the land (hereinafter referred to as “the **SHADOW LAKE MAXIMUM POOL**”) which, at once, is located within the watershed of the SHADOW LAKE DAM and, after completion of construction of the SHADOW LAKE DAM and the SHADOW LAKE RESERVOIR in accordance with the designs approved by the NRD, will have a ground surface elevation lower than 1,066.0 feet above mean sea level, NGVD. Such permanent easement and restrictive covenant also shall generally prohibit the placement of any earthen fill or other fill in any areas of the SHADOW LAKE MAXIMUM POOL that, either now or hereafter, have a ground surface elevation lower than 1,066.0 feet above mean sea level, NGVD.

f) SLD LLC and SID 264 shall grant to the NRD a permanent easement, in the form as attached hereto and incorporated herein by reference as Exhibit “___” or in such other form as may be determined by agreement of such PARTIES, over and across the MIDLANDS LAKE DAM COMPLEX, such portion to be legally described in the FINAL PLANS, such easement, generally granting to the NRD the right to operate, maintain,

patrol, repair, replace, manage and regulate the MIDLANDS LAKE DAM in the MIDLANDS LAKE DAM COMPLEX.

g) SLD LLC and SID 264 shall grant to the NRD permanent easements and restrictive covenants, in the form as attached hereto and incorporated herein by reference as Exhibit “___” or in such other form as may be determined by agreement of such PARTIES, generally granting to the NRD the right to flow and back up MIDLANDS LAKE DAM RESERVOIR water and sediment upon, and inundate, all that land (hereinafter referred to as “the **MIDLANDS LAKE REGULATED FLOOD POOL**”) which, at once, is both located within the watershed of the MIDLANDS LAKE DAM and, after completion of construction of the MIDLANDS LAKE DAM and the MIDLANDS LAKE DAM RESERVOIR in accordance with the designs approved by the NRD, will have a ground surface elevation lower than 1,080.1 feet above mean sea level, NGVD, which elevation the PARTIES agree is intended to be approximately one foot (1.0’) above the mean sea level elevation of the 500-year flood pool of the MIDLANDS LAKE RESERVOIR. Such permanent easement and restrictive covenant also shall generally prohibit the construction or maintenance, within the MIDLANDS LAKE REGULATED FLOOD POOL, of structures, fixtures or other improvements; provided, however, it shall not prevent:

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

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

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

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

i) 370 LLC and SID 267, and SLD LLC and SID 264, shall grant to the NRD a temporary easement, in the form as attached hereto and incorporated herein by reference as Exhibit “___” or in such other form as may be determined by agreement of such PARTIES, consisting of the conditional right to enter the SHADOW LAKE DAM COMPLEX and/or MIDLANDS LAKE DAM COMPLEX and therein construct the SHADOW LAKE DAM and/or MIDLANDS LAKE DAM, such easement to be effective only in the event of default of this AGREEMENT by 370 LLC and SID 267 or SLD LLC and SID 264 that the NRD determines necessitates that the

NRD take over the work of construction of the SHADOW LAKE DAM and/or MIDLANDS LAKE DAM, respectively, pursuant to this AGREEMENT, and such easement to be operative until construction of the SHADOW LAKE DAM and/or MIDLANDS LAKE DAM, respectively, is finally completed.

j) SLD LLC and SID 264 shall grant to the NRD a temporary easement, in the form as attached hereto and incorporated herein by reference as Exhibit “___” or in such other form as may be determined by agreement of such PARTIES, consisting of the conditional right to enter the SHADOW LAKE RESERVOIR COMPLEX and use the same for borrow and spoil of earthen material, such easement to be effective only in the event of default of this AGREEMENT by SLD LLC and SID 264 that necessitates that the NRD electively take over the work of construction of the SHADOW LAKE DAM pursuant to this AGREEMENT, and such easement to be operative until construction of the SHADOW LAKE DAM is finally completed.

k) 370 LLC and SID 267, and SLD LLC and SID 264, shall grant to the NRD a permanent easement in the form as attached hereto and incorporated herein by reference as Exhibit “___,” or in such other form as may be determined by agreement of such PARTIES, granting to the NRD the right of ingress and egress over and across the unimproved land in PAPILLION PROMENADE or SHADOW LAKE, between the public streets and roads, the SHADOW LAKE DAM, and the MIDLANDS LAKE DAM.

l) 370 LLC and SID 267 shall grant to the NRD a permanent easement across the DAM ROAD in the form as attached hereto and incorporated herein by reference as Exhibit “___,” or in such other form as may be determined by agreement of such PARTIES, providing for auxiliary spillway re-entry to the centerline of the channel of Midlands Creek.

m) 370 LLC and SID 267 shall grant to the NRD a permanent easement in the form as attached hereto and incorporated herein by reference as Exhibit “___,” or in such other form as may be determined by agreement of such PARTIES, for construction, operation and maintenance of the principal spillway pipe of the SHADOW LAKE DAM under the DAM ROAD.

n) 370 LLC and SID 267 shall grant to the NRD a permanent easement in the form as attached hereto and incorporated herein by reference as Exhibit “___,” or in such other form as may be determined by agreement of such PARTIES, providing for construction, operation and maintenance of toe drains, sand filters, and other appurtenances to the SHADOW LAKE DAM that are necessary to be within the DAM ROAD embankment.

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

a) The NRD TITLE INSURANCE BINDER shall be issued by an authorized title insurance company in the amount of \$3,400,000 and shall show marketable fee simple title to the PROJECT LAND RIGHTS to be vested in 370 LLC and SID 267, or SLD LLC and SID 264, respectively, free from any easements, restrictions, covenants of record, and other encumbrances that would prevent or retard the construction, operation, maintenance repair, replacement or regulation of the COOPERATIVE PROJECTS pursuant to this AGREEMENT. The NRD TITLE INSURANCE BINDER shall be conclusive evidence of good title as therein shown as to all

matters insured or to be insured by the policy, subject only to the exceptions as therein stated.

b) If the NRD TITLE INSURANCE BINDER discloses any exceptions to title, 370 LLC and SID 267, or SLD LLC and SID 264, respectively, shall have 30 days from the date of delivery of the NRD TITLE INSURANCE BINDER to the NRD to have such exceptions removed from the NRD TITLE INSURANCE BINDER, or, at 370 LLC and SID 267, and SLD LLC and SID 264'S expense, to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions, and, in such event, the time of the CLOSING shall be the day following the date of such removal of exceptions or commitment to insure, or the date for closing as provided pursuant to this AGREEMENT, whichever comes later.

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

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

21. PERMITS. 370 LLC and SID 267 shall have the responsibility to obtain all other permits and rights-of-way, including without limitation, zoning and subdivision approvals, licenses, easements, water rights, and permits or consents from the Corps of Engineers or other federal, state or local agencies, as may be required or convenient for construction, and for permanent operation, and maintenance of the DAM ROAD and the portion of the Midlands Creek Channel in PAPILLION PROMENADE. SLD LLC and SID 264 shall have the responsibility to obtain all other permits and rights-of-way, including without limitation, zoning and subdivision approvals, licenses, easements, water rights, and permits or consents from the Corps of Engineers or other federal, state or local agencies, as may be required or convenient for construction, and for permanent operation, and maintenance of the COOPERATIVE PROJECTS.

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

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

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

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

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

or,

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

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

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

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

24. PAYMENT OF THE NRD CONTRIBUTION. The NRD shall pay the NRD'S CONTRIBUTION to SLD LLC and SID 264 in three uneven installments, as follows:

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

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

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

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

c) For the NRD's fiscal year 2008 (July 1, 2007-June 30, 2008), a third installment payment consisting of the lesser of the NRD MAXIMUM

CONTRIBUTION or the NRD ACTUAL COST CONTRIBUTION, less the sum of the NRD'S installment payments for fiscal years 2006 and 2007, such third installment payment to be due and payable by the NRD to SLD LLC and SID 264 on the later of the following dates:

- i) June 1, 2008, or
- ii) 45 days after the date of the CLOSING, or
- iii) 45 days after the ENGINEERS shall have certified to the NRD in writing that construction of the COOPERATIVE PROJECTS, in accordance with the FINAL PLANS approved by the NRD and the CITY, has been finally completed and as-built plans for the COOPERATIVE PROJECTS have been furnished to the NRD without any additional cost to the NRD.

26. 370 LLC and SID 267 CONTRIBUTION. As 370 LLC'S and SID 267'S contribution towards the costs of design, construction, project administration, permits and land rights and project administration for the COOPERATIVE PROJECTS (hereinafter referred to as "the **370 LLC/SLD LLC CONTRIBUTION**"), in addition to paying the costs of the DAM ROAD, 370 LLC and SID 267 shall pay to SLD LLC and SID 264 an amount equal to 25% of the actual SHADOW LAKE MINIMAL DAM COSTS (without costs of land rights and legal, fiscal and interest costs), such contribution to be paid _____

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

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

a) the NRD, at its sole and un-reimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the SHADOW LAKE DAM and the MIDLANDS LAKE DAM, as the NRD in its sole discretion determines necessary and in accordance with generally accepted engineering practices and the operation and maintenance manuals prepared by the ENGINEERS for such PROJECT components; provided, however, SID 264, at its sole cost and expense, shall perform all necessary grounds keeping of the SHADOW LAKE DAM COMPLEX and the MIDLANDS LAKE DAM COMPLEX, such as mowing and maintenance of grass and other ornamental vegetation, and debris cleanup.

b) SID 267, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the DAM ROAD and the portion of the Midlands Creek in PAPILLION PROMENADE, all as SID 267 in its sole discretion determines necessary and in accordance with generally accepted engineering practices; and,

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

29. INDEMNIFICATIONS. (a) Each of the PARTIES shall defend, indemnify, and hold the other PARTIES harmless from and against all costs and expenses, including court costs and attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of

or resulting from the indemnifying PARTY'S negligence in the design, construction, operation, maintenance, repair, management or regulation of the COOPERATIVE PROJECTS, or components thereof, except such personal injuries or property damages as may be caused by the sole negligence of any of such other PARTIES. Except as otherwise specifically provided in this AGREEMENT, SLD LLC and SID 264 shall defend and indemnify the NRD and hold the NRD harmless (1) from and against any and all costs of the acquisition of PROJECT LAND RIGHTS, and of the design and construction of the COOPERATIVE PROJECTS; (2) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of SLD LLC and SID 264's construction of the COOPERATIVE PROJECTS or elements thereof; arising out of SLD LLC or SID 264's operation, maintenance, repair, replacement, management or regulation of the portions of the COOPERATIVE PROJECTS, or elements thereof, for which they have assumed responsibility under this AGREEMENT; or caused by the negligence or other actions or inactions of SLD LLC or SID 264, their employees, officers, contractors and agents in the acquisition of PROJECT LAND RIGHTS, or in the construction, operation, maintenance, repair, replacement, management or regulation of the portions of the COOPERATIVE PROJECTS, or elements thereof, for which they have assumed responsibility under this AGREEMENT (except as may be caused solely by the negligence of the NRD or its employees, officers, contractors or agents); and, (3) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys fees, arising from the introduction or presence in or on any portion of the COOPERATIVE PROJECTS of asbestos or any form thereof, or any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental

Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any portion of the COOPERATIVE PROJECTS, including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination in or on any portion of the COOPERATIVE PROJECTS (except costs and expenses relating to any such substances or materials introduced by the NRD or its employees, officers, contractors or agents).

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

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

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

33. SUCCESSOR AND ASSIGNS BOUND BY COVENANTS. All covenants, stipulations and agreements in this AGREEMENT shall extend to

and bind the legal representatives, successors, and assigns of the respective PARTIES.

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

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

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

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

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

39. INVALID PROVISIONS. In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of this AGREEMENT which shall in all

respects remain a legally binding agreement with the invalid portion being deleted; provided that the validity of any such covenant, condition, or provision does not materially prejudice any of the PARTIES in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this AGREEMENT.

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

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

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

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

44. DEFAULT. If the any of the PARTIES fails to comply with any provision of this AGREEMENT after reasonable request for performance has been served on such party, the remaining PARTIES may seek specific performance, or may terminate this AGREEMENT upon written notice to the other PARTIES prior to the letting of the CONSTRUCTION CONTRACT. In addition, if any PARTY or any of their contractors fail to perform the work provided in this AGREEMENT with respect to constructing any of the COOPERATIVE PROJECTS, or abandon or cease work on any of the COOPERATIVE PROJECTS for a period of one year, or fail in any way to perform the conditions hereof, or fail to pay laborers, mechanics, or material suppliers when due, provided that the failure to pay is not caused by any failure on the part of the NRD, or in the event that a PARTY or any of its contractors shall become insolvent or unable to meet their obligations as they become due, or shall make any assignment for the benefit of creditors or shall commence any proceedings in bankruptcy or if any other proceedings are commenced against them, the NRD may, and without prejudice to any other rights it may have, by giving to the other PARTIES 30 days notice of its written election, terminate this AGREEMENT; or the NRD may take over all work or any part thereof, and all tools, equipment, and supplies to finish the work by whatever method it deems expedient, including, without limitation, taking over the such PARTY'S permits, plans and specifications, and construction and engineering contracts; and, in such event the such PARTY and its contractors shall not be entitled to receive any other payments until the work is completed. If the unpaid balance of the NRD contributions to a PARTY pursuant to this AGREEMENT exceeds the NRD's expense of completing the work of such PARTY, the excess shall be paid to such PARTY or its contractors. If the expense exceeds the unpaid balance, then such PARTY shall promptly pay the difference to the NRD on demand. The NRD's

expense of completion shall be established as the actual cost of construction plus 20% additional for overhead and supervision.

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

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

46. NOTICES. Any notice required under the terms of this AGREEMENT shall be deemed to have been given forty-eight (48) hours after notice has been deposited in the United States mail. Notices to the CITY provided for in this AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid, addressed to:

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF

This AGREEMENT is executed by the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT on this ____ day of _____, 2005, pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL RESOURCES
DISTRICT**

By _____
General Manager

This AGREEMENT is executed by the CITY OF PAPILLION, NEBRASKA on this ____ day of _____, 2005, pursuant to ordinance duly adopted by its City Council.

CITY OF PAPILLION, NEBRASKA

BY _____
MAYOR

ATTEST:

CITY CLERK

This AGREEMENT is executed by 370 L.L.C, A NEBRASKA LIMITED LIABILITY COMPANY on this ____ day of _____, 2005.

370 L.L.C, A NEBRASKA LIMITED LIABILITY COMPANY

By _____
Title _____

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

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

By _____

Title _____

This AGREEMENT is executed by SHADOW LAKE DEVELOPMENT, L.L.C., A NEBRASKA LIMITED LIABILITY COMPANY on this ____ day of _____, 2005.

**SHADOW LAKE DEVELOPMENT, L.L.C., A NEBRASKA
LIMITED LIABILITY COMPANY**

By _____

Title _____

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

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

By _____

Title _____

[ACKNOWLEDGEMENTS]

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

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

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

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

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

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

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

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

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

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

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

STATE OF NEBRASKA)
) SS.

COUNTY OF _____)

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

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

EXHIBIT ____

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

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

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

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

EXHIBIT ____

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

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

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

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

Memorandum

To: PPO Subcommittee
From: Paul Woodward, Water Resources Engineer
Date: May 6, 2005
Re: P-MRNRD Regional Multi-Hazards Mitigation Plan—Professional Services Agreement with USACE and Planning Grant from NEMA

Deleted: April 29, 2005

The District has worked with the Nebraska Emergency Management Agency (NEMA), U.S. Army Corps of Engineers (USACE), and the Nebraska Department of Natural Resources (DNR) to secure a grant and retain the services necessary to develop a Regional Multi-Hazards Mitigation Plan for the entire District. This type of plan would benefit the District and other emergency management agencies not only by providing a list of potential hazard mitigation alternatives, but also by increasing the potential of federal mitigation funding assistance for projects such as the Floodway Purchase Program. The Sub-Grant Award Agreement, in the amount of \$155,000, would be provided by NEMA and is enclosed for your review and consideration.

The District has consulted with the USACE Floodplain Management Branch and they have agreed to conduct the flood hazard mitigation study and compile the completed Multi-Hazard report. This study would involve analyzing existing flood hazards and in some cases producing an inventory of structures in hazardous areas. The Corps will complete the plan by May 31, 2006. A letter agreement with the USACE estimates a total cost \$206,667 for these services as outlined in their scope of work. This total less the amount of the grant will leave the District with a cost-share of 25%, or \$51,667. The USACE agreement and scope are attached for your review and consideration.

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The DNR has agreed to provide USACE with the remaining sections of the plan relating to other natural hazards as well as assisting the District and USACE in holding public meetings throughout the NRD to gather input. Procedural Guidance for the planning process in NRDs was prepared by DNR and is attached for your information. DNR's services would not require an agreement or additional funding.

In summary, the USACE and DNR will prepare an Regional Multi-Hazards Mitigation Plan for the entire District by May 31, 2006 at a total cost of \$206,667. The District has secured a grant in the amount of \$155,000, but would be responsible for remaining \$51,667.

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Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute a \$155,000 Sub-Grant Award Agreement with NEMA and a lump sum \$206,667 Professional Services Agreement with the U.S. Army Corps of Engineers for preparation of a Regional Multi-Hazards Mitigation Plan for the entire District, both subject to changes deemed necessary by the General Manager and approval as to form by District legal counsel.

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Deleted: 12,084

SUB-GRANT AWARD AGREEMENT

Grantee	Sub-Grantee
Organization: Name: Nebraska Emergency Management Agency (NEMA) Address: 1300 Military Road Lincoln, NE 68508	Organization Name: Papio-Missouri River NRD 8901 South 154th Street Omaha, NE 68138-3621
	Sub-grantee No. EMK-2003-GR-3025
Awarding Agency: NEMA	CFDA No. 97.047
Sub-grantee Period of Performance: March 15 2005 – May 31, 2006	Amount Funded this Action: \$155,000.00
Project Title: Pre Disaster Mitigation Planning Grant	
Reporting and Payment Requirements:	
Terms and Conditions	
<ol style="list-style-type: none"> 1) NEMA hereby awards a sub-grant, as described below to The Papio-Missouri River Natural Resources District 2) NEMA shall make payments to the Sub-Grantee as described in Attachment 4. All requests for payment shall include current and cumulative costs, sub-grant number, and certifications as to truth and accuracy of the request. Requests that do not reference the sub-grant number shall be returned to the sub-grantee. Requests for payment and questions concerning request receipts and payments should be directed to the appropriate party's Program and Financial Contact, as shown in Attachment 3. 3) Matters concerning the request or negotiation of any changes in the terms, conditions, or amounts cited in this sub-award agreement should be directed to the appropriate party's Administrative Contact, as shown in Attachment 3. Any such changes made to this sub-grant agreement require the written approval of each party's Authorized Official, as shown in Attachment 3. 4) Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law. 5) The Sub-grant is subject to the terms and conditions of the Grant and other special terms and conditions, as identified in Attachment 2. 6) By signing below the Sub-Grantee makes the certifications and assurances shown in Attachment 1. 	
By an Authorized Official of NEMA Name _____ Date _____ Al Berndt Title: Assistant Director	By an Authorized Official of Name _____ Date _____ Title: _____

The following regulations reflect federal requirements for recipient of grants. The Authorizing Official for the Sub-grantee (listed in attachment 3) certifies compliance with these requirements by signing the first page of the grant award. The entire text of these agreements is available from NEMA on request to the Administrative Contact listed in Attachment 3.

1. Certification Regarding Lobbying (45 CFR-1168)
2. Debarment, Suspension, and Other Responsibility Matters (45 CFR-1169)
3. Drug Free Workplace Certification (Drug Free Workplace Act of 1988)
4. Certification Regarding Nondiscrimination Statutes and Their Implementing Regulations (Title IV of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972 as amended; Age Discrimination Act of 1975 as amended.
5. Certificate Regarding Federal Debt Status (OMB Circular A-129)
6. OMB Circular A-133 Audits
7. Assurances – Non-Construction Programs (Standard Form 424B)

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS
PRIMARY COVERED TRANSACTIONS**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principles are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certificate such prospective participant shall attach an explanation to this proposal.

LOBBYING CERTIFICATION

To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any kind of cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction; and
3. It will require that the language in this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

DRUG FREE WORKPLACE

It will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about-
 - a. The dangers of drug abuse in the workplace;
 - b. The grantee's policy of maintaining a drug-free workplace
 - c. Any available drug counseling, rehabilitation, and employee assistance programs, and
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment the employee will:
 - a. Abide by the terms of the statement; and
 - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must

provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point of receipt of such notices. Notice shall include the identification number(s) of each affected grant;

6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted –
 - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency;
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1,2,3,4,5, and 6

INSTRUCTIONS CONCERNING DRUG-FREE WORKPLACE

1. By signing and /or submitting this application or grant agreement, the sub-grantee is providing certification.
2. The certification is a material representation of fact upon which reliance is place when the agency awards the grant. If it is later determined that the sub-grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, NEMA, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).
4. If the workplace identified to the agency changes during the performance of the grant the sub-grantee shall inform NEMA of the change (s).
5. The sub-grantee may insert in the space provided below the site(s) for the performance of work done in connection with this grant:

Place of performance (Street address, city, county, state, zip code) below.

Natural Resources Center
8901 S. 154th Street
Omaha, NE 68138

Check ____ if there are workplaces on file that are not identified here; the certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F.

Signature for all Certifications:

Authorized Official

Date

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

General Terms and Conditions:

1. The Subgrantee will prepare and submit to the Nebraska Emergency Management Agency for submission to the Federal Emergency Management Agency an All Hazards Hazard Mitigation Plan that meets the requirements of the Disaster Mitigation Act of 2000 and accompanying regulations and guidance documents.
2. The plan will cover the entire jurisdiction of the Papio-Missouri River Natural Resource District (NRD). The Papio-Missouri River NRD may request and utilize the cooperation and support of municipalities, counties and other political subdivisions within the District to complete the plan.
3. This grant requires a 25% match of the Federal amount listed on the grant award.
4. The Subgrantee may contract with another entity to complete this plan. The contractor must meet the Certifications listed in Attachment 1.
5. The U.S. Single Audit Act requires that recipient state and local governments receiving \$500,000 or more in federal assistance in any fiscal year must have a single audit for that year. A copy of these audits must be sent to NEMA thirty (30) days upon receipt by the sub-grantee. (see OMB Circular A-128)

SPECIAL CONDITIONS:

1. The Sub-grantee is subject to monitoring visits from NEMA staff to ensure proper completion of the project and proper documentation is on file.

NEMA Contacts	Sub-Grantee Contacts
<p style="text-align: center;">Authorized Official</p> <p>Name: Al Berndt, Assistant Director</p> <p>Address: 1300 Military Road Lincoln, NE 68508</p> <p>Telephone: 402 47-7410</p> <p>Fax: 402 471-7433</p> <p>Email: al.berndt@ne.ngb.army.mil</p>	<p style="text-align: center;">Authorized Official</p> <p>Name: Steve Oltmans, General Manager</p> <p>Address: 8901 S. 154th St. Omaha NE 68138</p> <p>Telephone: 402-444-6222</p> <p>Fax: 402-895-6543</p> <p>Email: soltmans@papionrd.org</p>
<p style="text-align: center;">Administrative Contact</p> <p>Name: Lori Moore, State Hazard Mitigation Officer</p> <p>Address: 1300 Military Road Lincoln, NE 68505</p> <p>Telephone: 402-471-7416</p> <p>Fax: 401-471-7433</p> <p>Email: lori.a.moore@ne.ngb.army.mil</p>	<p style="text-align: center;">Administrative Contact</p> <p>Name: Paul Woodward, Water Resources Eng.</p> <p>Address: 8901 S. 154th St. Omaha NE 68138</p> <p>Telephone: 402-444-6222</p> <p>Fax: 402-895-6543</p> <p>Email: pwoodward@papionrd.org</p>
<p style="text-align: center;">Financial Contact</p> <p>Name: Deb Simpson, Business Manager</p> <p>Address: 1300 Military Road</p> <p>Telephone: 402-471-7214</p> <p>Fax: 402-471-7433</p>	<p style="text-align: center;">Financial Contact</p> <p>Name: Jack Lawless, District Accountant</p> <p>Address: 8901 S 154th St. Omaha NE 68138</p> <p>Telephone: 402-444-6222</p> <p>Fax: 402-895-6543</p> <p>Email: jlawless@papionrd.org</p>

Reporting/Payment Requirements:

1. All sub-grantees are required to submit a quarterly status report to the Governor's Authorized Representative (GAR) on a quarterly basis. The reports will be due by the 15th of the months of January, April, July and October until the project has been completed.
2. The progress report should include any problems or delays incurred in the projects process. The length of time it may take to resolve the issue and whether this will impact the final performance period date. Please include percentage of completion in all reports.
3. The sub-grantee shall submit a summary of actual eligible costs incurred as well as backup documentation for all payment requests. This summary will show whether the request for payment is for a partial completion or the final billing on the project. Each summary will show the total approved amount of the project, any previous Federal funds received and the current amount requested.
4. The request will be reviewed by the State Hazard Mitigation Officer and forwarded with recommendation to the GAR for approval of payment. The sub-grantee will certify that the reported costs were incurred in the performance of eligible work, that the approved work has been completed, and that the project is in compliance with the provisions of the grant request.
5. Reimbursement payments in excess of \$75,000 will be made electronically. An ACH enrollment form should be requested if one has not already been submitted to the State.

AGREEMENT BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, OMAHA NEBRASKA
AND
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

This Agreement, made this _____ day of _____, by and between the United States Army Engineer District, Omaha, Nebraska (hereinafter referred to as the "Corps"), and the Papio-Missouri River Natural Resources District (hereinafter referred to as the "Papio-Missouri NRD").

WHEREAS, Section 206 of the Flood Control Act of 1960 (33 U.S.C. §709a, as amended) authorizes the Secretary of the Army, acting through the Chief of Engineers, to compile and disseminate information on floods and flood damages to Federal and non-Federal interests (hereinafter referred to as the "Flood Plain Management Services Program"); and to collect from Federal agencies and private persons fees for the purpose of recovering the cost of providing and expanding the scope of the requested services ; and

WHEREAS, the Papio-Missouri NRD has the authority and capability to furnish the cooperation hereinafter set forth and is willing to provide the payment for the services in accordance with the terms of this agreement;

NOW THEREFORE, the parties agree as follows:

- a. The Corps, using funds provided by the Papio-Missouri NRD, shall expeditiously prosecute and complete the Regional Multi-Hazard Mitigation Plan substantially in compliance with the Scope of Services attached as Attachment 1, and in conformity with applicable Federal laws and regulations and mutually acceptable standards of engineering. The completed services shall be provided by the Corps on or before May 31, 2006.
- b. The Papio-Missouri NRD shall pay, 100 percent of the total cost of the services, which is currently estimated to be \$206,667.
- c. The award and administration of any contract with a third party for services in furtherance of this Agreement shall be exclusively within the control of the Corps.
- d. This Agreement shall terminate at the completion of the services, provided that, prior to such time and upon thirty (30) days written notice, either Party may terminate or suspend this Agreement without penalty. However the Papio-Missouri NRD shall pay for all reasonable costs incurred by the Corps.

e. In the event of a dispute between the parties, they shall seek to resolve such dispute through negotiation or other form of alternative dispute resolution procedure mutually acceptable to them.

f. This Agreement shall become effective upon the signature of both Parties.

g. All notices, correspondence, or other documents required by this agreement shall be delivered or mailed to the following addresses:

For the Sponsor:

Steven G. Oltmans
General Manager
Papio-Missouri River Natural Resources District
8901 South 154th Street
Omaha, NE 68138

For the Corps:

U.S. Army Corps of Engineers
Flood Plain Management Section
106 South 15th Street
Omaha, Nebraska 68102-1618
Attn: Randall L. Behm

By _____

Steven G. Oltmans, General Manager
Papio-Missouri River Natural
Resources District

By _____

Robert F. Roumph
Chief, Engineering Division
U.S. Army Engineer District - Omaha

SCOPE OF WORK (Attachment 1)

Omaha District, Corps of Engineers

April 2005

Regional Multi-Hazard Mitigation Plan

- A. **Limits of Study:** The Papio-Missouri River Natural Resources District Boundaries
- B. **Scope of Work:** This proposal is for the development of a Regional Multi-Hazard Mitigation Plan (Plan) for the Papio-Missouri River Natural Resources District (Papio-Missouri NRD) by the Omaha District Corps of Engineers (Corps). The Plan is intended to assist the Papio-Missouri NRD, the State and local communities in meeting the requirements of the Disaster Mitigation Act of 2000. Under the guidelines of the Disaster Mitigation Act of 2000, local governments must have a FEMA-approved mitigation plan in place in order to receive Pre-Disaster Mitigation (PDM) and Hazard Mitigation Grant Program (HMGP) funds from the Federal government.

Each community and county evaluation contained within this regional Plan is required to be developed in sufficient enough detail as to identify all hazards having the potential for impacting people, structures, and land uses within the jurisdictional boundaries of the Papio-Missouri NRD. At the discretion of the Papio-Missouri NRD, Nebraska Department of Natural Resources (DNR), local entity and FEMA, additional future mitigation evaluations may be developed if the potential exists for demonstrating an economically feasible project. The Corps has established a four-hour time commitment per community and county for public involvement / hazard plan adoption. The Corps will participate in the public involvement process in association with the Papio-Missouri NRD and the DNR to obtain hazard information and to coordinate the adoption of the plan by community or county officials.

For development of this Plan, the Corps will evaluate the multiple hazards, and in particular, focusing on flooding. Data regarding other pertinent hazards, such as high wind, tornado, winter weather, and drought will be obtained from the DNR and from information contained in other recently completed regional hazard mitigation plans. The Corps will develop the flood hazard information in either a detailed format or limited detail format. The format chosen will be dependent upon the population of the community or county being assessed, the type of hazard (i.e. detailed, approximate or no hazard identified), and the significance of the hazard identified (i.e. minimal significance, moderate significance, or extensive). The difference between a detailed format and the limited detail format is that under the detailed format, the Corps will conduct a vulnerability assessment of the structures identified in the building inventory and will also identify potential mitigation measures to be recommended for possible future analyses and implementation. Under the limited detail format, the Corps will not perform the vulnerability assessment of the structures located in the flood plain.

The development of the Plan will be coordinated with officials from the affected communities and counties and the final Plan will be provided to local officials for adoption, so as to assure that continued eligibility for Federal disaster mitigation funds is possible.

Funding for this Plan is provided on a cost-shared basis, 75% from FEMA and 25% from the Papio-Missouri NRD. Part or all of the 25% cost-share may be provided as an in-kind service in lieu of cash. The total cost proposed for developing this Regional Multi-Hazard Mitigation Plan is \$206,667. Of this total amount, FEMA will provide \$155,000 for Plan development and the remaining portion of the cost-share (\$51,667) is required in cash, as an in-kind service, or a combination of both. It is proposed that the period of performance for developing this Plan be 12 months, terminating on May 31, 2006.

Detailed Hazard Mitigation Plan		
	Hours	Cost
General Documentation and Planning Process		
Authority and Purpose	1	84
Study Area Description	1	84
General Plan Description	1	84
All-Hazards (from other regional plans)	1	84
Flood Hazard Mitigation Assessment		
Flood History	2	168
Flood Hazard Identification & Assessment	8	674
Critical Facility Identification	4	337
Vulnerability Assessment		
Flood Plain Building Inventory	24	2,021
Potential Flood Hazard Mitigation Measures	16	1,347
Flood Hazard Mitigation Plan Write-up	8	674
Mitigation Plan QA/QC	4	461
Field Data Collection	8	674
Public Involvement/ Plan Adoption	4	337
Total Detailed Study Cost		7,030

Limited Detail Hazard Mitigation Plan		
	Hours	Cost
All-Hazards Identification & Assessment	1	84
Authority and Purpose	1	84
Flood History	2	168
Flood Hazard Identification & Assessment	8	674
Critical Facility Identification	2	168
Flood Hazard Mitigation Plan Write-up	4	337
Mitigation Plan QA/QC	4	461
Field Data Collection	6	505
Public Involvement/ Plan Adoption	4	337
Total Limited Detail Study Cost		2,819

Papio – Missouri River NRD
Regional Multi-Hazard Mitigation Plan Cost Estimate

Community	FHMP Study Type	FHMP Cost	Population Multiplier	Hazard Multiplier	FHMP Cost
1 Jackson	Limited	2,819	1.0	1.0	2,819
2 South Sioux City	Detailed	7,030	1.2	1.0	8,436
3 Dakota City	Detailed	7,030	1.0	1.0	7,030
4 Hubbard	Limited	2,819	1.0	1.0	2,819
5 Homer	Detailed	7,030	1.0	1.0	7,030
6 Winnebago	Limited	2,819	1.0	1.0	2,819
7 Walthill	Limited	2,819	1.0	1.0	2,819
8 Macy	Limited	2,819	1.0	1.0	2,819
9 Decatur	Limited	2,819	1.0	1.0	2,819
10 Tekamah ¹	Limited	1,344	1.0	1.0	1,344
11 Herman	Limited	2,819	1.0	1.0	2,819
12 Blair ²	Detailed	3,584	1.0	1.1	3,942
13 Kennard	Limited	2,819	1.0	1.0	2,819
14 Fort Calhoun	Detailed	7,030	1.0	1.0	7,030
15 Arlington	Detailed	7,030	1.0	1.0	7,030
16 Washington	Limited	2,819	1.0	1.0	2,819
17 Bennington	Detailed	7,030	1.0	1.1	7,733
18 Valley ³	Limited	1,397	1.0	1.0	1,397
19 Waterloo	Detailed	7,030	1.0	1.0	7,030
20 Elkhorn	Detailed	7,030	1.2	1.0	8,436
21 Omaha	Detailed	7,030	1.3	1.3	11,880
22 Gretna	Limited	2,819	1.0	1.0	2,819
23 Springfield	Detailed	7,030	1.0	1.0	7,030
24 King Lake	Limited	2,819	1.0	1.2	3,383
25 Ralston	Detailed	7,030	1.2	1.0	8,436
26 LaVista	Detailed	7,030	1.2	1.0	8,436
27 Papillion	Detailed	7,030	1.2	1.1	9,279
28 Bellevue	Detailed	7,030	1.2	1.2	10,123
29 Boys Town	Limited	2,819	1.0	1.0	2,819
Counties					
1 Dakota	Detailed	7,030	1.2	1.1	9,279
2 Thurston	Limited	2,819	1.0	1.0	2,819
3 Burt	Detailed	7,030	1.0	1.0	7,030
4 Washington	Detailed	7,030	1.2	1.1	9,279
5 Douglas	Detailed	7,030	1.2	1.2	10,123
6 Sarpy	Detailed	7,030	1.2	1.2	10,123
Sub-Total					204,667
FEMA Submittal and Review Process					2,000
Total FHMP					206,667

1. Tekamah flood hazard study completed under separate authority. Current study to coordinate other hazards.
2. Blair currently conducting flood study. Current study to incorporate other hazards and building inventory.
3. Valley flood hazard study completed under separate authority. Current study to coordinate other hazards.

Procedural Guidance for Natural Resources District All-Hazards Mitigation Plans

Planning Process

- 1) Determine the number of public meetings necessary to cover a significant portion of the NRD population base. Options include:
 - One meeting per major population center
 - One meeting per county
 - If counties are small or if minimal attendance is expected at the public meetings, multi-county meetings can be held
- 2) Publish article explaining planning process in all relevant newspapers in the project area
 - State that the public is invited
 - Send letters to all elected officials in NRD area, inviting them to attend or to send a community representative to the public meeting(s)
 - Be sure to invite regional representatives, including: emergency managers, local floodplain coordinators, local building officials, elected officials (county, local)
 - Nebraska Public Power is “covered” for mitigation projects through the State Mitigation Plan annex and will not be invited to these public meetings
 - Send letters to the contiguous counties and NRDs to coordinate the planning process on an “inter-district” level.
- 3) Provide a copy of goals and objectives of the public meetings to all elected officials and community board members through letter or website. Care must be taken to not give them a boiler plate of goals and objectives. The plan sponsors should lead a very quick goal and objective setting session.

Risk Assessment

The planning team should start with the hazards listed in the State Mitigation Plan, then adds to or eliminate hazards as necessary. The public meetings will establish the hazard types to which the region is most vulnerable. It is anticipated that the top five hazard types will not change much from meeting-to-meeting, but may be ranked somewhat differently. If it is not possible to rank the top five hazards from the public meeting input, the Corps, NDNR, and NRD will determine what they believe to be the top five hazards.

Every plan must include a statement on repetitive loss properties and National Flood Insurance Program participation status. (Note: if a community or county is not participating, getting them into the NFIP is a valid mitigation strategy – whether likely or not.)

In small communities, NDNR’s vulnerability assessment with the use of aerial photography to complete a structural inventory will be used. In large communities such as Omaha, alternative forms of the assessment will be pursued such as using HAZUS.

Structures in a regulated floodplain will be counted and analyzed on an individual basis by the Corps. The Corps, NDNR, and NRD will determine the amount of data to be collected for each property.

Mitigation Strategy

Invite representative(s) from communities not present at the public meeting to submit a list of potential projects for their community.

- Each community that adopts the plan must have at least one potential project identified in the plan.
- A list of sample projects will be provided to community leaders as examples for them to choose or help them determine their own.
- The NRD may have a strategy of their own. As the most likely sponsor of future mitigation projects, the NRD will prioritize projects.

Plan Writing

Two options:

- 1) The Corps will complete and write the flood portion of the plan, NDNR will complete and write the non-flood portion of the plan, and NDNR will complete the overall plan.
- 2) The Corps will complete and write the flood portion of the plan, NDNR will complete and write the non-flood portion of the plan, and the Corps will complete the overall plan.

Plan Maintenance

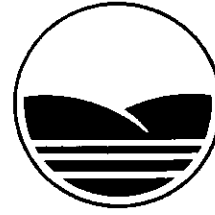
FEMA has sample language that could be included for the monitoring, evaluating, and updating portions of the plan.

Adoption

Each community that wishes to be eligible for federal mitigation funds will agree will do so by adopting the plan through resolution.

The NRD board will also pass a resolution as the overall sponsoring body.

PAPIO-MISSOURI RIVER
NATURAL
RESOURCES
DISTRICT



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

MEMORANDUM TO: Programs, Projects and Operations Subcommittee

SUBJECT: Equipment Replacement/Purchase Request for FY 2005

DATE: April 14, 2005

FROM: Jean Friends Tait, Purchasing Agent

Attached is a chart of equipment items identified for purchase/replacement in FY 2006. Again this year, the process to identify and prioritize equipment items most needed by the District was determined by a staff Equipment Committee comprised of Jerry Herbster, Martin Cleveland, Bill Warren, Trent Heiser and me. Each section within the NRD identified their equipment requirements and the equipment committee reviewed each item and made recommendations to the General Manager for purchase. The GM then reviewed the Committee's recommendations and made further changes/cuts to the chart. The chart reflects the General Manager's final recommendations.

The FY 2005 equipment budget was \$295,405. The FY 2006 equipment budget request is \$377,685. State statute allows for a maximum 2.5% increase in restricted funds (to include general operational costs, i.e. salaries, equipment, insurance, etc., does not include project expenditures, i.e. construction, land rights, etc.). The Board can approve an additional 1% increase for a total of 3.5% increase in restricted funds, if required.

Staff recommends approval of the FY 2006 Equipment Requirements subject to FY 2006 Budget.

FY 2006 Equipment Requirements List

Item Description	Cost	Justification/Indicative Data
Machinery & Equipment		
Hydraulic Excavator	47,529	3 rd of 4 payments
Rubber Tire Loader 130-135 hp	23,109	2 nd of 4 payments
Low-Boy Truck Tractor	86,500	To replace and trade-in 1980 tractor that has over 550,000 miles
AMT Utility Vehicle	5,500	Replacement for 3 year old machine, regular replacement cycle
Pick-up Mounted weed sprayer (300 gallon)	3,800	Weed control-parks, operations and maintenance of flood control projects and recreation projects
8' Rotary Hydraulic Mower	6,600	New item needed to maintain additional 3 structures on the Pigeon Jones Watershed as well as the Elk Creek Watershed. (see memo)
Total FY 06 Machine/Equip	\$173,038	FY 05 Budget \$176,259 (\$70,638 is committed by existing obligations)
Trucks & Vehicles		
2006 Compact 4x4 Extended Cab Pickup Truck	19,500	New Rural Water System Employee @ Blair Office ~ service, operating and utility calls – WCRW to pay 100% of purchase
2006 Compact 4X4 Extended Cab Pickup Truck	17,500	Replace 2LA42, 2001 Ford F-150 4x4 trade-in (est. 102,650 miles 12/31/05) Sklenar
2006 ¾ Ton 4X4 Regular Cab Long bed Pickup Truck	19,500	Replace 2LA43, 2002 Chevy 4x4 trade-in (est. 103,061 miles 12/31/05) Lehman
2006 ¾ Ton 4X4 Extended Cab Long bed Pickup	26,500	Replace 2LL10, 2000 Ford F-250 4x4 Extended Cab trade-in (est. 96,025 miles 12/31/05) with mounted tool rack Survey
2006 ¾ Ton Chassis-Cab with Service Body 4X4 Utility Truck	22,500	Replace 2TA09, 2001 Chevy 4x4 trade-in (est. 96,669 miles 12/31/05) Park
Total FY 06 Trucks/Vehicles	\$105,500	FY 05 Budget \$67,000

Computer Equipment		
Computer Replacement with monitors (eight)	14,120	Cycle out oldest 8 of District's computers & monitors.
Servers (two)	12,380	Replace one outdated server and add a server to support website usage.
Imaging Scanner	7,110	Replace existing scanner of 7 years
Miscellaneous	5,750	Various hardware or software updates, drive replacements, keyboards, network cards, etc.
Director Laptops (three)	5,992	Replace 3 laptops per rotation schedule
Adobe Acrobat Upgrade	2,525	Upgrade to add commenting functionality and forms to our website
Cisco Firewall & Intrusion Detection	7,770	Replace unsupported firewall adding intrusion detection capabilities
Telephone Additional Features	3,500	Phone over internet
GPS Survey Equipment	40,000	See Memo
Total FY 06 Office Equip.	\$99,147	FY 05 Budget \$52,146
Total FY 06 Equipment Request \$377,685 FY 05 Budget \$295,405		

Papio-Missouri River NRD Equipment Expenditure/Request Comparison

Prepared on April 7, 2005

FY 2006	FY 2005	FY 2004	FY 2003	FY 2002
Machinery/Equipment \$173,038	Machinery/Equipment \$176,259	Machinery/Equipment \$147,700	Machinery/Equipment \$138,870	Machinery/Equipment \$168,724
Vehicles \$105,500	Vehicles \$67,000	Vehicles \$77,600	Vehicles \$67,000	Vehicles \$69,500
Office Equipment \$99,147	Office Equipment \$52,146	Office Equipment \$83,750	Office Equipment \$89,496	Office Equipment \$65,347
TOTAL \$377,685	TOTAL \$295,405	TOTAL \$309,050	TOTAL \$295,366	TOTAL \$303,571

VEHICLE MILEAGE PROJECTIONS

VEHICLE	NUMBER	MILEAGE 12/31/2001	MILEAGE 12/31/2002	MILEAGE 12/31/2003	MILEAGE 12/31/2004	Age in Months	Total Life*	2001	Average Mileage - Month 2002	2003	2004	Suggested Replacement Year	Estimated Mileage 12/31/2005**	12/31/2006**
1 2003 Ford 4X4 Explorer Purchased: 10/25/2002	1CA07	0	5,161	27,962	54,401	27.0	2,015	0	1720	1900	2205	F.Y. 2007	80,840	107,279
2 2003 Ford 4X4 Explorer Purchased: 10/25/2002	1CA08	0	2,530	16,970	30,020	27.0	1,112	0	843	1203	1088		43,070	56,120
3 2004 Chevy S-10 Blazer 4X4 Purchased: 11/03	1CA09	0	0	271	13,062	14.0	933	0	0	136	1066		25,853	36,644
4 1973 Ford Flat Bed Truck Purchased: 1973	2EA02	155,356	155,507	155,669	155,698	384.0	405	11	13	14	2		155,727	155,756
5 1985 Mack Dump Truck Purchased: 1984	2FA04	241,491	263,208	291,368	318,249	252.0	1,263	1,931	1810	2347	2240		345,130	372,011
6 1991 Mack Dump Truck Purchased: 1990	2EA05	88,500	98,560	109,033	111,742	180.0	621	794	831	873	226		114,451	117,160
7 2002 Ford 4X4 Pickup Purchased: 2/02/2002	2EA07	0	5,753	12,432	19,322	35.0	552	0	479	557	574		26,212	33,102
8 2002 Ford 4X4 Pickup Purchased: 12/11/01	2GA01	0	4,490	11,278	16,591	36.0	461	0	374	566	443		21,904	27,217
9 2004 Ford F-350 Purchased: 11/04	2CA02	0	0	206	9,580	14.0	684	0	0	103	781		18,954	28,328
10 1997 Chevy S-10 4X4 Pickup Purchased: 01/03/97	2LA34	37,349	42,570	47,300	52,135	96.0	543	478	435	394	403		56,970	61,805
11 1999 Chevy 3/4 4X4 Pickup Purchased: 5/99	2LA39	21,172	36,597	53,366	74,991	68.0	1,103	550	1285	1397	1802	F.Y. 2007	96,616	118,241
12 1999 Ford Diesel 4X4 Pickup Purchased: 12/08/98	2LA40	57,155	67,160	76,170	85,424	83.0	1,029	1,455	834	751	771		94,678	103,932
13 2001 Ford 1/2 4X4 Pickup Purchased: 11/2000	2LA42	23,500	43,730	62,300	82,475	50.0	1,650	1,820	1686	1548	1681		102,650	122,825
14 2002 Chevy 4X4 Pickup Purchased: 11/2001	2LA43	611	24,093	49,901	76,481	38.0	2,013	306	1957	2151	2215	F.Y. 2006	103,061	129,641
15 2003 Ford Ranger Pickup Purchased: 10/25/2002	2LA44	0	3,165	19,450	35,072	27.0	1,299	0	1055	1357	1302	F.Y. 2006	50,694	66,316
16 2000 Chevy S-10 4X4 Pickup Purchased: 12/28/99	2LL07	13,928	20,349	25,959	31,980	60.0	533	558	535	468	502		38,001	44,022
17 2000 Ford Diesel 4X4 Pickup Purchased: 01/11/00	2LL08	33,990	54,630	71,277	85,078	60.0	1,418	1,670	1720	1387	1150		98,879	112,680
18 2000 Ford Diesel 4X4 Pickup Purchased: 01/19/00	2LL09	25,590	38,290	54,278	67,803	60.0	1,130	1,112	1058	1332	1127		81,328	94,853
19 2000 Ford 3/4 4X4 Pickup Purchased: 02/00	2LL10	32,839	47,280	65,671	80,848	57.0	1,418	1,558	1203	1533	1265	F.Y. 2006	96,025	111,292
20 2005 Chevy Colorado Pickup Purchased: 11/04	2LL11	0	0	0	1,250	2.0	625	0	0	0	625		8,750	16,250
21 2005 Chevy Colorado Pickup Purchased: 11/04	2LL12	0	0	0	1,300	2.0	650	0	0	0	650		9,100	16,900
22 2005 Chevy Colorado Pickup Purchased: 11/04	2LL13	0	0	0	402	2.0	201	0	0	0	201		2,814	5,226
23 2005 Chevy Colorado Pickup Purchased: 11/04	2LL14	0	0	0	810	2.0	405	0	0	0	405		5,670	10,530
24 1980 Mack Tractor Trailer Purchased: 1980	2RA03	541,044	543,210	546,808	555,400	300.0	1,851	193	181	300	716		563,992	572,584
25 2001 Chevy 4X4 Utility Truck Purchased: 1/19/01	2FA09	19,541	38,739	56,440	77,881	48.0	1,633	1,628	1600	1475	1787	F.Y. 2006	99,322	120,763
26 2001 Ford F-350 Utility Truck Purchased: 1/19/01	2TA10	12,004	28,197	44,656	58,413	48.0	1,217	1,000	1349	1372	1146		72,170	85,927
27 2004 Ford Diesel 4X4 Utility Purchased: 11/04	2TA11	0	0	80	15,378	14.0	1,098	0	0	40	1275		30,676	45,974
28 1999 Ford Windstar Van Purchased: 1/99	2VA02	22,000	28,828	33,520	38,285	72.0	532	512	569	391	397		43,050	47,815

Dick
Belmont

Swamy

Park

* Total Life = Total Miles / Age in Months

** Based on 2003 Avg. Mileage/Month

*** Trade Cycle (approximately)

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
VEHICLE OPERATION RECORDS
CALENDAR YEAR 2004

A	B	C	D	E	F	G	H	I	J	K	L	M	N
		VEHICLE DESCRIPTION	TOTAL MILES	FUEL INFO.	MPG	TOTAL DIR. OPERATING	EXPENSE	MAINTENANCE AND REPAIR COST	PNRD	TOTAL M&R	OVERALL EXPENSE	OVERALL COST/MILE	ENDING MILEAGE
			TRAVELED	TOTAL GALS.	(C/D)			COMM.		(H-I)	(G+J)	(K/D)	12/31/2003
1		1C407 03 FORD EXPLORER	26,439	1,636	16.2	\$3,841.88	\$652.79		\$0.00	\$652.79	\$4,494.67	\$0.17	54,401
2		1C408 03 FORD EXPLORER	13,050	750	17.4	\$1,602.42	\$277.12		\$0.00	\$277.12	\$1,879.54	\$0.14	30,020
3		1C409 2004 CHEVY BLAZER	12,791	693	18.4	\$1,500.78	\$102.25		\$0.00	\$102.25	\$1,603.03	\$0.13	13,062
4		2EA02 73 FORD FLATBED TRK.	29	0	0.0	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00	155,698
5		2EA04 85 MACK DUMP TRK	26,881	4,355	6.2	\$5,590.95	\$0.00		\$0.00	\$0.00	\$5,590.95	\$0.21	318,249
6		2EA05 91 MACK DUMP TRK	2,709	450	6.0	\$552.80	\$0.00		\$0.00	\$0.00	\$552.80	\$0.20	111,742
7		2EA07 02 FORD 4X4 DUMP BED	6,890	728	9.5	\$1,348.77	\$0.00		\$0.00	\$0.00	\$1,348.77	\$0.20	19,322
8		2GA01 FORD LIGHT FLAT BED	5,313	499	10.6	\$909.32	\$45.50		\$0.00	\$45.50	\$954.82	\$0.18	16,591
9		2GA02 2004 FORD F-350 FLATBED PICKUP	9,380	958	9.8	\$1,685.02	\$0.00		\$0.00	\$0.00	\$1,685.02	\$0.18	9,580
10		2LA34 97 CHEVY S-10 PICKUP 4X4	4,885	320	15.3	\$650.93	\$1,755.29		\$0.00	\$1,755.29	\$2,406.22	\$0.49	52,135
11	*	2LA35 97 CHEVY S-10 PICKUP 4X4	12,373	808	15.3	\$1,471.79	\$0.00		\$0.00	\$0.00	\$1,471.79	\$0.12	92,421
12		2LA39 99 CHEVY 3/4 4X4 PICKUP	21,625	1,830	11.8	\$3,221.73	\$30.26		\$0.00	\$30.26	\$3,251.99	\$0.15	74,991
13		2LA40 99 FORD 4X4 DIESEL PICKUP	9,254	852	10.9	\$1,556.12	\$0.00		\$0.00	\$0.00	\$1,556.12	\$0.17	85,424
14		2LA42 01 FORD F-350 4X4 PICKUP	20,175	1,312	15.4	\$2,392.17	\$859.16		\$0.00	\$859.16	\$3,251.33	\$0.16	82,475
15		2LA43 02 CHEVY 4X4 PICKUP	26,580	2,273	11.7	\$1,952.50	\$1,199.91		\$1.75	\$1,201.66	\$5,154.16	\$0.19	76,481
16		2LA44 03 FORD RANGER PICKUP	15,622	903	17.3	\$1,634.78	\$0.00		\$0.00	\$0.00	\$1,634.78	\$0.10	35,072
17	*	2LL06 98 FORD RANGER 4X4	12,476	728	17.1	\$1,596.24	\$0.00		\$0.00	\$0.00	\$1,596.24	\$0.13	95,387
18		2LL07 00 CHEVY S-10 SUPER CAB 4X4	6,021	482	12.5	\$865.88	\$0.00		\$0.00	\$0.00	\$865.88	\$0.14	31,980
19		2LL08 00 FORD DIESEL SUPER CAB 4X4	14,453	1,029	14.0	\$2,106.37	\$0.00		\$0.00	\$0.00	\$2,106.37	\$0.15	85,078
20		2LL09 00 FORD DIESEL SUPER CAB 4X4	13,525	903	15.0	\$1,680.14	\$53.49		\$0.00	\$53.49	\$1,733.63	\$0.13	67,803
21		2LL10 00 FORD F-250 SUPER CAB 4X4	15,177	1,549	9.8	\$2,924.63	\$494.36		\$751.23	\$1,245.59	\$4,170.22	\$0.27	80,848
22	*	2LL11 05 CHEVY COLORADO 4X4	1,250	85	14.7	\$155.00	\$0.00		\$0.00	\$0.00	\$155.00	\$0.12	1,250
23	*	2LL12 05 CHEVY COLORADO 4X4	1,300	78	16.7	\$180.12	\$0.00		\$0.00	\$0.00	\$180.12	\$0.14	1,300
24	*	2LL13 05 CHEVY COLORADO 4X4	402	43	9.5	\$73.67	\$0.00		\$0.00	\$0.00	\$73.67	\$0.18	402
25	*	2LL14 05 CHEVY COLORADO 4X4	810	53	15.2	\$96.60	\$0.00		\$0.00	\$0.00	\$96.60	\$0.12	810
26		2RA03 80 MACK TRUCK TRACTOR	1,784	525	3.4	\$660.00	\$154.89		\$0.00	\$154.89	\$814.89	\$0.46	8,592
27		2TA00 01 FORD F-350 UTILITY TRK	14,589	1,779	8.2	\$3,247.78	\$0.00		\$0.00	\$0.00	\$3,247.78	\$0.22	58,413
28		2TA11 2004 FORD UTILITY TRUCK	15,299	1,562	9.8	\$3,789.59	\$661.22		\$0.00	\$661.22	\$3,450.81	\$0.23	15,378
29		2TA09 01 CHEVY 4X4 UTILITY TRK.	21,441	2,212	9.7	\$3,678.86	\$0.00		\$0.00	\$0.00	\$3,678.86	\$0.17	77,881
30		2VA02 99 FORD WINDSTAR MINI VAN	4,765	261	18.3	\$577.25	\$495.60		\$0.00	\$495.60	\$1,072.85	\$0.23	38,285
2004 TOTALS			337,288	29,654	11.4	\$52,534.59	\$6,781.84		\$752.98	\$7,534.82	\$60,069.41	\$0.18	

*2LA35 WAS REPLACED WITH 2LL13 IN NOV. 04

*2LL06 WAS REPLACED WITH 2LL12 IN NOV. 04

*2LL11 AND 2LL14 ARE NEW THERE IS NO REPLACEMENT

MEMORANDUM

Date: 3/23/2005
To: PROGRAMS, PROJECTS AND OPERATIONS SUBCOMMITTEE
From: MIKE MCNANEY, SURVEY COORDINATOR
RE: PURCHASE OF SURVEY GRADE GPS EQUIPMENT

The District staff is recommending the purchase of a survey grade Global Positioning System (GPS) for the purpose of expanding the work capacity of the survey staff by saving time and money, as well as increasing survey accuracy. This system:

- Provides the flexibility to accomplish emergency and high importance surveys on short notice, allowing for less lead time on such projects. This will be especially beneficial in areas where we have no existing survey control.
- Having the ability to use GPS will save substantial amounts of time and money, especially on large and ongoing projects i.e. Decatur Bend, California Bend, West Branch R.O.W., channel improvements, cross-sections on the Papio Creek and the floodplain remapping project. (Example: In 2003 the total cost to survey Decatur Bend without GPS was \$15,574.50. To have surveyed this project *with* the GPS system, survey time and cost would be reduced by more than 66 %, or \$10,383.19.) This will allow more time for in house surveys.
- GPS system will allow for "One Man" surveys on many of the district projects, which will be a benefit when there is a need for legal descriptions, maps and other technical work.
- With GPS, we will have the benefit of incorporating all the district's projects and R.O.W. into one common computer based system; with the additional ability to keep accurate records of maintenance areas. Finally, this GPS system will allow us to provide information used in Geographical Information Systems (GIS) used by many of the local engineering firms as well as local Government Agencies.

MEMO

TO: Papio-Missouri River NRD Board of Directors

SUBJECT: Proposed addition to Policy Manual, 15.9 Purchasing-“Cost-Shared” Projects

FROM: Marlin J. Petermann, Assistant General Manager

DATE: May 2, 2005

At the April 14, 2005 Board Meeting, Director Lanphier distributed the attached memorandum requesting the staff to present two alternatives that would benefit the public and make up for not using competitive bidding on “cost-shared” projects as proposed in Policy 15.9. Below are some alternatives that have been used by the District to protect the taxpaying public’s interest when ‘cost-sharing’ with developers and other cooperators.

1. **Unit Cost Averaging**—This method has been used for many years for “cost-sharing” millions of dollars with private landowners on rural conservation practices and projects. Historical records of what various contractors have charged in recent years for construction of these conservation practices are used to establish average costs. The NRCS gathers this unit cost (e.g. Per cubic yard or per acre) information on a county-wide basis. The District then pays a certain percentage of the county average cost to the landowner as a “cost-share” for hiring a contractor to construct the practice(s) or project.
2. **Engineer’s Estimate**—Historical records of contractor charges for various project components are compiled for recent years and used to form the basis for the Engineer’s Cost Estimate for a project. Unit cost data, much like that used for “cost-sharing” on rural conservation work, is collected by the project engineer. In the case where competitive bids are taken, this estimate is normally used as the basis for accepting or rejecting contractor bids. This method of capping public expenditures or providing the most benefit to the public was utilized in the District’s public/private partnerships for Zorinsky Sediment Structure #3/Whitehawk and Papio Dam Site 13/Elk Ridge-DIAL projects, as well as the Shadow Lake Development project being proposed at the May meetings.
3. **Non-Public Competitive Bidding**—Just because the District may not be “cost-sharing” with a governmental entity, does not mean that competitive bidding is not occurring. In fact, it may be more vigorous. Developers and other cooperators are just as interested in getting the project built as cheap as possible, as anyone, because it keeps their “cost-share” down. In the

public/private partnerships noted above, the District's project was included as part of the overall subdivision grading and was competitively bid (privately) so that an economy of scale was realized as well. In the private sector, the developers negotiate back and forth with bidders to insure they have achieved the best product for the least price. It should be noted that this is where a good, quality set of plans and specifications are important, so that a sound project is built and cost is not the only consideration.

These are some of the primary ways the District has protected the taxpayer's interests and provided benefits to the public when "cost-sharing" on projects with developers and other cooperators. A combination or slight variation of these, such as sharing a portion of the savings below the Engineer's Estimate as an incentive for the developer/cooperator to seek the lowest contract price, can also be beneficial.

One final note of benefits to the public that have resulted from the District's "cost-shared" projects with private cooperators/developers should be made. Walnut Creek Lake and Recreation Area was built totally with public funds. The adjacent landowners and developers have reaped tremendous monetary benefits from the public project, but provided no funds toward it. The District's public/private partnerships have brought in the private sector to help "cost-share" on building these public projects. Also, the private developers are able to purchase the necessary land rights on a willing-seller basis, much easier than a public entity.

TO: Directors of the Papio-Missouri NRD and Staff

FROM: Dorothy Lanphier, Subdistrict 7

DATE: April 14, 2005

SUBJECT: Proposed addition to Policy Manual, 15.9 Purchasing – “Cost-Shared” Projects

It seems imprudent for us to consider changing our purchasing policies to exempt “cost-shared” projects from competitive bidding without putting a method in its place that will provide equivalent public benefits. The Directors of the Papio-Missouri NRD need to be able to demonstrate to the public that we are making the best use of public money and doing it in an open manner. In short, the way we spend public money needs to be able to withstand tough public scrutiny.

Request / Directive to Staff

For the next monthly meeting, I request that our staff do some research and present us at least two alternatives that will make up for not using competitive bidding on “cost-shared” projects and will provide equivalent public benefits. Once we have had the opportunity to examine at least two alternative methods and compare them to competitive bidding, we can make a more informed decision about what method is appropriate for this district.

15.9 Purchasing – Cost-shared Projects. Paragraphs 15.0 through 15.8 of these policies shall not apply to projects **constructed** by other governmental agencies, developers or other cooperators in accordance with cost-sharing agreements with the District that are specifically authorized by the Board. Paragraph 15.2 of these policies shall not apply to projects **engineered** by other governmental agencies, developers or other cooperators in accordance with cost-sharing agreements with the District that are specifically authorized by the Board.

[bold added for emphasis in draft only]

[May 12, 2005]

From: Oltmans, Steve
Sent: Tuesday, May 10, 2005 3:04 PM
To: Conley, Fred; Conley, John; Connealy, Richard; Fowler, Tim; Jansen, Richard; Kolowski, Rick; Lanphier, Dorothy; Neary, Joseph; Schwope, John; Tesar, Richard; Thompson, Jim
Cc: Petermann, Marlin; Paul F. Peters; Teer, Pat
Subject: Director Lanphier's Inquiries

Attached are three inquiries from Director Lanphier and staff's responses.

1. Memo from Director Lanphier - Proposed addition to Policy Manual, 15.9 Purchasing - Cost-Shared" Projects
and Marlin Petermann's reponse
2. e-mail from Director Lanphier regarding Marlin's May 2 memo. Marlin's replies follow each question.
3. e-mail to Paul Peters from Director Lanphier re Policy Manual; procedures and Paul's reponse

If you have any questions on any of these please feel free to contact me.

Steve

5/10/2005

TO: Directors of the Papio-Missouri NRD and Staff
FROM: Dorothy Lanphier, Subdistrict 7
DATE: April 14, 2005
SUBJECT: Proposed addition to Policy Manual, 15.9 Purchasing – “Cost-Shared” Projects

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[**bold** added for emphasis in draft only]

[May 12, 2005]

MEMO

TO: Papio-Missouri River NRD Board of Directors

SUBJECT: Proposed addition to Policy Manual, 15.9 Purchasing-“Cost-Shared” Projects

FROM: Marlin J. Petermann, Assistant General Manager

DATE: May 2, 2005

At the April 14, 2005 Board Meeting, Director Lanphier distributed the attached memorandum requesting the staff to present two alternatives that would benefit the public and make up for not using competitive bidding on “cost-shared” projects as proposed in Policy 15.9. Below are some alternatives that have been used by the District to protect the taxpaying public’s interest when ‘cost-sharing’ with developers and other cooperators.

1. **Unit Cost Averaging**—This method has been used for many years for “cost-sharing” millions of dollars with private landowners on rural conservation practices and projects. Historical records of what various contractors have charged in recent years for construction of these conservation practices are used to establish average costs. The NRCS gathers this unit cost (e.g. Per cubic yard or per acre) information on a county-wide basis. The District then pays a certain percentage of the county average cost to the landowner as a “cost-share” for hiring a contractor to construct the practice(s) or project.
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public/private partnerships noted above, the District's project was included as part of the overall subdivision grading and was competitively bid (privately) so that an economy of scale was realized as well. In the private sector, the developers negotiate back and forth with bidders to insure they have achieved the best product for the least price. It should be noted that this is where a good, quality set of plans and specifications are important, so that a sound project is built and cost is not the only consideration.

These are some of the primary ways the District has protected the taxpayer's interests and provided benefits to the public when "cost-sharing" on projects with developers and other cooperators. A combination or slight variation of these, such as sharing a portion of the savings below the Engineer's Estimate as an incentive for the developer/cooperator to seek the lowest contract price, can also be beneficial.

One final note of benefits to the public that have resulted from the District's "cost-shared" projects with private cooperators/developers should be made. Walnut Creek Lake and Recreation Area was built totally with public funds. The adjacent landowners and developers have reaped tremendous monetary benefits from the public project, but provided no funds toward it. The District's public/private partnerships have brought in the private sector to help "cost-share" on building these public projects. Also, the private developers are able to purchase the necessary land rights on a willing-seller basis, much easier than a public entity.

From: Petermann, Marlin
Sent: Tuesday, May 10, 2005 12:02 PM
To: Lanphier, Dorothy
Cc: Oltmans, Steve; Petermann, Marlin; Woodward, Paul; paul.peters@mindspring.com; Teer, Pat
Subject: RE:Policy 15.9 "Cost-Shared Projects"/ Memo of May 2,2005

Dorothy,

Thanks for the inquiry. See my response below. I am hopeful that I have addressed your request. Let me know if I can be of further assistance.

Marlin

From: Dorothy Lanphier [mailto:dlanphier@cox.net]
Sent: Monday, May 09, 2005 3:04 PM
To: Petermann, Marlin
Subject: Re: Memo of May 2,2005

TO: Marlin J. Petermann, Assistant General Manager, Papio-Missouri River NRD

FROM: Dorothy Lanphier, Subdistrict 7

DATE: May 9, 2005

SUBJECT: Your May 2, 2005 memo re: proposed addition to Policy Manual, 15.9 Purchasing – “Cost-Shared” Projects

Thank you for your May2, 2005 memo responding to my April 14,2005 request for at least two alternatives that will make up for not using competitive bidding on “cost-shared” projects and which can be demonstrated to accomplish equivalent public benefits as competitive bidding does. As stated in my April 14th request, the Directors need to be able to demonstrate to the public that we are making the best use of public money and doing so in an open manner.

Your May 2nd memo lists several alternatives that you say have been used by the District. It is not clear from your explanations how each of these alternatives has been used for District projects. It is also unclear how each is implemented so that each process is open. For example:

1. For unit costs averaging, are the historical records of what various contractors have charged in recent years (which you say forms the basis for determining a unit costs) compiled and made available to the public as well as Directors?

5/10/2005

Reply: The information, I find out, is compiled by FSA (USDA Farm Service Agency), not NRCS (USDA Natural Resources Conservation Service), and is available to Directors and the public, although voluminous, upon request.

2. For Engineer's Estimate, are the historical records of contractor charges for various project components (which you indicate forms the basis for the Engineer's Cost Estimate for a project) compiled and made available for the public as well as Directors?

Reply: They are available from the entity or Engineering Company preparing the estimate, upon request.

3. How is non-public competitive bidding transparent?

Reply: As a partner, the bids are provided to the District, upon request.

4. How is the information related to using as an incentive a share of the savings below the Engineer's Estimate made available to the public as well as Directors?

Reply: To help encourage a private partner (developer, cooperator, etc.) to seek the lowest price for constructing a joint project, the NRD may provide an incentive by offering to share a portion of the cost savings realized on a project (difference between the Engineer's estimate and actual contractor's costs). For example, if the Engineer's estimate is \$100,000 for a project and the developer negotiates a construction price of \$90,000 with a contractor, the savings is \$10,000; which could be split with the developer to encourage the lowest negotiated price possible. Both the NRD and the private partner save \$5,000. This "win-win" concept is similar to the common practice of providing incentives to contractors for completing projects ahead of schedule.

Request/Directive

To illustrate how each of the methods you listed in your memo works, please provide me the primary source documentation from two District projects for each method you listed (i.e., (1) unit cost averaging, (2) Engineer's Estimate, (3) non-public competitive bidding, and (4) a combination or slight variation of these such as sharing a portion of the savings below the Engineer's Estimate as an incentive). I would like to review the primary source documents that demonstrate the features your memo outlines. Therefore, for each of the four methods listed, please provide me the documentation related to two examples of District projects that used that method. Thank You

Reply: As noted in my May 2nd memo, District projects where the first alternative (unit cost averaging) is used are primarily for the rural conservation cost-share programs with private landowners. As also noted, the remaining two (or three if you include the "incentive savings" concept) alternatives have been used in some form or another in four public/private partnership projects (Papio Dam Site 6/Newport Landing; Zorinski Sediment Basin #3/Whitehawk; Papio Dam Site 13/Elk Ridge; and Papio Site S-30/Shadow Lakes). As far as primary source documents demonstrating these features are concerned, they are basically the cost estimates for the various projects. Numerous agencies and engineering companies compile the unit costs forming the total project cost estimate. An example of such unit prices and total construction cost estimates can be found on pages 10 & 11 (attached) in the "Shadow Lake and Midland Lake Dams Design Report" prepared by Lamp Rynearson and Associates, Inc. and provided to the Directors in preparation for the May 10 & 12 Subcommittee and Board meetings.

Table 6 Preliminary Cost Estimate for Shadow Lake Dam

Description		Approximate Quantity	Unit	Unit Price	Total
1.	CLEARING AND GRUBBING	1	LS	\$25,000.00	\$25,000.00
2.	EXCAVATION FOR SOIL KEY	10,000	CY	\$3.00	\$30,000.00
3.	EMBANKMENT	400,000	CY	\$1.50	\$600,000.00
4.	BACK HOE EXCAVATION AT CREEK CROSSING	2	LS	\$30,000.00	\$60,000.00
5.	CREEK DIVERSION CHANNEL	2	LS	\$20,000.00	\$40,000.00
6.	CHIMNEY DRAIN	8,500	TN	\$25.00	\$212,500.00
7.	GRANULAR STRUCTURE DRAIN	260	LF	\$90.00	\$23,400.00
8.	INTAKE STRUCTURE	1	LS	\$142,000.00	\$142,000.00
9.	SHEET PILE CUT-OFF (PRINCIPAL SPILLWAY)	1,100	SF	\$25.00	\$27,500.00
10.	PRINCIPAL SPILLWAY (5'R x 6'S)	290	LF	\$800.00	\$232,000.00
11.	ENERGY DISSIPATOR	1	LS	\$30,000.00	\$30,000.00
12.	BEACH RIP-RAP	6,000	TN	\$30.00	\$180,000.00
13.	GEOWEB SPILLWAY REINFORCEMENT	14,000	SY	\$30.00	\$420,000.00
14.	SOIL-CEMENT STABILIZATION IN EMERGENCY SPILLWAY	7,000	CY	\$20.00	\$140,000.00
15.	SEEDING	21	AC	\$1,500.00	\$31,500.00
16.	INSTRUMENTATION	1	LS	\$50,000.00	\$50,000.00
17.	CONTINGENCY - 10%				\$224,390.00
Estimated Construction Costs					\$2,468,290.00
Estimated Engineering Fees - Design and Construction Administration					\$425,000.00
Subtotal					\$2,893,290.00
Estimated Legal, Fiscal and Interest					\$565,000.00
Total Estimated Costs					\$3,458,290.00
P-MRNRD CONTRIBUTION					
75% Allowable Construction Costs (Reduced by 100 LF Principal Spillway in Schram Road)					\$1,791,217.50
75% Estimated Engineering Fees					\$318,750.00
TOTAL P-MRNRD CONTRIBUTION SHADOW LAKE					\$2,109,967.50
PAPILLION PROMENADE CONTRIBUTION					
25% Allowable Construction Costs (Reduced by 100 LF Principal Spillway in Schram Road)					\$597,072.50
PRINCIPAL SPILLWAY EXTENSION (5'R x 6'S) (SCHRAM ROAD RIGHT-OF-WAY)			100	LF	\$800.00
					\$80,000.00
25% Estimated Engineering Fees					\$108,250.00
Estimated Legal, Fiscal and Interest					\$565,000.00
TOTAL PAPILLION PROMENADE CONTRIBUTION					\$1,348,322.50

Table 7 Preliminary Cost Estimate for Midlands Lake Dam

Bid Item Description	Approximate Quantity	Unit	Unit Price	Total
1. CLEARING AND GRUBBING	1	LS	\$15,000.00	\$15,000.00
2. EXCAVATION FOR SOIL KEY	1,700	CY	\$3.00	\$5,100.00
3. EMBANKMENT	75,000	CY	\$1.50	\$112,500.00
4. BACK HOE EXCAVATION AT CREEK CROSSING	1	LS	\$40,000.00	\$40,000.00
5. CREEK DIVERSION CHANNEL (550 LF @ 20 CY)	1	LS	\$40,000.00	\$40,000.00
6. CHIMNEY DRAIN	2,000	TN	\$25.00	\$50,000.00
7. GRANULAR STRUCTURE DRAIN	120	LF	\$75.00	\$9,000.00
8. INTAKE STRUCTURE	1	LS	\$78,000.00	\$78,000.00
9. CONDUIT (8'R X 6'S)	160	LF	\$1,400.00	\$224,000.00
10. ENERGY DISSIPATOR	1	LS	\$52,000.00	\$52,000.00
11. BEACH RIP-RAP	1,400	TN	\$30.00	\$42,000.00
12. OUTLET RIP-RAP	400	TN	\$35.00	\$14,000.00
13. GEO-WEB SPILLWAY REINFORCEMENT	7,500	SY	\$25.00	\$187,500.00
14. WETLAND REVEGETATION	6	AC	\$3,000.00	\$18,000.00
15. SEEDING	5	AC	\$1,500.00	\$7,500.00
16. INSTRUMENTATION	1	LS	\$20,000.00	\$20,000.00
17. CONTINGENCY - 10%				\$91,460.00
Estimated Construction Costs				\$1,006,060.00
Estimated Engineering Fees - Design and Construction Administration				\$160,000.00
Subtotal				\$1,166,060.00
Estimated Legal, Fiscal and Interest				\$227,000.00
Total Estimated Costs				\$1,393,060.00
P-MRNRD CONTRIBUTION				
100% Estimated Construction Costs				\$1,006,060.00
100% Estimated Engineering Fees				\$160,000.00
TOTAL P-MRNRD CONTRIBUTION SHADOW LAKE				\$1,166,060.00
SHADOW LAKE CONTRIBUTION				
100% Estimated Legal, Fiscal and Interest				\$227,000.00
TOTAL SHADOW LAKE CONTRIBUTION				\$227,000.00

From: Petermann, Marlin
Sent: Tuesday, May 10, 2005 2:36 PM
To: Teer, Pat
Subject: FW: Re; Policy Manual;procedures

From: Paul F. Peters [mailto:paul.peters@mindspring.com]
Sent: Tuesday, May 10, 2005 1:59 PM
To: Petermann, Marlin
Subject: Fw: Re; Policy Manual;procedures

----- Original Message -----

From: Paul F. Peters
To: Dorothy Lanphier
Cc: Steve Oltmans
Sent: Tuesday, May 10, 2005 1:22 PM
Subject: Re: Re; Policy Manual;procedures

Dorothy:

Please see attached memo.

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
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----- Original Message -----

From: Dorothy Lanphier
To: paul.peters@mindspring.com
Sent: Monday, May 09, 2005 3:23 PM
Subject: Re; Policy Manual;procedures

MEMO

TO: Paul Peters, Legal Counsel, Papio-Missouri River NRD

5/10/2005

FROM: Dorothy Lanphier, Subdistrict 7

DATE: May 9, 2005

SUBJECT: Request/Directive re: use of Policy Manual; procedures

I would appreciate a written explanation to several questions I have regarding the District's use of a policy manual and some of the District's procedures. Thank You.

1. Where does the District get its authority to operate with a policy manual? (Section 2-3228 of the Nebraska statutes, which you mentioned in a previous conversation, authorizes the District to adopt and promulgate rules and regulations to carry out its authorized purposes. It does not discuss use of a policy manual.)
2. If you consider the District's use of a policy manual equivalent to rules and regulations, please explain how this is true.
3. Why, in the case of Policies 1.1 through 16.6 of the policy manual does the vote on the adoption of a proposed resolution require a postponement until the next regular meeting of the Board, at which time further amendment of such resolution shall not be in order?

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E-mail: paul.peters@mindspring.com

To: Dorothy Lanphier, Director
Papio-Missouri River Natural Resources District

Copy: Steven G. Oltmans, General Manager

Date: May 10, 2005

Subject: Your memo of May 9, 2005 re Policy Manual

This responds to the questions asked in your memo:

1. Where does the District get its authority to operate with a policy manual? (Section 2-3228 of the Nebraska statutes, which you mentioned in a previous conversation, authorizes the District to adopt and promulgate rules and regulations to carry out its authorized purposes. It does not discuss use of a policy manual.)

Response: Section 2-3213(1) authorizes the Board to govern the District. Section 2-3228(6) authorizes the Board to adopt rules and regulations to carry out the purposes of Section 2-3201 to 2-3257 and 2-32,109 to 2-32,114, R.R.S., 1997, the statutes governing natural resources districts. The Board acts by majority resolution (Section 2-3219). The policy manual is a compilation of directives governing the District, adopted by resolutions of the Board from time to time and assembled in one convenient place. The policy manual does not substitute for the minutes of the Board of Directors that, under Section 2-3220 R.R.S., 1997, are required to be maintained. The fact that the compilation is referred to as the "policy manual" confers no additional status on the directives contained therein. Similarly to the Board's adoption of Roberts Rules, they are in effect until the Board decides otherwise and there is nothing legally preventing a policy from being expressly or impliedly overridden, superseded, ignored, amended or revoked by subsequent resolution of the Board at any time.

2. If you consider the District's use of a policy manual equivalent to rules and regulations, please explain how this is true.

Response: They are rules and regulation in the sense that they provide directives for the governance of the District upon which the General Manager, the "chief executive" and "supervising officer" of the district (as referred to in Section 2-3202(6) R.R.S., 1997), can rely for day-to-day guidance, in the absence of contrary direction contained in subsequent Board resolutions.

3. Why, in the case of Policies 1.1 through 16.6 of the policy manual does the vote on the adoption of a proposed resolution require a postponement until the next regular meeting of the Board, at which time further amendment of such resolution shall not be in order?

Response: It was believed that a period of time should elapse between the introduction and adoption of resolutions setting Board policy on these subjects, simply to insure that, as a matter of fairness, the directors and the public would have advance notice and a reasonable opportunity to prepare for the vote thereon, similarly to the requirements of many other deliberative bodies that proposals be read aloud at a number of meetings prior to a vote thereon. This policy expresses more of a tradition or precedent than it does a mandate. As in the case of most other directives contained in the policy manual, there is nothing legally preventing this policy from being expressly or impliedly overridden, superseded, ignored, amended or revoked by subsequent resolution of the Board at any time.

I hope that this adequately responds to your questions. Please advise if I can provide any further information on this subject.