

Memo to: Programs, Projects and Operations Subcommittee

From: Jim Becic

Date: 6 November, 2003

Re: Funding Support for the Lewis and Clark “Children’s Art Wall” - in Sarpy County.

The Papio-Missouri River NRD, along with five other entities, (Sarpy County, Bellevue, ESU #3, Fontenelle Nature Association and the Bellevue Public Schools) contributed to the \$8,000.00 cost of developing the *Sarpy County Lewis and Clark Interpretive Master Plan*. This Sarpy County Plan was developed beginning in April of 2003, following nearly 9 months of discussion. This plan followed a format similar to the one recently completed for the City of Omaha, the National Park Service and the NRD in 2002.

The ‘Omaha Plan’ resulted in numerous interpretive panels being completed – some with sound – and the now familiar 14’ tall x 14 ft’ diameter Icons, being constructed for Omaha, Washington County and the Council Bluffs area (Attachment “A”). These Icons – art-work in themselves - will be permanent displays with additional, juried art-work embellishing the massive sculptures. Most of these will be in place by July of 2004, to coincide with the beginning of the 200th anniversary of the Lewis and Clark Journey.

Last Fiscal Year, the NRD contributed \$25,000 towards the construction cost of the bronze, “First Council” signature site at Fort Atkinson in Washington County. This \$500,000, north ‘anchor’ site, depicts the first meeting that Lewis and Clark had with Native Americans on their Voyage of Discovery up the Missouri River.

The Sarpy County Lewis and Clark ‘Plan’ – completed in September, 2003 also recommends installation of interpretive panels at various locations – but, instead of local artists embellishing 14 foot tall Icons depicting the Lewis and Clark journey, the Sarpy County Plan envisions a single, massive, curving wall depicting the Missouri River.

The three unique qualities about this Art Wall concept are: **1)** the site at Haworth Park in Bellevue (Attachment “B”), is the only location in the numerous Back to the River locations, where there is grass and trees and you can physically walk down to touch the River; **2)** the entire L&C Journey will be interpreted in a single location; and the most exciting aspect is that **3)** the wall will be embellished with artwork not by local or adult artists – but, by children residing along the entire route of Lewis and Clark (Attachments “C & D”). This Lewis and Clark “*Children’s Interpretive Art Wall*” will be the southern “anchor” and its concept is unique in the nation.

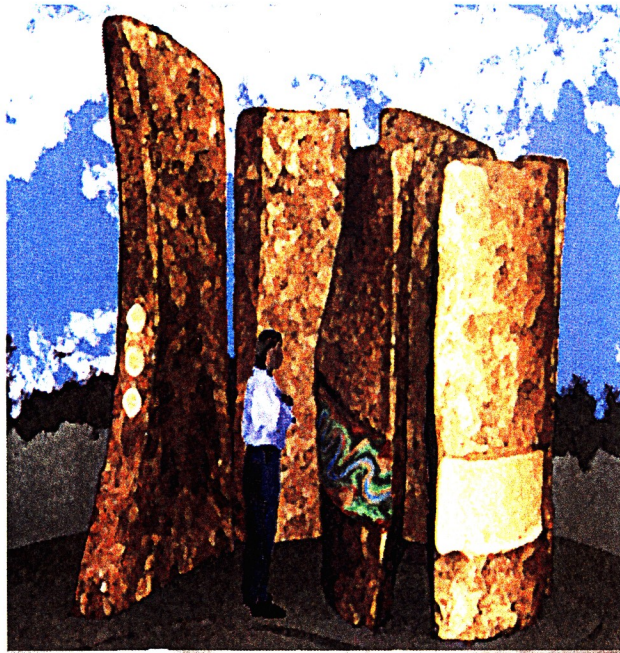
The wall itself will be ~ 65 feet long by 8 feet high and 1 foot thick. The artwork will consist of over 750 individual and unique, 6”x 6” (children’s art) tiles that are inset on both sides of the wall and will depict the Lewis and Clark Journey. The estimated cost for the entire project is \$250,000 and includes native grass and wildflower plantings, lighting and landscaping and improvements to the parking. The Sarpy County Board has committed \$50,000 towards the cost of the project and the Bellevue City Council will be

considering a similar request at their 10 November, 2003 meeting. The request to the NRD is for a financial contribution of \$25,000.

Due to the construction scheduling, anticipated completion in June of 2004, and the “up front” costs and efforts needed to gather the artwork and produce the tiles, etc., the entire project costs need to be obligated by the end of December, 2003.

It is the staff’s recommendation that the Subcommittee recommend to the Board, that the District contribute \$25,000 towards the Sarpy County Lewis and Clark Children’s Interpretive Art Wall project.

Sarpy County Art Wall Memo to Subcommittee

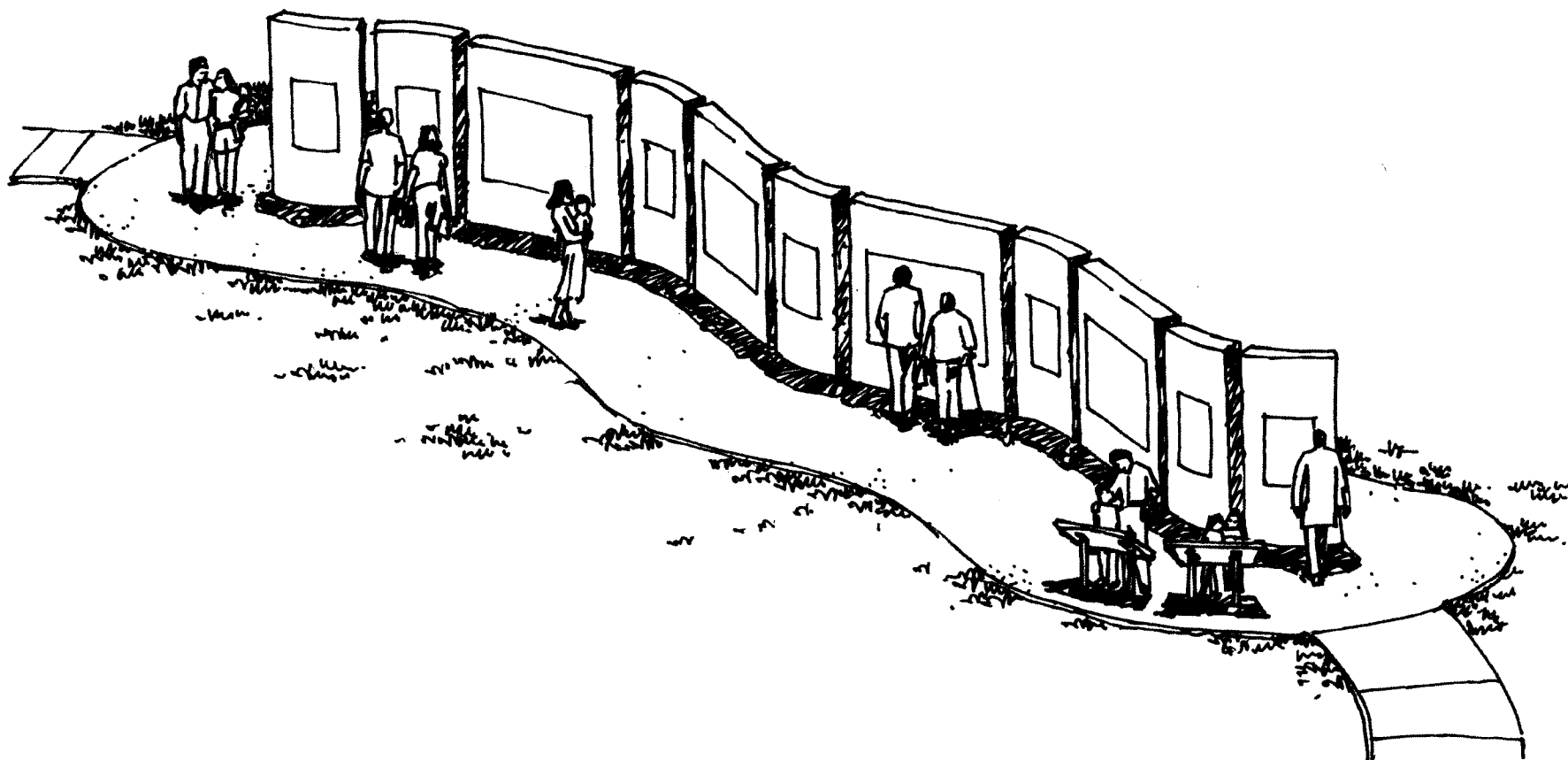


Attachment "A"





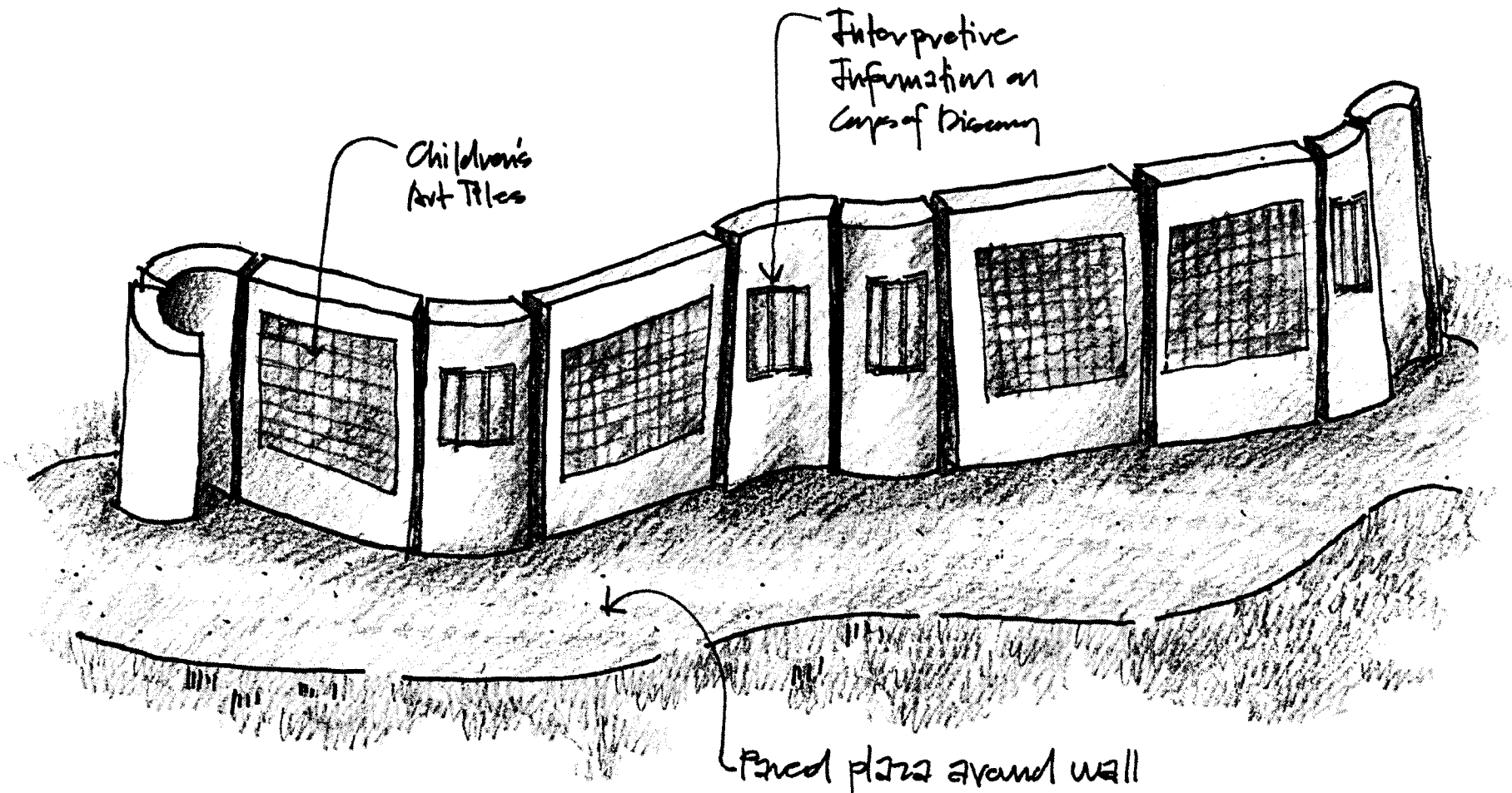
Attachment "B"



Concept Sketch
Children's Interpretive Art Wall
Sarpy County, Nebraska



Big Muddy
Workshop
Landscape Architects / Interpretive Planners
Omaha, Nebraska
October 7, 2003



Concept Sketch
Children's Interpretive Art Wall
Sarpy County, Nebraska

MEMO - REVISED

Subject: Savanna Shores/Walnut Creek Project

Date: October 31, 2003

REVISED

From: Gerry Bowen

The subcommittee was briefed about this project at the September 9, 2003 meeting. The attached agreement is presented for your consideration.

Boyer Young Development (BYD) proposes to develop a 60 acre area southwest of 96th Street & Schramm Road, immediately south of Walnut Creek Recreation Area (see attached map). The development surrounds a portion of the recreation area south of Schramm Road acquired as part of the flood pool of the reservoir, and currently used as a wildlife management area. The development also includes a pond that was included in the Walnut Creek Watershed Water Quality Plan as a potential site for a permanent sediment storage structure.

According to the agreement, BYD or the SID will accomplish the following:

1. BYD will rehabilitate the sediment pond to provide 25 years of sediment storage and meet the state design standards. They estimate the cost of the renovation to be \$150,000. The agreement calls for the District to pay 50% of these costs, up to a maximum of \$75,000. The SID will operate and maintain the sediment basin structure.
2. BYD will design and build a trail from this development which will connect to the existing trail in the Walnut Creek Recreation Area north of Schramm Road. To complete this connection to the trail in Walnut Creek, it will require a box culvert under Schramm Road. The agreement grants an easement from the District to the developer to construct the trail, plus commits the District to cost share up to \$25,000 on the culvert.
3. As a part of the development, BYD will have to mitigate some wetlands (1.5 acres). The agreement grants an easement on District land south of Schramm Road to mitigate these wetlands. In addition, the developer needs to monitor the wetlands as long as required in the mitigation plan (normally 3-5 years) approved by the Corps of Engineers.
4. BYD or the SID will remove all accumulated sediments from the basin in the future.

In addition to the easements and cost share mentioned above, the agreement calls for the District to perform the following duties.

1. Maintain the wetlands after the Corps-mandated monitoring period expires.
2. Maintain the trail on District property.

It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute an interlocal agreement with Boyer Young Development Company and Sarpy County SID #249 for the Savanna Shores/Walnut Creek Project providing for a maximum District cost share of \$100,000 for trail, wetland and sediment basin improvements, subject to approval as to form by District legal counsel.

1. *Journal of the American Medical Association*, 1997; 277: 1033-1037.



INTERLOCAL COOPERATION ACT AGREEMENT
AMONG
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,
SANITARY AND IMPROVEMENT DISTRICT NO. 249 OF SARPY COUNTY,
NEBRASKA,
AND
BOYER YOUNG DEVELOPMENT COMPANY
FOR

SAVANNA SHORES/WALNUT CREEK PROJECT

THIS AGREEMENT (hereinafter referred to as “**THIS AGREEMENT**”) is made pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 to 13-827 R.R.S. 1997, et. seq., by and among the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “**the NRD**”); **SANITARY AND IMPROVEMENT DISTRICT NO. 249 of SARPY COUNTY, NEBRASKA** (hereinafter referred to as “**the SID**”); and, **BOYER YOUNG DEVELOPMENT COMPANY**, a Nebraska corporation (hereinafter referred to as “**the DEVELOPER**”).

The NRD, the SID and the DEVELOPER are hereinafter referred to individually as a “**PARTY**” and collectively as “**the PARTIES.**”

WITNESSETH:

WHEREAS, the NRD and the SID are governmental bodies organized under the laws of the State of Nebraska; and,

WHEREAS, the Walnut Creek Lake and Recreation Area, a flood control reservoir and recreational development (hereinafter referred to collectively as “**WALNUT**”

CREEK”), formerly known as Corps of Engineers’ Papillion Creek and Tributaries Lakes Project Dam Site No. 21, located in Sarpy County, Nebraska, was developed and is administered by the NRD pursuant to an agreement with the City of Papillion, Nebraska; and,

WHEREAS, WALNUT CREEK facilities include, among other things, a reservoir and a public recreational bicycle and pedestrian trail; and,

WHEREAS, the Savanna Shores real estate subdivision development (hereinafter referred to as “**the SUBDIVISION**”) is a private development proposed by the DEVELOPER for a 60 acre site immediately south of and adjacent to WALNUT CREEK, more particularly described in the legal description attached hereto as Exhibit “A” and incorporated herein by reference; and,

WHEREAS, the SID is responsible for construction, operation and maintenance of public improvements in the SUBDIVISION; and,

WHEREAS, the SUBDIVISION includes an existing pond (hereinafter referred to as “**the SEDIMENT DETENTION POND**”) that presently operates as a sediment detention facility assisting in maintaining the water quality of the WALNUT CREEK reservoir; and,

WHEREAS, the DEVELOPER has proposed the following as the components of a cooperative project (hereinafter referred to as “**the PROJECT**”) by and among the DEVELOPER, the SID and the NRD:

a) Construction of a public recreational bicycle and pedestrian trail (hereinafter referred to as “**the CONNECTING TRAIL**”) on the NRD’s WALNUT CREEK land, to connect the existing public recreational bicycle and pedestrian trail in WALNUT CREEK with a public recreational bicycle and pedestrian trail to be designed and constructed by the SID in the SUBDIVISION; and,

b) Enlargement and improvement of the existing **SEDIMENT DETENTION POND** in the **SUBDIVISION** (hereinafter referred to as “the **SEDIMENT DETENTION POND IMPROVEMENTS**”) to enable it to accommodate tributary runoff into the **WALNUT CREEK** reservoir, consisting of: (1) reworking of the dam structure and upgrading the principal spillway from the existing corrugated metal piping to concrete piping, (2) increasing its capacity to enable it to handle a 100-year storm event, and (3) enlarging the **SEDIMENT DETENTION POND** to provide approximately 25 years of sediment storage, such enlargement and improvement to be designed and constructed by the **SID**; and,

c) Construction of new wetlands on approximately 1.5 acres of the **NRD’S WALNUT CREEK** land (hereinafter referred to as “the **WETLANDS IMPROVEMENTS**”) to mitigate the loss of approximately 1.0 acre of wetlands that will be destroyed by the **DEVELOPER** and the **SID** during the development of the **SUBDIVISION**, such new wetlands to be designed and constructed by the **DEVELOPER**; and,

d) Construction of a box culvert (hereinafter referred to as “the **BOX CULVERT**”) to allow public bicycle and pedestrian passage under Schram Road and connecting the two portions of the **CONNECTING TRAIL**, such **BOX CULVERT** to be designed and constructed by the **SID**; and,

WHEREAS, the **DEVELOPER** has proposed that the **NRD** contribute to the **SID** a one-time lump sum payment as the **NRD’s** share of the cost of the design and construction of the **PROJECT**; and,

WHEREAS, the **PARTIES** desire to set forth the terms of their agreement for the design, construction, operation, maintenance, repair, replacement, regulation and ownership of the **PROJECT**; and,

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals and their mutual covenants, the PARTIES hereby agree as follows:

1. PURPOSE. The purpose of THIS AGREEMENT is to set forth the terms under which the PROJECT and its components will be designed, constructed, operated, maintained, repaired replaced, regulated and owned, and to specify the rights, duties and obligations of the PARTIES in connection therewith.

2. DUTIES OF THE PARTIES. The PROJECT will be undertaken without any separate entity being created, and, the duties and responsibilities of the PARTIES with respect thereto shall be as defined by THIS AGREEMENT.

3. ESTABLISHMENT OF PROJECT. The parties do hereby establish the PROJECT and hereby find that the PROJECT will be of general benefit to the NRD, with only an incidental special benefit.

4. THE ENGINEERS. On or before January 1, 2004, the DEVELOPER and the SID shall retain, and subsequently fully compensate at their own expense, engineering consultants (hereinafter referred to as “**the ENGINEERS**”), approved in writing by the NRD (such approval to not be withheld or delayed unreasonably), to design the PROJECT and to prepare plans and specifications and contract documents for, and administer construction of, the PROJECT.

5. ENGINEERS INSURANCE. The contract between the DEVELOPER and the SID on the one hand, and the ENGINEERS on the other hand (hereinafter referred to as “**the ENGINEERING CONTRACT**”), shall require the ENGINEERS to purchase, and maintain until the expiration of two years after completion of the PROJECT, 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) Bodily Injury: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
- c) Comprehensive General Liability (including Premises-Operations, Independent Contractors' Protection, Products Liability and Completed Operations, Broad Form Property Damage, and Contractual Liability):
 - i) Bodily Injury: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
 - iii) Policy form for General Liability coverages shall be Comprehensive General Liability only.
 - iv) General Liability coverages shall be provided on an occurrence basis only.
- d) Contractual Liability:
 - i) Bodily Injury: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
- e) Personal Liability: (Employment Exclusion deleted) \$2,000,000.00 aggregate
- f) Business Auto Liability (including owned, non-owned and hired vehicles):
 - i) Bodily Injury: \$1,000,000.00 per person, \$2,000,000.00 per accident
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
- g) General Provisions: (i) Limits may be covered with a combination of primary and excess policies. (ii) All policies shall be endorsed to have any

annual aggregate apply on a per-project basis, and to provide for 30-days written notice to the SID, the DEVELOPER and the NRD prior to termination or change in the coverage provided. (iii) The SID, the DEVELOPER and the NRD reserve the right to approve the ENGINEERS' insurers."

The ENGINEERING CONTRACT shall further require that, prior to commencement of the work, the ENGINEERS shall submit certificates in form acceptable to the DEVELOPER, the SID and the NRD evidencing such insurance.

6. PRELIMINARY PLANS AND SPECIFICATIONS. On or before March 1, 2004, the ENGINEERS shall complete the preparation of preliminary plans and specifications (hereinafter referred to as "**the PRELIMINARY PLANS**") for the PROJECT.

7. COST ESTIMATES. The PRELIMINARY PLANS as prepared by the ENGINEERS shall include, without limitation, the ENGINEERS' itemized estimate of the cost of the PROJECT, including the costs of engineering, design, construction and construction administration, but excluding right-of-way costs.

8. APPROVAL OF PRELIMINARY PLANS. Upon the ENGINEERS' completion of the PRELIMINARY PLANS, and after approval of the same by the DEVELOPER and the SID, the PRELIMINARY PLANS shall be submitted to the NRD for its written approval, such approval to be provided to the DEVELOPER and the SID at the NRD'S separate sole cost and expense. The NRD shall have 30 days to review the PRELIMINARY PLANS and to approve or disapprove the same in writing or suggest amendments thereto. Such approval shall not be withheld or delayed unreasonably.

9. PREPARATION OF FINAL PLANS FOR PROJECT. Upon receipt by the DEVELOPER and the SID of the NRD'S written approval of the PRELIMINARY PLANS, the DEVELOPER and the SID shall direct the ENGINEERS to prepare final plans and specifications for the PROJECT (hereinafter referred to collectively as "**the**

FINAL PLANS”). The FINAL PLANS shall include, without limitation, operation and maintenance manuals for the PROJECT.

10. APPROVAL OF FINAL PLANS. Upon the ENGINEERS’ completion of the FINAL PLANS, and after approval of the same by the DEVELOPER and the SID, the FINAL PLANS shall be submitted to the NRD for its written approval, such approval to be provided to the DEVELOPER and the SID at the NRD’S separate sole cost and expense. The NRD shall have 30 days to review the FINAL PLANS and to approve or disapprove the same in writing or suggest amendments thereto. Such approval shall not be withheld or delayed unreasonably.

11. LAND TRANSFERS. At a closing to be held on or before May 1, 2004 (hereinafter referred to as “**the CLOSING**”) and without further consideration, the NRD shall grant to the DEVELOPER and the SID a temporary easement, in the form as attached hereto and incorporated herein by reference as Exhibit “B,” or in such other form as may be determined by agreement of the PARTIES, over and across the parcels of land described in such Exhibit; and, the SID shall grant to the NRD a permanent easement, in the form as attached hereto and incorporated herein by reference as Exhibit “C,” or in such other form as may be determined by agreement of the PARTIES, over and across the parcel of land described in such Exhibit.

12. PERMITS. The DEVELOPER and the SID shall have the responsibility to obtain all permits, and all lands, easements 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 PROJECT.

13. THE PROJECT CONTRACTOR. The DEVELOPER and the SID shall retain one or more general contractors (hereinafter referred to collectively as “the **PROJECT CONTRACTOR**”), approved by the NRD in writing, to construct the PROJECT. Such approval shall not be withheld or delayed unreasonably.

14. CONSTRUCTION CONTRACT DOCUMENTS. On or before May 1, 2004, the DEVELOPER and the SID shall deliver to the NRD for its approval copies of the proposed contract between the DEVELOPER and the SID, on the one hand, and the PROJECT CONTRACTOR, on the other hand, for construction of the PROJECT (such contract, together with the FINAL PLANS, hereinafter being referred to collectively as “the **CONSTRUCTION CONTRACT DOCUMENTS**”), including, without limitation, the proposed schedule of all materials and labor compensation rates that the DEVELOPER and the SID propose to pay to the PROJECT CONTRACTOR for construction of the PROJECT. The NRD shall have a period of 30 days to review the CONSTRUCTION CONTRACT DOCUMENTS 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.

15. CONTRACTOR’S INSURANCE. The CONSTRUCTION CONTRACT DOCUMENTS shall require the PROJECT CONTRACTOR to purchase, and maintain until the expiration of four years after completion of the PROJECT, 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) Comprehensive General Liability (including Premises-Operations, Independent Contractors' Protection, Products Liability and Completed Operations, Broad Form Property Damage, and Contractual Liability):
 - i) Bodily Injury: \$1,000,000.00 each occurrence, \$5,000,000.00 aggregate
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$5,000,000.00 aggregate
 - iii) Policy form for General Liability coverages shall be Comprehensive General Liability only.
 - iv) General Liability coverages shall be provided on an occurrence basis only.
 - v) Products Liability and Completed Operations coverages shall be maintained for two (2) years after final payment.
 - vi) Broad Form Property Damage coverage shall include completed operations coverage.
- c) Contractual Liability:
 - i) Bodily Injury: \$1,000,000.00 each occurrence, \$5,000,000.00 aggregate
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$5,000,000.00 aggregate
- d) Personal Liability: (Employment Exclusion deleted) \$5,000,000.00 aggregate
- e) Business Auto Liability (including owned, non-owned and hired vehicles):
 - i) Bodily Injury: \$1,000,000.00 per person, \$5,000,000.00 per accident
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$5,000,000.00 aggregate
- f) General Provisions: (i) Limits may be covered with a combination of primary and excess policies. (ii) All policies shall be endorsed to have any annual aggregate apply on a per-project basis, and to provide for 30-days written notice to the SID, the DEVELOPER and the NRD prior to termination or change in the coverage provided. (iii) The SID, the DEVELOPER and the NRD reserve the right to approve the ENGINEERS' insurers."

The CONSTRUCTION CONTRACT DOCUMENTS shall require that, prior to commencement of the work, the PROJECT CONTRACTOR shall submit certificates in form acceptable to the DEVELOPER, the SID and the NRD evidencing such insurance.

16. PROJECT CONTRACTOR'S BONDS. The CONSTRUCTION CONTRACT DOCUMENTS shall require the PROJECT CONTRACTOR to purchase and maintain, during performance of the work, labor and material payment bonds and performance bonds, in the amount of the contract price, naming the DEVELOPER, the SID and the NRD as secured parties.

17. CONSTRUCTION OF PROJECT. Within 30 days after the NRD'S approval of the CONSTRUCTION CONTRACT DOCUMENTS, or at such other time as the PARTIES agree in writing, the DEVELOPER and the SID will sign the CONSTRUCTION CONTRACT DOCUMENTS for construction of the PROJECT. The PROJECT shall be constructed by the DEVELOPER and the SID, at the unreimbursed cost and expense of the DEVELOPER and the SID, and in conformance with the CONSTRUCTION CONTRACT DOCUMENTS. Construction of the PROJECT shall be completed on or before December 31, 2004.

18. CONSTRUCTION OBSERVATION. The DEVELOPER and the SID will provide for full-time engineering observation and administration of construction of the PROJECT at the sole cost and expense of DEVELOPER and the SID. The NRD shall be given the opportunity to fully observe such construction at all reasonable hours and contemporaneously receive from the DEVELOPER and the SID copies of all written communications between or issued by the DEVELOPER and the SID and/or the ENGINEERS and/or the PROJECT CONTRACTOR pertaining to such construction, including but not limited to statements by the ENGINEERS as to percentage of completion and substantial completion.

19. BUILT PLANS. Within 45 days after final completion of the PROJECT the DEVELOPER and the SID shall provide to the NRD “as-built” plans showing the PROJECT as completed by the PROJECT CONTRACTOR.

20. CONTRACTOR’S WARRANTIES. The DEVELOPER and the SID shall enforce all bonds and warranties given by the PROJECT CONTRACTOR and its subcontractors in the CONSTRUCTION CONTRACT DOCUMENTS.

21. PAYMENT OF PROJECT COSTS. Except as otherwise provided in THIS AGREEMENT, the DEVELOPER and the SID shall pay all the costs of design and construction of the PROJECT without reimbursement by the NRD.

22. NRD CONTRIBUTIONS. As the NRD’S sole contributions towards and sole liability for the costs of design and construction of, and permits and rights-of-way for, the PROJECT (hereinafter referred to collectively as “the **NRD CONTRIBUTION**”), the NRD shall pay to the SID:

- a) one-half (50%) of the first ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) necessarily expended by the SID for the costs of design and construction of the SEDIMENT DETENTION POND IMPROVEMENTS; and,
- b) one-half (50%) of the first FIFTY THOUSAND DOLLARS (\$50,000) necessarily expended by the SID for the costs of design and construction of the BOX CULVERT that remain unpaid after the application of any grant funds obtained for construction of the BOX CULVERT, the grantor’s apportionment of grant funds attributable to the BOX CULVERT to be conclusive as among the PARTIES.

23. PAYMENT OF THE NRD CONTRIBUTION. The NRD shall pay the NRD CONTRIBUTION forty-five (45) days after receipt of written notice from the

ENGINEERS that the PROJECT has been substantially completed in accordance with the CONSTRUCTION CONTRACT DOCUMENTS. The NRD CONTRIBUTION shall be paid without interest until due and thereafter shall be paid with interest computed from the due date at the rate determined by adding two percentage points (2.0%) to the national rate charged from time-to-time by the First National Bank of Omaha, Nebraska, or at the rate paid by the DEVELOPER and the SID for financing such costs during such delinquency period, whichever is greater.

24. PROJECT OPERATION AND MAINTENANCE. After final completion of construction of the PROJECT and the DEVELOPER'S, the SID'S and the NRD'S acceptance of the same from the PROJECT CONTRACTOR:

a) The NRD, at its sole and unreimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the CONNECTING TRAIL in such manner and at such times as the NRD in its sole discretion determines necessary, in accordance with generally accepted engineering practices.

b) The DEVELOPER, at its sole and unreimbursed cost and expense, shall monitor, operate, maintain, repair, replace and regulate the WETLANDS IMPROVEMENTS for an establishment period (expected to be from 3 to 5 years after construction), until the U. S. Army Corps of Engineers has determined in writing that wetlands have been successfully established in the WETLANDS IMPROVEMENTS EASEMENT AREA. Thereafter, the NRD, at its sole and unreimbursed cost and expense, shall permanently operate maintain, repair, replace and regulate the WETLANDS IMPROVEMENTS in such manner and at such times as the NRD in its sole discretion determines necessary, in accordance with generally accepted engineering practices.

c) The SID, at its sole and unreimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the SEDIMENT

DETENTION POND IMPROVEMENTS in accordance with generally accepted engineering practices and applicable rules and regulations of the State of Nebraska, for its designed purpose of detaining runoff and silt. The NRD shall have the permanent right to enter the EASEMENT AREA from time to time to remove accumulated silt from the SEDIMENT DETENTION POND, , if the SID shall fail or neglect to remove accumulated silt from the SEDIMENT DETENTION POND as required by THIS AGREEMENT.

d) If and when the SEDIMENT DETENTION POND becomes more than one-half (50%) full of accumulated silt, as determined by the NRD, then the SID, at its sole and unreimbursed cost and expense, shall dredge and restore the same to its as-built condition, failing which the NRD may perform such silt removal and shall have an action at law against the SID for the fair and reasonable cost of such silt removal.

e) The DEVELOPER and the SID, at their sole and unreimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the box culvert in such manner and at such times as the DEVELOPER and the SID, in their sole discretion, determine necessary and in accordance with generally accepted engineering practices.

25. INDEMNIFICATIONS. (a) The DEVELOPER and the SID shall defend, indemnify, and hold the NRD harmless from and against all costs and expenses, including attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the DEVELOPER or the SID'S negligence in the design and construction, or in the operation, maintenance, repair, replacement, or regulation, of their respective portion(s) of the PROJECT that either or both are bound by THIS AGREEMENT to perform, except such personal injuries or property damages as may be caused by the sole negligence of the NRD; and (b) The NRD shall defend, indemnify, and hold the DEVELOPER and the SID harmless from and

against all costs and expenses, including attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the NRD's operation, maintenance, repair, replacement, or regulation of the portion(s) of the PROJECT that it is bound by THIS AGREEMENT to perform, except such personal injuries or property damages as may be caused by the sole negligence of the DEVELOPER or the SID.

26. PROJECT RISK OF LOSS. After substantial completion of construction of the PROJECT, the sole risk of loss of or damage to any portion of the PROJECT shall be borne by the PARTY that, under THIS AGREEMENT, has the duty to provide operation, maintenance, repair, replacement, or regulation of such portion of the PROJECT, whether such loss or damage results from flood or other casualty whatsoever.

27. ASSIGNMENT. The DEVELOPER may not assign any of its rights or duties in THIS AGREEMENT in whole or in part to any person except with the prior written consent of the NRD and the SID; provided, however, the DEVELOPER and the SID may assign, to any financial institution providing financing for the PROJECT, their rights to receive all or part of the NRD CONTRIBUTION.

28. SUCCESSORS 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 PARTIES.

29. REVIEW OF AGREEMENT - The PARTIES each represent that they have carefully reviewed the terms and conditions of THIS AGREEMENT and are familiar with such terms and conditions and agree faithfully to comply with the same to the extent to which said terms and conditions apply to its activities, authorized and required by THIS AGREEMENT.

30. NO FEE PAID - The Developer, the SID and the NRD each covenants to the others that it has not paid, nor agreed to pay, any fee, commission, percentage, brokerage fee, gift, or any other award for making of THIS AGREEMENT.

31. NONDISCRIMINATION. 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, color, sex, age, political or religious opinions, affiliations or national origin.

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

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

34. MERGER. THIS AGREEMENT shall not be merged into any other oral or written Agreement, lease or deed of any type.

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

36. STRICT COMPLIANCE. All provisions of THIS AGREEMENT and each and every document that shall be attached shall be strictly complied with as written.

37. INVALID PROVISIONS. In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the

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

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

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

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

41. 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. In addition, if the DEVELOPER or the SID or any of their contractors fail to perform the work provided in THIS AGREEMENT with respect to constructing the PROJECT, or abandon or cease work on the PROJECT 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 DEVELOPER or the SID or any of their 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 DEVELOPER and the SID 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 DEVELOPER'S and the SID'S permits, plans and specifications, and construction and engineering contracts; and, in such event the DEVELOPER and the SID and their contractors shall not be entitled to receive any other payments until the PROJECT is completed. If the unpaid balance of the NRD contributions provided by THIS AGREEMENT exceeds the NRD's expense of completing the PROJECT, the excess shall be paid to the DEVELOPER or its contractors. If the expense exceeds the unpaid balance, then the DEVELOPER and the SID 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.

42. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall become effective upon its execution by all PARTIES, and shall be perpetual in its duration.

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

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

and notices to the DEVELOPER and/or the SID provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid addressed to:

Robert C. Doyle
Fullenkamp, Doyle & Jobeun
11440 West Center Road
Omaha, Nebraska 68144-4482

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 _____, 2003

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

THIS AGREEMENT is executed by SANITARY AND IMPROVEMENT DISTRICT NO. 249 OF SARPY COUNTY, NEBRASKA on this ____ day of _____, 2003

**SANITARY AND IMPROVEMENT DISTRICT
NO. 249 OF SARPY COUNTY, NEBRASKA**

By _____
Chairperson, Board of Trustees

Attest:

Clerk

THIS AGREEMENT is executed by BOYER YOUNG DEVELOPMENT COMPANY, on this ____ day of _____, 2003.

BOYER YOUNG DEVELOPMENT COMPANY

By _____
TIMOTHY J. YOUNG, President

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this ____ day of _____, 2003, before me, a Notary Public, personally came STEVEN G. OLTMANS, General Manager of the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and 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 _____, 2003, before me, a Notary Public, personally came _____, Chairperson, Board of Trustees of **SANITARY AND IMPROVEMENT DISTRICT NO. 249 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 _____, 2003, before me, a Notary Public, personally came **TIMOTHY J. YOUNG**, President of **BOYER YOUNG DEVELOPMENT 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 corporation.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

REGISTER OF DEEDS USE

PERMANENT EASEMENT

WHEREAS, the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “**the NRD**”), **SANITARY AND IMPROVEMENT DISTRICT NO. 249 of SARPY COUNTY, NEBRASKA** (hereinafter referred to as “**the SID**”) and **BOYER YOUNG DEVELOPMENT COMPANY**, a Nebraska corporation (hereinafter referred to as “**the DEVELOPER**”) are entering into an Agreement (hereinafter referred to as “**the PROJECT AGREEMENT**”) pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 to 13-827 R.R.S. 1997, et. seq., providing, *inter alia*, for the construction, operation, maintenance, repair, replacement and regulation of a sediment detention pond (hereinafter referred to as “**the SEDIMENT DETENTION POND**”) on a parcel of land (hereinafter referred to as “**the EASEMENT AREA**”) in Sarpy County, Nebraska, the legal description of the EASEMENT AREA being attached hereto as Exhibit “1” and incorporated herein by reference.

PURSUANT TO THE PROJECT AGREEMENT and for valuable consideration in hand paid, the DEVELOPER and the SID (hereinafter referred to collectively as “the

GRANTOR”) hereby grant to the NRD and its successors and assigns, and their officers, agents, employees and contractors, a permanent easement (hereinafter referred to as “the **EASEMENT**”) in, on, under, over and across the EASEMENT AREA.

PURSUANT TO THE EASEMENT, the NRD shall have the permanent right to use the SEDIMENT DETENTION POND constructed in the EASEMENT AREA for its designed purpose of detaining runoff and silt; and if the SID fail or neglect to remove detained, accumulated silt from the SEDIMENT DETENTION POND, the NRD also shall have the permanent right to enter the EASEMENT AREA from time to time to remove such detained, accumulated silt from the SEDIMENT DETENTION POND; provided, however, the SID otherwise shall have the reserved right to use the EASEMENT AREA for any purposes which do not conflict with such designed purpose and herein granted rights, and which do not constitute filling or siltation, or accelerate filling or siltation, of the SEDIMENT DETENTION POND.

Additional Provisions

The EASEMENT shall be subject to the following additional provisions, to-wit:

A. The consideration recited herein shall constitute payment in full for any and all damages sustained by the GRANTOR or its successors and assigns by reason of the NRD’S exercise of any of the rights or privileges herein expressly granted or reasonably implied.

B. The GRANTOR waives compliance with the notice and other provisions of the Uniform Procedure for Acquiring Private Property for Public Use (Sec. 25-2501, R.R.S. 1943, et seq.)

C. The GRANTOR, for itself and for its successors and assigns, covenants and agrees that the GRANTOR is the owner of the EASEMENT AREA and that it has good right to grant THE EASEMENT over the same; that the EASEMENT AREA is free and clear of all liens and encumbrances except easements of record; and, that it will warrant and

defend the NRD'S title to the EASEMENT against the lawful claims and demands of all persons whomsoever.

Dated as of this _____ day of _____ 2003

**SANITARY AND IMPROVEMENT DISTRICT
NO. 249 OF SARPY COUNTY, NEBRASKA**

By _____
Chairperson, Board of Trustees

Attest:

Clerk

BOYER YOUNG DEVELOPMENT COMPANY

By _____
TIMOTHY J. YOUNG, President

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, a Notary Public, personally came _____, Chairperson, Board of Trustees of **SANITARY AND IMPROVEMENT DISTRICT NO. 249 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

REGISTER OF DEEDS USE

TEMPORARY EASEMENTS

WHEREAS, the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “**the NRD**”), **SANITARY AND IMPROVEMENT DISTRICT NO. 249 of SARPY COUNTY, NEBRASKA** (hereinafter referred to as “**the SID**”) and **BOYER YOUNG DEVELOPMENT COMPANY**, a Nebraska corporation (hereinafter referred to as “**the DEVELOPER**”) are entering into an Agreement (hereinafter referred to as “**the PROJECT AGREEMENT**”) pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 to 13-827 R.R.S. 1997, et. seq., providing, *inter alia*, for the construction, operation, maintenance, repair, replacement and regulation of (a) a bicycle and pedestrian trail (hereinafter referred to as “**the CONNECTING TRAIL**”) on a parcel of land (hereinafter referred to as “**the TRAIL EASEMENT AREA**”) in Sarpy County, Nebraska, the legal description of the TRAIL EASEMENT AREA being attached hereto as Exhibit “2” and incorporated herein by reference; and, (b) construction of wetlands (hereinafter referred to as “**the WETLANDS IMPROVEMENTS**”) on a parcel of land (hereinafter referred to as “**the WETLANDS EASEMENT AREA**”) in Sarpy County, Nebraska, the legal

description of the WETLANDS EASEMENT AREA being attached hereto as Exhibit “3” and incorporated herein by reference.

PURSUANT TO THE PROJECT AGREEMENT and for valuable consideration in hand paid, the NRD hereby grants to the DEVELOPER and the SID (hereinafter referred to collectively as “the **GRANTEES**”) and their successors and assigns, and their officers, agents, employees and contractors, temporary easements (hereinafter referred to as “the **EASEMENTS**”) in, on, under, over and across the TRAIL EASEMENT AREA and the WETLANDS EASEMENT AREA.

PURSUANT TO THE EASEMENTS, the GRANTEES shall have the temporary right to enter and use the TRAIL EASEMENT AREA for the purpose of constructing a bicycle and pedestrian trail and the GRANTEES shall have the temporary right to enter and use the WETLANDS EASEMENT AREA to construct, monitor, operate, maintain, repair, replace and regulate the WETLANDS IMPROVEMENTS for an establishment period (expected to be from 3 to 5 years after construction), until the U. S. Army Corps of Engineers has determined in writing that wetlands have been successfully established in the WETLANDS IMPROVEMENTS EASEMENT AREA, all at the GRANTEES’ own cost and expense, provided, however, the NRD shall have the reserved right to use the TRAIL EASEMENT AREA and the WETLANDS EASEMENT AREA for any purposes which do not conflict with such expressed purposes.

Additional Provisions

The EASEMENTS shall be subject to the following additional provisions, to-wit:

A. The consideration recited herein shall constitute payment in full for any and all damages sustained by the NRD or its successors and assigns by reason of the GRANTEES’ exercise of any of the rights or privileges herein expressly granted or reasonably implied.

B. The NRD, for itself and for its successors and assigns, covenants and agrees that the NRD is the owner of the TRAIL EASEMENT AREA and the WETLANDS EASEMENT AREA and that it has good right to grant THE EASEMENTS over the same; that the TRAIL EASEMENT AREA and the WETLANDS EASEMENT AREA are free and clear of all liens and encumbrances except easements of record; and, that it will warrant and defend the NRD'S title to the EASEMENTS against the lawful claims and demands of all persons whomsoever.

Dated as of this _____ day of _____ 2003

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, a Notary Public, personally came STEVEN G. OLTMANS, General Manager of the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and 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

Memo – (Original)

To: Programs, Projects, and Operations Subcommittee

Subject: Savanna Shores/Walnut Creek Project

Date: October 29, 2003

From: Gerry Bowen

The subcommittee was briefed about this project at the September 9, 2003 meeting. The attached agreement is presented for your consideration.

Boyer Young Development (BYD) proposes to develop a 60 acre area southwest of 96th Street & Schramm Road, immediately south of Walnut Creek Recreation Area (see attached map). The development surrounds a portion of the recreation area south of Schramm Road acquired as part of the flood pool of the reservoir, and currently used as a wildlife management area. The development also includes a pond that was included in the Walnut Creek Watershed Water Quality Plan as a potential site for a permanent sediment storage structure.

According to the agreement, BYD or the SID will accomplish the following:

1. BYD will rehabilitate the sediment pond to provide 25 years of sediment storage and meet the state design standards. They estimate the cost of the renovation to be \$150,000. The agreement calls for the District to pay 50% of these costs, up to a maximum of \$75,000.
2. BYD will design and build a trail from this development which will connect to the existing trail in the Walnut Creek Recreation Area north of Schramm Road. To complete this connection to the trail in Walnut Creek, it will require a box culvert under Schramm Road. The agreement grants an easement from the District to the developer to construct the trail, plus commits the District to cost share up to \$25,000 on the culvert.
3. As a part of the development, BYD will have to mitigate some wetlands (3.0 acres). The agreement grants an easement on District land south of Schramm Road to mitigate these wetlands. In addition, the developer needs to monitor the wetlands as long as required in the mitigation plan (normally 3-5 years) approved by the Corps of Engineers.
4. BYD or the SID will remove all accumulated sediments from the basin in the future.

In addition to the easements and cost share mentioned above, the agreement calls for the District to perform the following duties.

1. Maintain the wetlands after the Corps-mandated monitoring period expires.
2. Maintain the improved sediment basin structure.
3. Maintain the trail on District property.

It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute an interlocal agreement with Boyer Young Development Company and Sarpy County SID #249 for the Savanna Shores/Walnut Creek Project providing for a maximum District cost share of \$100,000 for trail, wetland and sediment basin improvements.

INTERLOCAL COOPERATION ACT AGREEMENT
AMONG
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT,
SANITARY AND IMPROVEMENT DISTRICT NO. 249 OF SARPY COUNTY,
NEBRASKA,
AND
BOYER YOUNG DEVELOPMENT COMPANY
FOR

SAVANNA SHORES/WALNUT CREEK PROJECT

THIS AGREEMENT (hereinafter referred to as “**THIS AGREEMENT**”) is made pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 to 13-827 R.R.S. 1997, et. seq., by and among the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “**the NRD**”); **SANITARY AND IMPROVEMENT DISTRICT NO. 249 of SARPY COUNTY, NEBRASKA** (hereinafter referred to as “**the SID**”); and, **BOYER YOUNG DEVELOPMENT COMPANY**, a Nebraska corporation (hereinafter referred to as “**the DEVELOPER**”).

The NRD, the SID and the DEVELOPER are hereinafter referred to individually as a “**PARTY**” and collectively as “**the PARTIES.**”

WITNESSETH:

WHEREAS, the NRD and the SID are governmental bodies organized under the laws of the State of Nebraska; and,

WHEREAS, the Walnut Creek Lake and Recreation Area, a flood control reservoir and recreational development (hereinafter referred to collectively as

“**WALNUT CREEK**”), formerly known as Corps of Engineers’ Papillion Creek and Tributaries Lakes Project Dam Site No. 21, located in Sarpy County, Nebraska, was developed and is administered by the NRD pursuant to an agreement with the City of Papillion, Nebraska; and,

WHEREAS, WALNUT CREEK facilities include, among other things, a reservoir and a public recreational bicycle and pedestrian trail; and,

WHEREAS, the Savanna Shores real estate subdivision development (hereinafter referred to as “**the SUBDIVISION**”) is a private development proposed by the DEVELOPER for a 60 acre site immediately south of and adjacent to WALNUT CREEK, more particularly described in the legal description attached hereto as Exhibit “A” and incorporated herein by reference; and,

WHEREAS, the SID is responsible for construction, operation and maintenance of public improvements in the SUBDIVISION; and,

WHEREAS, the SUBDIVISION includes an existing pond (hereinafter referred to as “**the SEDIMENT DETENTION POND**”) that presently operates as a sediment detention facility assisting in maintaining the water quality of the WALNUT CREEK reservoir; and,

WHEREAS, the DEVELOPER has proposed the following as the components of a cooperative project (hereinafter referred to as “**the PROJECT**”) by and among the DEVELOPER, the SID and the NRD:

a) Construction of a public recreational bicycle and pedestrian trail (hereinafter referred to as “**the CONNECTING TRAIL**”) on the NRD’s WALNUT CREEK land, to connect the existing public recreational bicycle and pedestrian trail in WALNUT CREEK with a public recreational bicycle and pedestrian trail to be designed and constructed by the SID in the SUBDIVISION; and,

b) Enlargement and improvement of the existing **SEDIMENT DETENTION POND** in the **SUBDIVISION** (hereinafter referred to as “the **SEDIMENT DETENTION POND IMPROVEMENTS**”) to enable it to accommodate tributary runoff into the **WALNUT CREEK** reservoir, consisting of reworking of the dam structure and upgrading the principal spillway from the existing corrugated metal piping to concrete piping, increasing its capacity to enable it to handle a 100-year storm event and to provide approximately 25 years of sediment storage, such enlargement and improvement to be designed and constructed by the **SID**; and,

c) Construction of new wetlands on approximately 3.0 acres of the **NRD’S WALNUT CREEK** land (hereinafter referred to as “the **WETLANDS IMPROVEMENTS**”) to mitigate the loss of approximately 1.0 acre of wetlands that will be destroyed by the **DEVELOPER** and the **SID** during the development of the **SUBDIVISION**, such new wetlands to be designed and constructed by the **DEVELOPER**; and,

d) Construction of a box culvert (hereinafter referred to as “the **BOX CULVERT**”) to allow public bicycle and pedestrian passage under Schram Road and connecting the two portions of the **CONNECTING TRAIL**, such **BOX CULVERT** to be designed and constructed by the **SID**; and,

WHEREAS, the **DEVELOPER** has proposed that the **NRD** contribute to the **SID** a one-time lump sum payment as the **NRD’s** share of the cost of the design and construction of the **PROJECT**; and,

WHEREAS, the **PARTIES** desire to set forth the terms of their agreement for the design, construction, operation, maintenance, repair, replacement, regulation and ownership of the **PROJECT**; and,

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals and their mutual covenants, the PARTIES hereby agree as follows:

1. **PURPOSE.** The purpose of THIS AGREEMENT is to set forth the terms under which the PROJECT and its components will be designed, constructed, operated, maintained, repaired replaced, regulated and owned, and to specify the rights, duties and obligations of the PARTIES in connection therewith.

2. **DUTIES OF THE PARTIES.** The PROJECT will be undertaken without any separate entity being created, and, the duties and responsibilities of the PARTIES with respect thereto shall be as defined by THIS AGREEMENT.

3. **ESTABLISHMENT OF PROJECT.** The parties do hereby establish the PROJECT and hereby find that the PROJECT will be of general benefit to the NRD, with only an incidental special benefit.

4. **THE ENGINEERS.** On or before _____, 20 ____, the DEVELOPER and the SID shall retain, and subsequently fully compensate at their own expense, engineering consultants (hereinafter referred to as “**the ENGINEERS**”), approved in writing by the NRD (such approval to not be withheld or delayed unreasonably), to design the PROJECT and to prepare plans and specifications and contract documents for, and administer construction of, the PROJECT.

5. **ENGINEERS INSURANCE.** The contract between the DEVELOPER and the SID on the one hand, and the ENGINEERS on the other hand (hereinafter referred to as **the ENGINEERING CONTRACT**”), shall require the ENGINEERS to purchase, and maintain until the expiration of two years after completion of the PROJECT, 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) Bodily Injury: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
- c) Comprehensive General Liability (including Premises-Operations, Independent Contractors' Protection, Products Liability and Completed Operations, Broad Form Property Damage, and Contractual Liability):
 - i) Bodily Injury: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
 - iii) Policy form for General Liability coverages shall be Comprehensive General Liability only.
 - iv) General Liability coverages shall be provided on an occurrence basis only.
- d) Contractual Liability:
 - i) Bodily Injury: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
- e) Personal Liability: (Employment Exclusion deleted) \$2,000,000.00 aggregate
- f) Business Auto Liability (including owned, non-owned and hired vehicles):
 - i) Bodily Injury: \$1,000,000.00 per person, \$2,000,000.00 per accident
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
- g) General Provisions: (i) Limits may be covered with a combination of primary and excess policies. (ii) All policies shall be endorsed to have any

annual aggregate apply on a per-project basis, and to provide for 30-days written notice to the SID, the DEVELOPER and the NRD prior to termination or change in the coverage provided. (iii) The SID, the DEVELOPER and the NRD reserve the right to approve the ENGINEERS' insurers."

The ENGINEERING CONTRACT shall further require that, prior to commencement of the work, the ENGINEERS shall submit certificates in form acceptable to the DEVELOPER, the SID and the NRD evidencing such insurance.

6. PRELIMINARY PLANS AND SPECIFICATIONS. On or before March 1, 2004, the ENGINEERS shall complete the preparation of preliminary plans and specifications (hereinafter referred to as "**the PRELIMINARY PLANS**") for the PROJECT.

7. COST ESTIMATES. The PRELIMINARY PLANS as prepared by the ENGINEERS shall include, without limitation, the ENGINEERS' itemized estimate of the cost of the PROJECT, including the costs of engineering, design, construction and construction administration, but excluding right-of-way costs.

8. APPROVAL OF PRELIMINARY PLANS. Upon the ENGINEERS' completion of the PRELIMINARY PLANS, and after approval of the same by the DEVELOPER and the SID, the PRELIMINARY PLANS shall be submitted to the NRD for its written approval, such approval to be provided to the DEVELOPER and the SID at the NRD'S separate sole cost and expense. The NRD shall have 30 days to review the PRELIMINARY PLANS and to approve or disapprove the same in writing or suggest amendments thereto. Such approval shall not be withheld or delayed unreasonably.

9. PREPARATION OF FINAL PLANS FOR PROJECT. Upon receipt by the DEVELOPER and the SID of the NRD'S written approval of the PRELIMINARY PLANS, the DEVELOPER and the SID shall direct the ENGINEERS to prepare final plans and specifications for the PROJECT (hereinafter referred to collectively as "**the**

FINAL PLANS”). The FINAL PLANS shall include, without limitation, operation and maintenance manuals for the PROJECT.

10. APPROVAL OF FINAL PLANS. Upon the ENGINEERS’ completion of the FINAL PLANS, and after approval of the same by the DEVELOPER and the SID, the FINAL PLANS shall be submitted to the NRD for its written approval, such approval to be provided to the DEVELOPER and the SID at the NRD’S separate sole cost and expense. The NRD shall have 30 days to review the FINAL PLANS and to approve or disapprove the same in writing or suggest amendments thereto. Such approval shall not be withheld or delayed unreasonably.

11. LAND TRANSFERS. At a closing to be held on _____, (hereinafter referred to as “**the CLOSING**”) and without further consideration, the NRD shall grant to the DEVELOPER and the SID a temporary easement, in the form as attached hereto and incorporated herein by reference as Exhibit “B,” or in such other form as may be determined by agreement of the PARTIES, over and across the parcels of land described in such Exhibit; and, the DEVELOPER and the SID shall grant to the NRD a permanent easement, in the form as attached hereto and incorporated herein by reference as Exhibit “C,” or in such other form as may be determined by agreement of the PARTIES, over and across the parcel of land described such Exhibit.

12. PERMITS. The DEVELOPER and the SID shall have the responsibility to obtain all permits, and all lands, easements 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 PROJECT.

13. THE PROJECT CONTRACTOR. On or before ____, 20 __, the DEVELOPER and the SID shall retain one or more general contractors (hereinafter referred to collectively as “the **PROJECT CONTRACTOR**”), approved by the NRD in writing, to construct the PROJECT. Such approval shall not be withheld or delayed unreasonably.

14. CONSTRUCTION CONTRACT DOCUMENTS. On or before _____, 20 __, the DEVELOPER and the SID shall deliver to the NRD for its approval copies of the proposed contract between the DEVELOPER and the SID, on the one hand, and the PROJECT CONTRACTOR, on the other hand, for construction of the PROJECT (such contract, together with the FINAL PLANS, hereinafter being referred to collectively as “the **CONSTRUCTION CONTRACT DOCUMENTS**”), including, without limitation, the proposed schedule of all materials and labor compensation rates that the DEVELOPER and the SID propose to pay to the PROJECT CONTRACTOR for construction of the PROJECT. The NRD shall have a period of 30 days to review the CONSTRUCTION CONTRACT DOCUMENTS 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.

15. CONTRACTOR’S INSURANCE. The CONSTRUCTION CONTRACT DOCUMENTS shall require the PROJECT CONTRACTOR to purchase, and maintain until the expiration of four years after completion of the PROJECT, 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) Comprehensive General Liability (including Premises-Operations, Independent Contractors' Protection, Products Liability and Completed Operations, Broad Form Property Damage, and Contractual Liability):
 - i) Bodily Injury: \$1,000,000.00 each occurrence, \$5,000,000.00 aggregate
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$5,000,000.00 aggregate
 - iii) Policy form for General Liability coverages shall be Comprehensive General Liability only.
 - iv) General Liability coverages shall be provided on an occurrence basis only.
 - v) Products Liability and Completed Operations coverages shall be maintained for two (2) years after final payment.
 - vi) Broad Form Property Damage coverage shall include completed operations coverage.
- c) Contractual Liability:
 - i) Bodily Injury: \$1,000,000.00 each occurrence, \$5,000,000.00 aggregate
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$5,000,000.00 aggregate
- d) Personal Liability: (Employment Exclusion deleted) \$5,000,000.00 aggregate
- e) Business Auto Liability (including owned, non-owned and hired vehicles):
 - i) Bodily Injury: \$1,000,000.00 per person, \$5,000,000.00 per accident
 - ii) Property Damage: \$1,000,000.00 each occurrence, \$5,000,000.00 aggregate
- f) General Provisions: (i) Limits may be covered with a combination of primary and excess policies. (ii) All policies shall be endorsed to have any annual aggregate apply on a per-project basis, and to provide for 30-days written notice to the SID, the DEVELOPER and the NRD prior to termination or change in the coverage provided. (iii) The SID, the DEVELOPER and the NRD reserve the right to approve the ENGINEERS' insurers."

The CONSTRUCTION CONTRACT DOCUMENTS shall require that, prior to commencement of the work, the PROJECT CONTRACTOR shall submit certificates in form acceptable to the DEVELOPER, the SID and the NRD evidencing such insurance.

16. PROJECT CONTRACTOR'S BONDS. The CONSTRUCTION CONTRACT DOCUMENTS shall require the PROJECT CONTRACTOR to purchase and maintain, during performance of the work, labor and material payment bonds and performance bonds, in the amount of the contract price, naming the DEVELOPER, the SID and the NRD as secured parties.

17. CONSTRUCTION OF PROJECT. Within 30 days after the NRD'S approval of the CONSTRUCTION CONTRACT DOCUMENTS, or at such other time as the PARTIES agree in writing, the DEVELOPER and the SID will sign the CONSTRUCTION CONTRACT DOCUMENTS for construction of the PROJECT. The PROJECT shall be constructed by the DEVELOPER and the SID, at the unreimbursed cost and expense of the DEVELOPER and the SID, and in conformance with the CONSTRUCTION CONTRACT DOCUMENTS. Construction of the PROJECT shall be completed on or before _____, 20 ____.

18. CONSTRUCTION OBSERVATION. The DEVELOPER and the SID will provide for full-time engineering observation and administration of construction of the PROJECT at the sole cost and expense of DEVELOPER and the SID. The NRD shall be given the opportunity to fully observe such construction at all reasonable hours and contemporaneously receive from the DEVELOPER and the SID copies of all written communications between or issued by the DEVELOPER and the SID and/or the ENGINEERS and/or the PROJECT CONTRACTOR pertaining to such construction, including but not limited to statements by the ENGINEERS as to percentage of completion and substantial completion.

19. CONTRACTOR'S WARRANTIES. The DEVELOPER and the SID shall provide to the NRD "as-built" plans showing the PROJECT as completed by the PROJECT CONTRACTOR.

20. CONTRACTOR'S WARRANTIES. The DEVELOPER and the SID shall enforce all bonds and warranties given by the PROJECT CONTRACTOR and its subcontractors in the CONSTRUCTION CONTRACT DOCUMENTS.

21. PAYMENT OF PROJECT COSTS. Except as otherwise provided in THIS AGREEMENT, the DEVELOPER and the SID shall pay all the costs of design and construction of the PROJECT without reimbursement by the NRD.

22. NRD CONTRIBUTIONS. As the NRD'S sole contributions towards the costs of design and construction of the PROJECT (hereinafter referred to collectively as "the **NRD CONTRIBUTION**"), the NRD shall pay:

- a) to the SID one-half (50%) of the first ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) necessarily expended by the SID for the costs of design and construction of the SEDIMENT DETENTION POND IMPROVEMENTS; and,
- b) to the Developer one-half (50%) of the first FIFTY THOUSAND DOLLARS (\$50,000) necessarily expended by the SID for the costs of design and construction of the BOX CULVERT that remain unpaid after the application of any grant funds obtained for construction of the BOX CULVERT, the grantor's apportionment of grant funds attributable to the BOX CULVERT to be conclusive as among the PARTIES.

The NRD CONTRIBUTION shall constitute the NRD's sole contribution towards, and sole liability for, the costs of design and construction of, and permits and rights-of-way for, the PROJECT.

23. PAYMENT OF THE NRD CONTRIBUTION. The NRD shall pay the NRD CONTRIBUTION forty-five (45) days after receipt of written notice from the ENGINEERS that the PROJECT has been substantially completed in accordance with the CONSTRUCTION CONTRACT DOCUMENTS. The NRD CONTRIBUTION shall be paid without interest until due and thereafter shall be paid with interest computed from the due date at the rate determined by adding two percentage points (2.0%) to the national rate charged from time-to-time by the First National Bank of Omaha, Nebraska, or at the rate paid by the DEVELOPER and the SID for financing such costs during such delinquency period, whichever is greater.

24. PROJECT OPERATION AND MAINTENANCE. After final completion of construction of the PROJECT and the DEVELOPER'S, the SID'S and the NRD'S acceptance of the same from the PROJECT CONTRACTOR:

a) The NRD, at its sole and unreimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the CONNECTING TRAIL in such manner and at such times as the NRD in its sole discretion determines necessary, in accordance with generally accepted engineering practices.

b) The DEVELOPER, at its sole and unreimbursed cost and expense, shall operate, maintain, repair, replace and regulate the WETLANDS IMPROVEMENTS for an establishment period (expected to be from 3 to 5 years after construction), until the U. S. Army Corps of Engineers has determined in writing that wetlands have been successfully established in WETLANDS IMPROVEMENTS EASEMENT AREA. Thereafter, the NRD, at its sole and unreimbursed cost and expense, shall permanently operate maintain, repair, replace and regulate the WETLANDS IMPROVEMENTS in such manner and at such times as the NRD in its sole discretion determines necessary, in accordance with generally accepted engineering practices.

c) The NRD, at its sole and unreimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the dam that impounds the SEDIMENT DETENTION POND, in such manner and at such times as the NRD in its sole discretion determines necessary and in accordance with generally accepted engineering practices, for its designed purpose of detaining runoff and silt; and, the NRD shall also have the permanent right to enter the EASEMENT AREA from time to time to remove accumulated silt from the SEDIMENT DETENTION POND, at the NRD'S own cost and expense, if the SID shall fail or neglect to remove accumulated silt from the SEDIMENT DETENTION POND as required by THIS AGREEMENT.

d) When the SEDIMENT DETENTION POND becomes more than one-half (50%) full of accumulated silt, as determined by the NRD, then the DEVELOPER and the SID, at their sole and unreimbursed cost and expense, shall dredge and restore the same to its as-built condition, failing which the NRD may perform such silt removal and shall have an action at law against the DEVELOPER and the SID for the fair and reasonable cost of such silt removal.

e) The DEVELOPER and the SID, at their sole and unreimbursed cost and expense, shall permanently operate, maintain, repair, replace and regulate the BOX CULVERT in such manner and at such times as the DEVELOPER and the SID, in their sole discretion, determine necessary and in accordance with generally accepted engineering practices.

26. INDEMNIFICATIONS. (a) The DEVELOPER and the SID shall defend, indemnify, and hold the NRD harmless from and against all costs and expenses, including attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the DEVELOPER or the SID'S negligence in the design and construction, or in the operation, maintenance, repair,

replacement, or regulation, of their respective portion(s) of the PROJECT that either or both are bound by THIS AGREEMENT to perform, except such personal injuries or property damages as may be caused by the sole negligence of the NRD; and (b) The NRD shall defend, indemnify, and hold the DEVELOPER and the SID harmless from and against all costs and expenses, including attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the NRD's operation, maintenance, repair, replacement, or regulation of the portion(s) of the PROJECT that it is bound by THIS AGREEMENT to perform, except such personal injuries or property damages as may be caused by the sole negligence of the DEVELOPER or the SID.

27. PROJECT RISK OF LOSS. After substantial completion of construction of the PROJECT, the sole risk of loss of or damage to any portion of the PROJECT shall be borne by the PARTY that, under THIS AGREEMENT, has the duty to provide operation, maintenance, repair, replacement, or regulation of such portion of the PROJECT, whether such loss or damage results from flood or other casualty whatsoever.

28. ASSIGNMENT. The DEVELOPER may not assign any of its rights or duties in THIS AGREEMENT in whole or in part to any person except with the prior written consent of the NRD and the SID; provided, however, the DEVELOPER and the SID may assign, to any financial institution providing financing for the PROJECT, their rights to receive all or part of the NRD CONTRIBUTION.

29. SUCCESSORS 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 PARTIES.

30. REVIEW OF AGREEMENT - The PARTIES each represent that they have carefully reviewed the terms and conditions of THIS AGREEMENT and are

familiar with such terms and conditions and agree faithfully to comply with the same to the extent to which said terms and conditions apply to its activities, authorized and required by THIS AGREEMENT.

31. NO FEE PAID - The Developer, the SID and the NRD each covenants to the other that it has not paid, nor agreed to pay, any fee, commission, percentage, brokerage fee, gift, or any other award for making of THIS AGREEMENT.

32. NONDISCRIMINATION. 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, color, sex, age, political or religious opinions, affiliations or national origin.

33. CAPTIONS. Captions used in THIS AGREEMENT are for convenience and are not used in the construction of THIS AGREEMENT.

34. 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.

35. MERGER. THIS AGREEMENT shall not be merged into any other oral or written Agreement, lease or deed of any type.

36. 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.

37. STRICT COMPLIANCE. All provisions of THIS AGREEMENT and each and every document that shall be attached shall be strictly complied with as written.

38. 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.

39. 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.

40. 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 deem to be necessary, expedient or proper in order to complete any and all conveyances, transfers, and assignments herein provided, and 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.

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

42. DEFAULT. If the any of the PARTIES fails to comply with any provision of THIS AGREEMENT after reasonable request for performance has been served on such party, the remaining PARTIES may seek specific performance, or may terminate THIS AGREEMENT upon written notice to the other PARTIES. In addition, if the DEVELOPER or the SID or any of their contractors fail to perform the work provided in THIS AGREEMENT with respect to constructing the PROJECT, or abandon or cease work on the PROJECT 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 DEVELOPER or the SID or any of their 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 DEVELOPER and the SID 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 DEVELOPER'S and the SID'S permits, plans and specifications, and construction and engineering contracts; and, in such event the DEVELOPER and the SID and their contractors shall not be entitled to receive any other payments until the PROJECT is completed. If the unpaid balance of the NRD contributions provided by THIS AGREEMENT exceeds the NRD's expense of completing the PROJECT, the excess shall be paid to the DEVELOPER or its contractors. If the expense exceeds the unpaid balance, then the DEVELOPER and the SID shall promptly pay the difference to the

NRD on demand. The NRD's expense of completion shall be established as the actual cost of construction plus 20% additional for overhead and supervision.

43. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall become effective upon its execution by all PARTIES, and shall be perpetual in its duration.

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

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

and notices to the DEVELOPER and the SID if sent by certified or registered mail, postage prepaid addressed to:

Robert C. Doyle
Fullenkamp, Doyle & Jobeun
11440 West Center Road
Omaha, Nebraska 68144-4482

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 _____, 2003

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

THIS AGREEMENT is executed by SANITARY AND IMPROVEMENT
DISTRICT NO. 249 OF SARPY COUNTY, NEBRASKA on this ____ day of
_____, 2003

**SANITARY AND IMPROVEMENT DISTRICT
NO. 249 OF SARPY COUNTY, NEBRASKA**

By _____
Chairperson, Board of Trustees

Attest:

Clerk

THIS AGREEMENT is executed by BOYER YOUNG DEVELOPMENT
COMPANY, on this ____ day of _____, 2003.

BOYER YOUNG DEVELOPMENT COMPANY

By _____
TIMOTHY J. YOUNG, President

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, a Notary Public, personally came STEVEN G. OLTMANS, General Manager of the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and 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 _____, 2003, before me, a Notary Public, personally came _____, Chairperson, Board of Trustees of **SANITARY AND IMPROVEMENT DISTRICT NO. 249 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 _____, 2003, before me, a Notary Public, personally came TIMOTHY J. YOUNG, President of **BOYER YOUNG DEVELOPMENT 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 corporation.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

REGISTER OF DEEDS USE

PERMANENT EASEMENT

WHEREAS, the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “**the NRD**”), **SANITARY AND IMPROVEMENT DISTRICT NO. 249** of **SARPY COUNTY, NEBRASKA** (hereinafter referred to as “**the SID**”) and **BOYER YOUNG DEVELOPMENT COMPANY**, a Nebraska corporation (hereinafter referred to as “**the DEVELOPER**”) are entering into an Agreement (hereinafter referred to as “**the PROJECT AGREEMENT**”) pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 to 13-827 R.R.S. 1997, *et. seq.*, providing, *inter alia*, for the construction, operation, maintenance, repair, replacement and regulation of a sediment detention pond (hereinafter referred to as “**the SEDIMENT DETENTION POND**”) on a parcel of land (hereinafter referred to as “**the EASEMENT AREA**”) in ___ Sarpy County, Nebraska, the legal description of the EASEMENT AREA being attached hereto as Exhibit “___” and incorporated herein by reference.

PURSUANT TO THE PROJECT AGREEMENT and for valuable consideration in hand paid, the DEVELOPER and the SID (hereinafter referred to collectively as “the

GRANTOR”) hereby grant to the NRD and its successors and assigns, and their officers, agents, employees and contractors, a permanent easement (hereinafter referred to as “the **EASEMENT**”) in, on, under, over and across the EASEMENT AREA.

PURSUANT TO THE EASEMENT, the NRD shall have the permanent right to use the SEDIMENT DETENTION POND constructed in the EASEMENT AREA for its designed purpose of detaining runoff and silt; and the NRD shall have the permanent right to enter the EASEMENT AREA from time to time to operate, maintain, repair, replace and regulate the dam that impounds the SEDIMENT DETENTION POND, including without limitation the inlet and the outlet pipes and works that comprise the principal spillway thereof. If the DEVELOPER and the SID fail or neglect to remove detained, accumulated silt from the SEDIMENT DETENTION POND in a manner or at times satisfactory to the NRD, the NRD also shall have the permanent right to enter the EASEMENT AREA from time to time to remove such detained, accumulated silt from the SEDIMENT DETENTION POND; provided, however, the DEVELOPER and the SID otherwise shall have the reserved right to use the EASEMENT AREA for any purposes which do not conflict with such designed purpose and herein granted rights, and which do not constitute filling or siltation, or accelerate filling or siltation, of the SEDIMENT DETENTION POND.

Additional Provisions

The EASEMENT shall be subject to the following additional provisions, to-wit:

A. The consideration recited herein shall constitute payment in full for any and all damages sustained by the GRANTOR or its successors and assigns by reason of the NRD’S exercise of any of the rights or privileges herein expressly granted or reasonably implied.

B. The GRANTOR waives compliance with the notice and other provisions of the Uniform Procedure for Acquiring Private Property for Public Use (Sec. 25-2501, R.R.S. 1943, et seq.)

C. The GRANTOR, for itself and for its successors and assigns, covenants and agrees that the GRANTOR is the owner of the EASEMENT AREA and that it has good right to grant THE EASEMENT over the same; that the EASEMENT AREA is free and clear of all liens and encumbrances except easements of record; and, that it will warrant and defend the NRD'S title to the EASEMENT against the lawful claims and demands of all persons whomsoever.

Dated as of this _____ day of _____ 2002

**SANITARY AND IMPROVEMENT DISTRICT
NO. 249 OF SARPY COUNTY, NEBRASKA**

By _____
Chairperson, Board of Trustees

Attest:

Clerk

BOYER YOUNG DEVELOPMENT COMPANY

By _____
TIMOTHY J. YOUNG, President

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, a Notary Public, personally came _____, Chairperson, Board of Trustees of **SANITARY AND IMPROVEMENT DISTRICT NO. 249 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 _____, 2003, before me, a Notary Public, personally came **TIMOTHY J. YOUNG**, President of **BOYER YOUNG DEVELOPMENT 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 corporation.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

REGISTER OF DEEDS USE

TEMPORARY EASEMENTS

WHEREAS, the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as “**the NRD**”), **SANITARY AND IMPROVEMENT DISTRICT NO. 249** of **SARPY COUNTY, NEBRASKA** (hereinafter referred to as “**the SID**”) and **BOYER YOUNG DEVELOPMENT COMPANY**, a Nebraska corporation (hereinafter referred to as “**the DEVELOPER**”) are entering into an Agreement (hereinafter referred to as “**the PROJECT AGREEMENT**”) pursuant to the Nebraska Interlocal Cooperation Act, Sections 13-801 to 13-827 R.R.S. 1997, *et. seq.*, providing, *inter alia*, for the construction, operation, maintenance, repair, replacement and regulation of (a) a bicycle and pedestrian trail (hereinafter referred to as “**the CONNECTING TRAIL**”) on a parcel of land (hereinafter referred to as “**the TRAIL EASEMENT AREA**”) in ____ Sarpy County, Nebraska, the legal description of the TRAIL EASEMENT AREA being attached hereto as Exhibit “__” and incorporated herein by reference; and, (b) construction of wetlands (hereinafter referred to as “**the WETLANDS IMPROVEMENTS**”) on a parcel of land (hereinafter referred to as “**the WETLANDS EASEMENT AREA**”) in ____ Sarpy County, Nebraska,

the legal description of the WETLANDS EASEMENT AREA being attached hereto as Exhibit “__” and incorporated herein by reference.

PURSUANT TO THE PROJECT AGREEMENT and for valuable consideration in hand paid, the NRD hereby grants to the DEVELOPER and the SID (hereinafter referred to collectively as “the **GRANTEES**”) and their successors and assigns, and their officers, agents, employees and contractors, temporary easements (hereinafter referred to as “the **EASEMENTS**”) in, on, under, over and across the TRAIL EASEMENT AREA and the WETLANDS EASEMENT AREA.

PURSUANT TO THE EASEMENTS, the GRANTEES shall have the temporary right to enter and use the TRAIL EASEMENT AREA for the purpose of constructing a bicycle and pedestrian trail and the GRANTEES shall have the temporary right to enter and use the WETLANDS EASEMENT AREA for the purpose of constructing wetlands improvements, all at the GRANTEES’ own cost and expense, provided, however, the NRD shall have the reserved right to use the TRAIL EASEMENT AREA and the WETLANDS EASEMENT AREA for any purposes which do not conflict with such expressed purposes.

Additional Provisions

The EASEMENTS shall be subject to the following additional provisions, to-wit:

A. The consideration recited herein shall constitute payment in full for any and all damages sustained by the NRD or its successors and assigns by reason of the GRANTEES’ exercise of any of the rights or privileges herein expressly granted or reasonably implied.

B. The NRD, for itself and for its successors and assigns, covenants and agrees that the NRD is the owner of the TRAIL EASEMENT AREA and the WETLANDS EASEMENT AREA and that it has good right to grant THE EASEMENTS over the same; that the TRAIL EASEMENT AREA and the WETLANDS EASEMENT AREA are free

and clear of all liens and encumbrances except easements of record; and, that it will warrant and defend the NRD'S title to the EASEMENTS against the lawful claims and demands of all persons whomsoever.

Dated as of this _____ day of _____ 2002

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2003, before me, a Notary Public, personally came STEVEN G. OLTMANS, General Manager of the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his/her voluntary act and deed and the voluntary act and deed of said District.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

MEMORANDUM

TO: PROGRAMS, PROJECTS AND OPERATIONS SUBCOMMITTEE

SUBJECT: Proposed OPPD Transmission Line along Little Papio Channel/Keystone Trail Project

DATE: October 27, 2003

BY: Martin P. Cleveland

The Omaha Public Power District (OPPD) has requested the District's approval to install a 345 KV overhead power transmission line on NRD right-of-way (ROW) along the Little Papio Creek. Attached is a map that shows the location of the proposed project, which would parallel the Little Papio Creek and Keystone Trail between Pine Street (Ak-Sar-Ben area) and the Union Pacific Railroad (near I-80). This project is proposed to satisfy the electric power needs of the Ak-Sar-Ben Business Campus (e.g. First Data Resources), which has reached capacity of the existing infrastructure.

Enclosed are copies of letters from the other Channel/Trail Partners (Corps of Engineers and Douglas County) and a letter from the District to OPPD requesting more information on the proposed project.

In the 1990's Douglas County transferred the Little Papio Channel Project and its ROW to the District and retained operation/maintenance responsibilities for the Keystone Trail. The Corps of Engineers built the Little Papio Channel Project in the 1960's and continues to have oversight on this Federal Project. OPPD will need to satisfy the concerns of the Corps of Engineers, Douglas County and the NRD before a permit can be granted for this project. OPPD's response to the NRD letters is also attached.

It is Management's recommendation that the Subcommittee recommend to the Board that the General Manager be directed to prepare a permit for the proposed OPPD Transmission Line on District ROW along the Little Papio Channel/Keystone Trail Project (Pine Street to the Union Pacific Railroad), for consideration by the Subcommittee at its December Meeting.

Enclosure

CC: Janelle Mavis, Corps of Engineers
Kent Holm, Douglas County

Lp89 File: 532 Reach: 7-5



PACIFIC STREET

PROPOSED
OPPD
TRANSMISSION LINE
LOCATION

PINE ST.

LITTLE PAPIO CREEK

CENTER ST

72nd St

GROVER ST

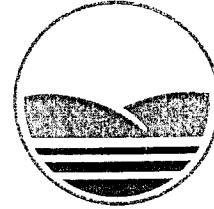
I-80

60th St



NO SCALE
10/29/2003

PAPIO-MISSOURI RIVER
NATURAL
RESOURCES
DISTRICT



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

October 23, 2003

Mr. Larry Hagan
Omaha Public Power District
ENG/ROW DEPT 6W/EP1
Omaha, NE 68102-2247

RE: Little Papio Creek Channel Project/Keystone Trail (Pine Street to UPRR)
OPPD Proposed Transmission Line

Dear Mr. Hagan:

The District has reviewed a conceptual project location plan sheet dated September 30, 2003 and typical pole structure cross-section sheet dated October 2, 2003. In addition, the District inspected the proposed pole locations, identified by stakes. The Little Papio Creek Channel is a federal project constructed by Corps of Engineers and maintained by the District. The Keystone Trail, which is located in the Channel Project ROW was built by the City of Omaha and is maintained by Douglas County Environmental Services.

Enclosed are comment letters from Corps of Engineers and Douglas County Environmental Services. Both entities would need to sign off on any projects that impact Channel and Trail. The City of Omaha may also need to provide approval for impacts on the trail. The District's comments (includes Corps and County comments) about the proposed Transmission Line are as follows:

- Additional information will be required to evaluate the pole foundation impact on channel stability. In particular, we would need to review design calculations for pole foundations, especially the lateral stresses.
- Cross-sections from the pole to the bottom of the channel for a typical pole located closest to the channel (e.g. poles #5 and #6) need to be provided for review.
- Poles located downstream of Grover Street appear to be situated in an existing drainage way that has considerable tree canopy in and over it. Additional information will be needed to evaluate if this drainage way will be blocked with poles and if trees will be removed for line clearances.
- What portions of the Keystone Trail would be used for pole construction access? There is concern that any use or crossing of the trail will damage the trail and would likely require replacement by OPPD.
- There is a segment of asphalt trail, between Mercy Road and Pine Street on the west side of the creek that is owned by College of St. Mary and as such any impacts on it would require their approval.
- Would it be possible to relocate the line alignment to the east bank (left bank looking downstream) of Little Papio Creek from Mercy Road to Grover Street (or possibly to UPRR)? This alignment would impact a shorter segment of Keystone Trail.
- Could the electromagnetic radiation (EMF) of proposed powerline be discussed as to impact on trail users?

- A number of the pole locations are close to the trail edge. Could the poles be moved to obtain a minimum of 10 ft. separation?
- The Little Papio Creek has a designated floodway, in which obstructions can not be placed without hydraulic analysis to confirm that there are no flood level impacts. Enclosed is a copy of the floodway map(FIRM).
- What is the estimated timeline for this project?
- Typically for sizable project impacts such as this the District has a permit fee, which is an unknown amount at this time. The Board of Directors will determine if a permit will be granted and the associated cost. According to District legal counsel, the District would be able to grant a permit, not an easement, as a result of not having warranted title to Little Papio Creek ROW. It would be incumbent upon OPPD to determine the state of title and obtain such other permits, easements or conveyances as OPPD deems necessary.
- The permit would likely include the following requirements: 1. Notwithstanding any prior NRD consent to an OPPD improvement's design or location, OPPD nevertheless must remove, relocate or modify any improvement that the NRD, in sole discretion, subsequently determines interferes with the operation, maintenance, repair or replacement of the Little Papio Creek Flood Control Project/Keystone Trail Project; 2. OPPD agrees to defend, indemnify and hold harmless the NRD, City of Omaha and Douglas County from and against all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for inverse condemnation, personal injuries or property damages arising out of the occupation or use by OPPD of the Little Papio Creek Flood Control Project/Keystone Trail Project right-of-ways that are the subject of this permit; including, without limitation, those claims, demands, causes of action, costs and expenses that are related to or involve electromagnetic radiation or obstruction of a drainageway; excepting, however, personal injuries or property damages caused by the sole negligence of the indemnified party.

If you have any questions, please contact me.

Sincerely,



Martin P. Cleveland, P.E.
Construction Engineer

Enclosure

CC: Janelle Mavis, Corps of Engineers
Kent Holm, Douglas County Environmental Services
Marlin Petermann, Gerry Bowen and Ron Lehman, NRD
Paul Peters, NRD Legal Counsel



DEPARTMENT OF THE ARMY
OMAHA DISTRICT, CORPS OF ENGINEERS
106 SOUTH 15TH STREET
OMAHA, NEBRASKA 68102-1618

REPLY TO
ATTENTION OF

October 2, 2003

Emergency Management (910-300)

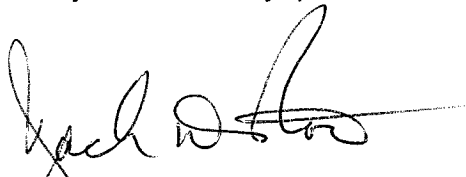
Mr. Martin Cleveland
Natural Resource District
8901 South 154th Street
Omaha, NE 68138-3621

Dear Mr. Cleveland:

We reviewed the OPPD proposed power transmission line layout between Pine Street and south of I-80 along the ^{Little} Papillion Creek Federal Flood Control Project. The Corps of Engineers requires review and approval of plans and specifications for any modification within the Federal Flood Control Project right-of-way. Therefore, after our site visit today we require review of the following information before we can make the determination if the power poles will interfere with or jeopardize the Federal Flood Control Project in any way:

- a. Design calculations for the pole foundations, in particular the lateral stresses.
- b. Cross sections from the pole to the bottom of the channel for a typical pole located closest to the channel, for example poles #5 and #6.

Feel free to contact someone from my office with any questions or concerns at (402) 221-4148.


JACK D. ROSE, P.E.
Chief Emergency Management Br

CF:
CENWO-OD-MR (Willcuts)
CENWO-ED-GB (Bertino)

[Faint, illegible handwritten notes and stamps in the bottom right corner]

Kent E. Holm, Director
Douglas County Environmental Services
3015 Menke Circle
Omaha, NE 68134
402-444-6362 402-444-4963
kholm@co.douglas.ne.us

Memo

To: Martin Cleveland, Papio-Missouri River NRD
From: Kent E. Holm, Environmental Services Director
CC: Kathleen Kelley, Chief Administrative Officer
Date: October 14, 2003
Re: Proposed OPPD Power Transmission Line along Keystone Trail

I have reviewed the locations for the proposed OPPD power transmission line between Pine Street and Interstate 80 along the Little Papio Creek and Keystone Trail and have the following comments:

1. The proposed pole locations between Mercy Road and the south end of the Chili Greens golf course will require the mobilization of equipment on the Keystone Trail. Given the size of the equipment needed to both install and maintain these power line poles, it is reasonable to assume that the concrete trail will be substantially damaged in this area. Damage to the trail in areas to the north and south of this area is also likely.
2. The Keystone Trail is a very popular recreational resource and hundreds, if not thousands, of people use the trail every day. The presence of electromagnetic radiation from the power line, directly above all these trail users, is not desirable, although there seems to be conflicting evidence in the scientific community as to the extent of the danger of this radiation.
3. Many of the proposed pole locations are very close to the Keystone Trail. All poles should be a minimum of ten (10) feet from the edge of the trail.
4. Easements and ROW requirements. What easements and/or ROW requirements will be necessary with this project?
5. What is the timeline for this project?

My recommendation is to, first, not locate the power line in this area. Second, if the power line must be located in the Little Papio corridor, then OPPD should look at routing the Mercy Road to Grover Street portion of the line to the east side of the Little Papio creek. I would ask that OPPD provide information to all stakeholders on the potential electromagnetic radiation that would be present under the proposed power line. I would also like information per my comments/questions # 4 and #5.

Please include these comments with the others that you are forwarding to OPPD and let me know if you have questions about the items I've addressed. I look forward to receiving additional information on the project.

Omaha Public Power District
ENG/ROW DEPT 6W/EP1 444 S 16th St Mall
Omaha, NE 68102
402-636-3647
Fax: 402-636-3947

fax

t r a n s m i t t a l

to: Martin Cleveland NRD

fax: 895-6543

from: Larry Hagan

date: October 2, 2003

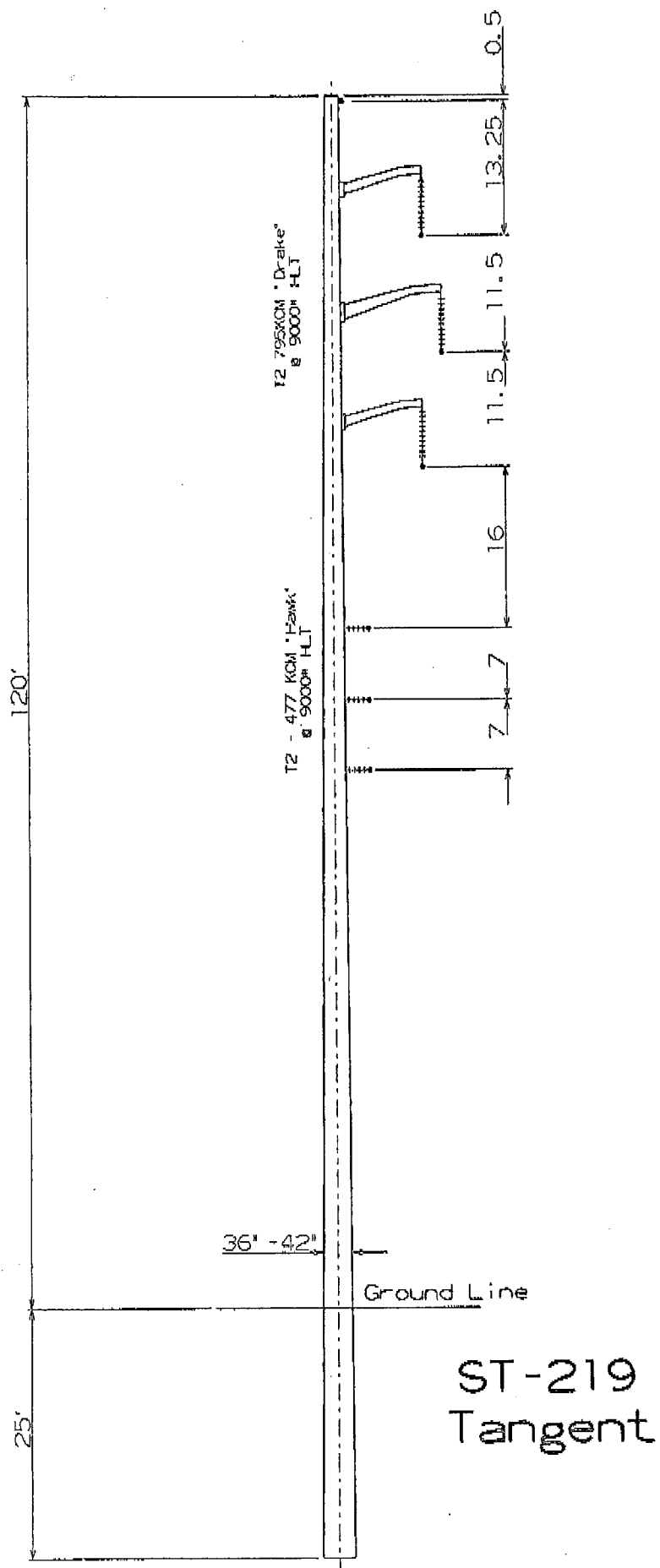
re: Transmission Line

Dear Martin,

Here is a the drawing of a typical pole that we are proposing to build along the creek near the old Aksarben property.

Any questions, please call me at 636-3647.

Larry Hagan



Paul F. Peters, P.C.
Taylor, Peters & Drews
Suite 940 Omaha Tower
2120 South 72nd Street
Omaha, NE 68124-2374
(402) 391-3712 FAX (402) 391-3714
E-mail: paul.peters@mindspring.com

To: Steven G. Oltmans, General Manager
Martin Cleveland
Papio-Missouri River Natural Resources District
8901 South 154th Street
Omaha, NE 68138-3621
Fax (402) 895-6543

Date: October 22, 2003

Subject: Proposed OPPD Transmission Line in Little Papio Creek Channel
Project/Keystone Trail (Pine Street to UPRR) ROW

You requested my immediate comments on your proposed letter to Larry Hagen, OPPD. The proposed ROW agreement is not yet drafted and available for review. My immediate comments are:

- The grant that the NRD would be able to provide to OPPD should be in the form of a permit. The state of the NRD's title to the Little Papio Creek ROW, as obtained from Douglas County, has never been verified and the NRD did not obtain warranted title to that Little Papio Creek ROW. Thus, the NRD cannot warrant to OPPD that it has title to the Little Papio Creek ROW. The proposed ROW agreement should provide that it will be incumbent upon OPPD to determine the state of title and obtain such other permits, easements or conveyances as OPPD determines necessary.

- The present agreement among the NRD, the City of Omaha, and Douglas County provides:

7. RELOCATIONS. If at any time the NRD, in its discretion, determines that it shall be necessary to temporarily remove, or temporarily or permanently relocate or modify, any Trail Project paving, landscaping, signage or other Trail Project improvements now or hereafter located within rights-of-way transferred to the NRD pursuant to this Agreement, in order to permit the NRD to properly perform operation, maintenance, repair or replacement of the Flood

Control Project, or in order to provide for the safety of the public using the trail, the NRD shall give the COUNTY written notification of such determination and make a written request that such removal(s), relocation(s) or modification(s) be performed by the COUNTY, whereupon the COUNTY shall perform such removal(s), relocation(s), and/or modification(s) within a reasonable time, at the COUNTY'S sole cost and expense.

I think that a similar provision should be included in the permit that provides that notwithstanding any prior NRD consent to an OPPD improvement's design or location, OPPD nevertheless must remove, relocate or modify any improvement that the NRD, in its sole discretion, subsequently determines interferes with operation, maintenance, repair or replacement of the Little Papio Creek Flood Control Project/Keystone Trail Project.

- I think that the permit granted to OPPD by the NRD also should provide:

____. **INDEMNIFICATION.** OPPD agrees to defend, indemnify and hold harmless the NRD, the City of Omaha and Douglas County from and against all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for inverse condemnation, personal injuries or property damages arising out of the occupation or use by OPPD of the Little Papio Creek Flood Control Project/Keystone Trail Project rights-of-way that are the subject of this permit; including, without limitation, those claims, demands, causes of action, costs and expenses that are related to or involve electromagnetic radiation or obstruction of a drainageway; excepting, however, personal injuries or property damages caused by the sole negligence of the indemnified party.



444 South 16th Street Mall
Omaha NE 68102-2247

October 30, 2003

Martin Cleveland, P.E.
Papio -Missouri River Natural Resource District
8901 S. 154th Street
Omaha, NE 68138

Subject: Proposed OPPD Transmission Line, Little Papio Creek (Pine Street to UPRR)

Dear Mr. Cleveland:

In Response to your correspondence dated October 23, 2003 the Omaha Public Power District would like to submit the following information for the NRD review.

Item #1

"Additional information will be required to evaluate the pole foundations, especially the lateral stresses."

OPPD Response:

This project is still in the routing study stages, structures and foundations have not been designed. I have calculated unfactored foundation loadings for a typical tangent structure foundation. Please refer to the attachment showing the foundation analysis which details the lateral pressures on the soil. If this route is selected, actual foundation analysis can be provided for each structure location.

Item #2

"Cross-sections from the pole to the bottom of the channel for a typical pole located closest to the channel (e.g. poles #5 and #6) need to be provided."

OPPD Response:

Cross sections for poles 5 & 6 have been provided and are attached.

Item #3

"Poles located down stream of Grover Street appear to be situated in an existing drainage way that has considerable tree canopy in and over it. Additional information will be needed to evaluate if this drainage way will be blocked with poles and if trees will be removed for line clearance."

OPPD Response:

The structures are located on the east edge of the drainage way near the UPRR. Significant tree trimming and removal will be necessary to route the transmission line through this area. Any additional information required by the Papio Missouri River NRD will be supplied upon request.

Item #4

"What portions of the Keystone Trail would be used for pole construction access? There is concern that any use or crossing of the trail will damage the trail and would likely require replacement by OPPD."

OPPD Response:

The trail will be used for access from the UPRR north to Grover Street. From Grover Street north to the creek crossing either the trail or the drive west of the fence will be used for access. From the deadend corner by MUD to Pine Street the trail will be used for access. OPPD will repair or pay the Missouri River Papio NRD to repair any damage to the property caused as a result of construction.

Item #5

"There is a segment of asphalt trail, between Mercy Road and Pine Street on the westside of the creek that is owned by College of St. Mary and as such any impacts on it would require their approval."

OPPD Response:

OPPD recognizes that the area where the proposed transmission line is spotted between Mercy Road and Pine Street is not owned by the NRD. If this route is found to be feasible and cost effective, the land owners will be consulted.

Item #6

"Would it be possible to relocate the Line alignment to the east bank (left bank looking downstream) of Little Papio Creek from Mercy Road to Grover Street (or possibly to UPRR)? This alignment would impact a shorter segment of Keystone Trail."

OPPD response:

The line was routed on the west bank of the Creek because it is our goal to keep the line as far away from residential property as possible. The mobile home park on the east side of the creek between Grover Street and I-80 will keep the line on the west side in that

area. The line alignment was kept on the west side through the whole line section to reduce the number of large angle structures. If required to build on the east side of the creek, OPPD would evaluate the cost associated with the additional angle structures and include this cost in the feasibility study.

Item #7

“Could the electromagnetic radiation (EMF) of proposed powerline be discussed as to impact on trail users?”

OPPD Response:

Electric and Magnetic Fields (EMFs) are present every where electricity is present. These fields are found in our homes, at work or on the street. Appliances in a persons home can produce larger EMFs than that which is found under power lines. Hundreds of studies have been completed with the results of which are conflicting and hard to interpret. Two informational booklets have been included which deal with this subject. Presently Papio trails have been built under several miles of transmission line throughout the Omaha area. No problems or concerns have arisen up to this point. If estimated EMF magnitudes which will occur under this proposed line are required, OPPD can calculate these estimated values for your review.

Item #8

“A number of the pole locations are close to the trail edge. Could the poles be moved to obtain a minimum of 10' separation?”

OPPD Response:

In most cases the pole alignment is 10' or more away from the path. We dropped down to 8.5' away to stay clear of a drainage way and effect less trees from UPRR to Grover Street.

Item #9

“The Little Papio Creek has a designated floodway, in which obstructions can not be placed without hydraulic analysis to confirm that there are no flood level impacts. Enclosed is a copy of the floodway map.”

OPPD Response:

It is apparent all of the proposed structures would fall in either ZONE X or ZONE AE and that a hydraulic analysis would need to be performed. If this route is chosen all necessary information will be provide for your analysis.

Item #10

What is the estimated timeline for this project?

OPPD Response:

This Line is part of a larger project which will not begin before August 04' and will be complete by June 05'. The anticipated start date for this section is 03/28/05 with projected finish as 05/26/05

Item #11

"Typically for sizable project impacts such as this the District has a permit fee, which is an unknown amount at this time. The Board of Directors will determine if a permit will be granted and the associated cost. According to District legal counsel, the District would be able to grant a permit, not an easement, as a result of not having warranted title to Little Papio Creek ROW. It would be incumbent upon OPPD to determine the state of title and obtain such other permits, easements or conveyances as OPPD deems necessary."

OPPD Response:

OPPD understands and agrees that compensation for occupying the NRD property is appropriate. How much that is will most likely be determined by whether we are granted a license or an easement. The fact that you cannot warrant title to the property in regard to an easement is not that important to OPPD. We feel that any imperfections in title that may arise in the future can be remedied by our ability to condemn, which we are prepared to do if necessary. Consequently, we feel that an easement is the proper document that should be executed in this matter.

Item #12

"The permit would likely include the following requirements: 1. Notwithstanding any prior NRD consent to an OPPD improvement's design or location, OPPD nevertheless must remove, relocate or modify any improvement that the NRD, in sole discretion, subsequently determines interferes with the operation, maintenance, repair or replacement of the Little Papio Creek Flood Control Project/Keystone Trail Project; 2. OPPD agrees to defend, indemnify and hold harmless the NRD, City of Omaha and Douglas County from and against all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for inverse condemnation, personal injuries or property damages arising out of the occupation or use by OPPD of the Little Papio Creek Flood Control Project Keystone Trail Project right-of-ways that are the subject of this permit; including, without limitation, those claims, demands, causes of action, costs and expenses that are related to or involve electromagnetic radiation or obstruction of a drainageway; excepting, however, personal injuries or property damages caused by the sole negligence of the indemnified party."


OPPD response:

OPPD will be going to great expense in constructing this line. It is our intent to place this line where the impact from the line will be minimized for all involved. As you can most certainly understand, once these poles are placed, we will not want to move them due to the cost and potential property damages that will ensue. We understand that things may change in the future and that maybe relocations may be necessary, however we would

certainly feel more comfortable with a permanent easement where we can't be forced to move without reasonable cause. Requirement 2 would be agreeable to OPPD.

If you have any further questions please contact me at (402) 636-3314.

Sincerely,

A handwritten signature in cursive script that reads "David P. Insinger".

David P. Insinger, P.E.
Transmission Design Engineer

Enclosures

cc: L. K. Troutman
L. J. Hagan

□

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***** High Eccentricity Moment Analysis and Design *****
*
*
*                      FAD Version 3.0                      *
*
*****

```

Title : TYPICAL SOIL
 By : INSINGER
 Comments :
 Date : 2003-10-2

I N P U T D A T A

-- Run Options --

Output Units.....: ENGLISH
 Solution Type.....: ANALYSIS
 Foundation Type.....: DRILLED SHAFT
 Side Shear Moment Spring....: ON
 Base Shear Spring.....: ON
 Base Moment Spring.....: ON
 Convergence Criterion.....: .001

-- Soil Parameters --

Layer No.	Layer Type	Depth to Bottom [ft]	Unit Weight [pcf]	Pressuremeter Deformation Modulus [ksi]	Friction Angle [deg]	Cohesion [ksf]	Strength Reduction Factor
1	SOIL	3.5	120.	.6000	.1	.500	1.00
2	SOIL	100.0	120.	.6000	.1	.750	.75

-- Shaft Parameters --

Diameter.....: 4.00 [ft]
 Embedment.....: 25.00 [ft]
 Stick-Up above Ground Level....: .00 [ft]
 Modulus of Elasticity * Moment of Inertia [EI]....: .470E+09 [kips-in^2]
 Depth to Water.....: 40.00 [ft]

-- Load Parameters --

LOAD CASE NUMBER: 1
 LOAD CASE NAME : No OL
 LATERAL LOAD : 4.0 [kips]
 MOMENT : 398.0 [kips-ft]
 AXIAL LOAD : 25.4 [kips]

□

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***** High Eccentricity Moment Analysis and Design *****
*
*
*                      FAD Version 3.0                      *
*
*****

```

Title : TYPICAL SOIL
 By : INSINGER
 Comments :
 Date : 2003-10-2

A N A L Y S I S R E S U L T S

-- Calculated Eccentricity == Applied Loads at Top of Shaft

LOAD CASE NUMBER: 1
 LOAD CASE NAME : No OL
 LATERAL LOAD : 4.0 [kips]
 MOMENT : 398.0 [kips-ft]
 ECCENTRICITY : 99.5 [ft]

-- Ultimate CAPACITY for above Eccentricity ==

Lateral [kips].....: 23.4 Moment [kips-ft].....: 2333.2

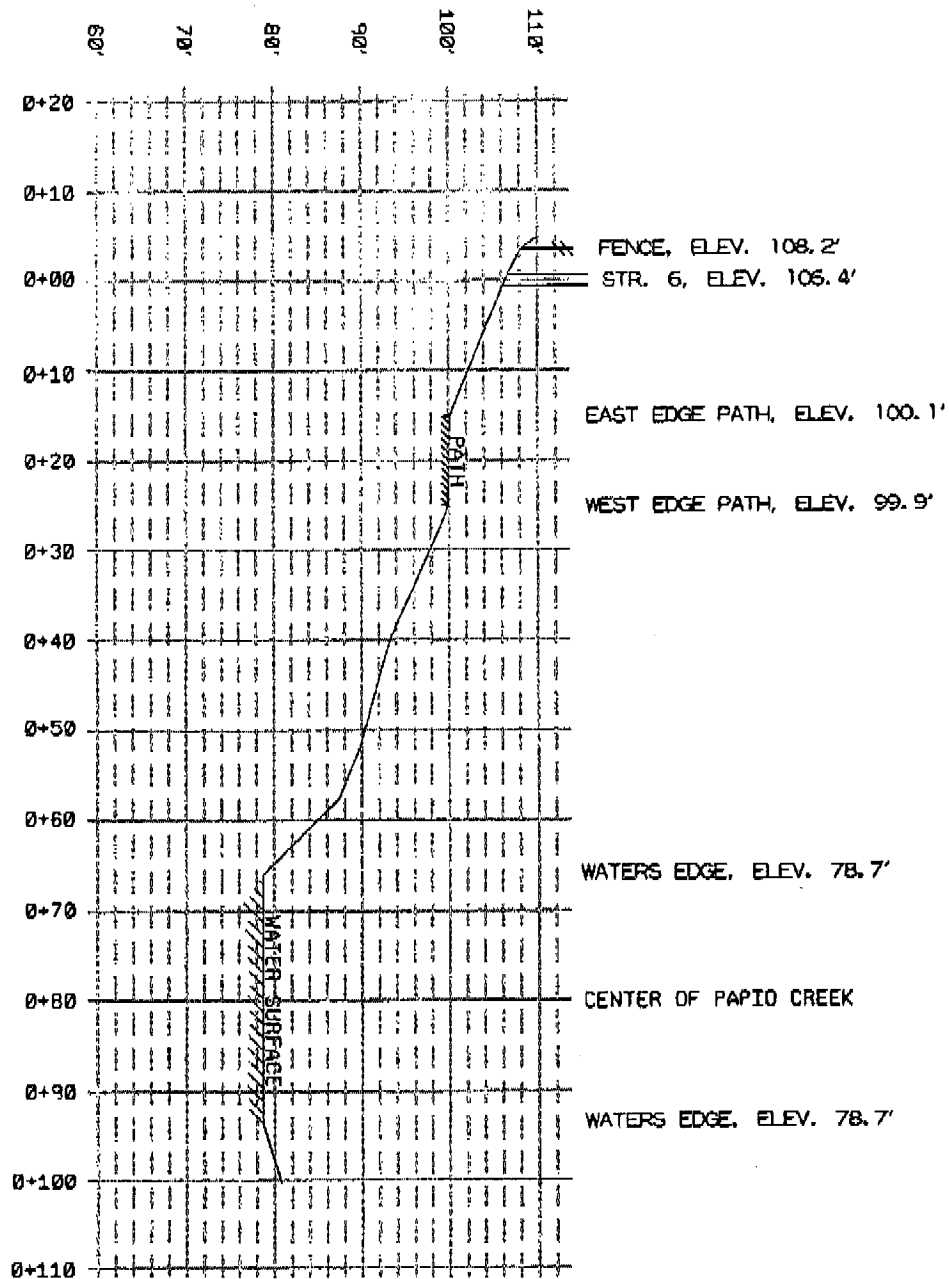
-- Reactions for above Analysis Load Case ==


Elev [ft]	Defl [in]	Rotation [deg]	Internal		Soil		
			Shear [kips]	Moment [kips-ft]	Lateral Pressure [ksf]	Side Shear [kips-ft/ft^2]	
.0	.1338	.0926	4.0	398.0	-.882	-.307	
-- Maximum Moment Location ==							
-.9	.1137	.0865	1.0	399.1	-.813	-.287	
-1.8	.1021	.0804	-1.8	397.8	-.824	-.267	
-3.5	.0748	.0683	-7.5	387.9	-.752	-.226	
-3.5	-- Layer Interface ==					-.992	-.226
-5.5	.0496	.0553	-14.5	364.5	-.828	-.184	
-7.4	.0294	.0434	-20.4	328.9	-.664	-.144	
-9.4	.0138	.0328	-24.8	283.4	-.469	-.109	
-11.3	.0023	.0240	-27.0	231.5	-.194	-.080	
-- Maximum Shear Location ==							
-11.7	.0000	.0223	-27.1	220.1	.000	-.074	
-13.3	-.0060	.0170	-26.4	178.4	.321	-.056	
-15.2	-.0119	.0117	-23.9	128.6	.456	-.039	
-17.2	-.0159	.0081	-20.1	85.3	.532	-.027	
-19.1	-.0186	.0058	-15.7	50.1	.582	-.019	
-21.1	-.0207	.0045	-11.0	23.8	.618	-.015	
-23.0	-.0225	.0040	-6.0	7.0	.648	-.013	
-25.0	-.0241	.0039	-.9	.1	.673	-.013	

-- Load Deflection ==

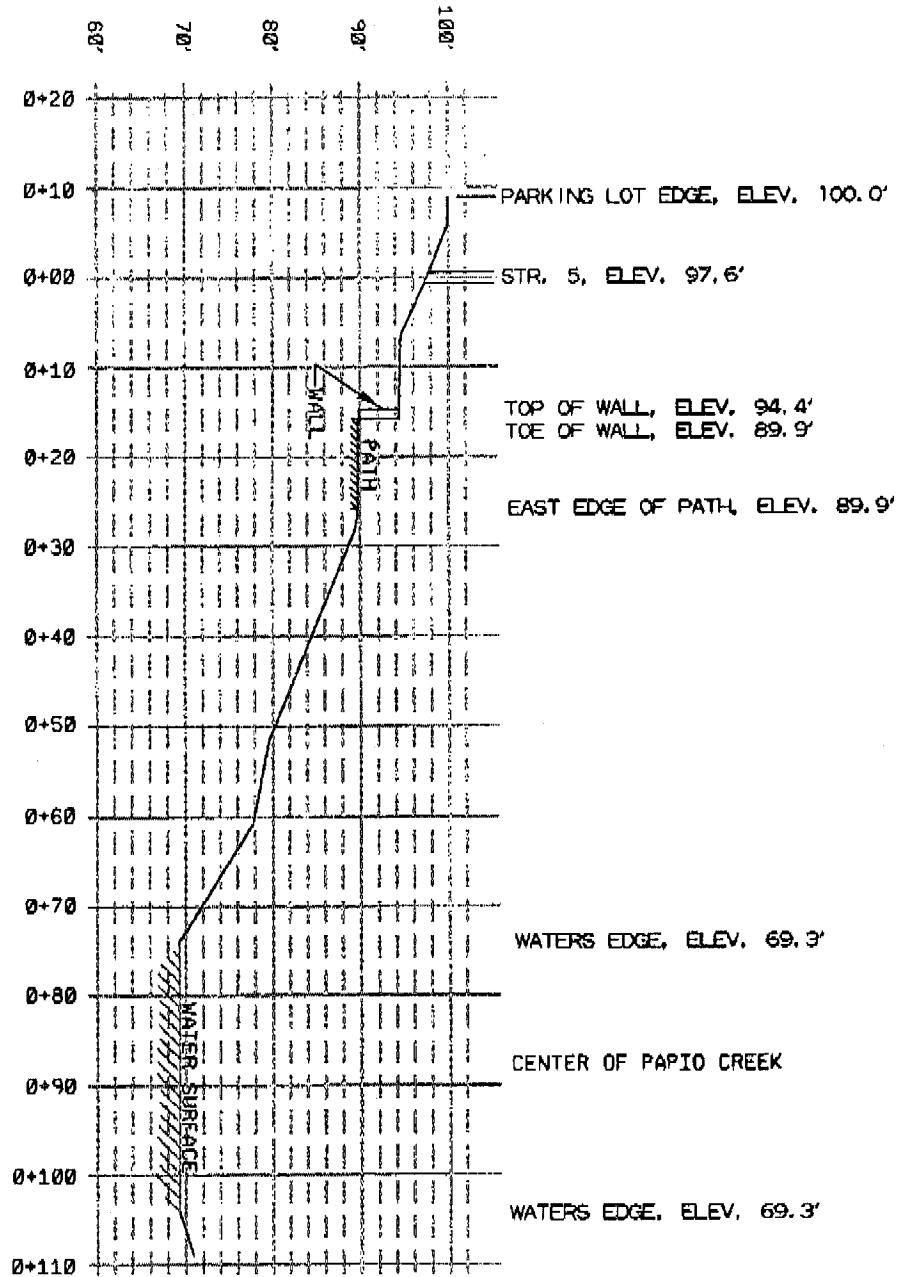
Lateral [kips]	Moment [kips-ft]	Total		Non-Recoverable	
		Deflection [in]	Rotation [deg]	Deflection [in]	Rotation [deg]
1.0	99.5	.022	.019		
2.0	199.0	.052	.041		
3.0	298.5	.089	.066		
4.0	398.0	.134	.093	.005	.002

REFERENCE POLE 6



REV.	BY	DATE	ENG	SCALE	1" =		161 KV TRANSMISSION LINE REFERENCE POLE 6
				DRAFT	10-30-03	<i>DSK</i>	
				CHECK			
				PROJ. ENG	D. INSINGER		
CAD NO	F./SERIALS, DEN	APPD.					LINE 158 CKT. W.O.150770 01
		DEPT.	TRANSMISSION				
 OMAHA PUBLIC POWER DISTRICT							SKA-10-30-01T

REFERENCE POLE 5



REV.	BY	DATE	ENG	SCALE	1" =		161 KV TRANSMISSION LINE REFERENCE POLE 5
				DRAFT	10-30-03	<i>AS</i>	
CAD NO.	F.1/S91.BARTALS.DON	F.1/S91.BARTALS.DON	F.1/S91.BARTALS.DON	CHECK			LINE 158 CKT. W.O.150770 01
				PROJ.ENG	D. INSINGER		
				APPD.			
				DEPT.	TRANSMISSION		
				OPPD			SKA-10-31-03T
				OMAHA PUBLIC POWER DISTRICT			

Memorandum

TO: Programs, Projects and Operations Subcommittee

SUBJECT: Bids for Walnut Creek Water System

DATE: October 29, 2003

FROM: Randy Lee, Assistant Park Superintendent

The Papio Missouri River NRD received and opened bids on the Walnut Creek Water System at the offices of Thompson Dressen Doorner on October 27th at 2 p.m. The project was advertised in local publications on October 16th and 23rd, 2003.

There were two contractors who submitted bids. The bids were reviewed by the NRD staff and TD2. The low bid was from Kerstens & Lee for \$57,156.00. The engineers estimate for the project was \$34,747.90 and the budgeted amount for the project was \$25,000.00.

Attached you will find the engineers estimate and the submitted proposals and costs per unit submitted by the bidders.

It is the staff's recommendation that the Subcommittee recommend to the Board that the bids be rejected and that the District re-bid in February 2004.

SUBMITTED PROPOSALS & COSTS
 Date of Bid: October 27, 2003 2:00 pm
 Client: Papio-Missouri River Natural
 Resources District
 Project: Walnut Creek Lake Water Service
 ID² File No.: 1202-104



Kerstens & Lee, Inc.
 11050 South 204th Street
 Gretna NE 68028

Sheet 1 of 1

General Excavating
 6701 Cornhusker Hwy
 Lincoln NE 68507

ITEM	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
1	6" DIP Water Main, Pressure Class 350, in place	615	L.F.	\$18.90	\$11,623.50	\$32.70	\$20,110.50
2	2" PVC Water Main, SDR 21, in place	1,325	L.F.	\$11.10	\$14,707.50	\$11.67	\$15,462.75
3	Water Meter Vault with Equipment per detail, in place	1	EA.	\$2,850.00	\$2,850.00	\$3,197.58	\$3,197.58
4	Water Meter Enclosure with Equipment per Schematic, in place	1	EA.	\$12,600.00	\$12,600.00	\$8,312.78	\$8,312.78
5	Tap Existing 10" PVC Water Main for 2" Water Service (City to do actual tap, contractor to excavate and pay tapping fee)	1	EA.	\$1,910.00	\$1,910.00	\$1,103.00	\$1,103.00
6	Remove 6" Plug and Connect to Existing 6" Tee	1	EA.	\$360.00	\$360.00	\$745.63	\$745.63
7	Connect to Existing 2" Water distribution Piping with Appropriate Fittings	3	EA.	\$660.00	\$1,980.00	\$327.50	\$982.50
8	Electrical Service to Heated Enclosure from Existing Residence	1	EA.	\$1,180.00	\$1,180.00	\$2,451.25	\$2,451.25
9	Dry Bore for 2" Water Main	168	L.F.	\$13.00	\$2,184.00	\$18.00	\$3,024.00
10	Remove & Replace Existing 4" Concrete Sidewalk	72	S.F.	\$5.00	\$360.00	\$5.52	\$397.44
11	Revisions to Existing Water Well Discharge Piping per plans	2	EA.	\$800.00	\$1,600.00	\$327.50	\$655.00
12	Yard Hydrant, in place	2	EA.	\$357.00	\$714.00	\$283.25	\$566.50
13	Removal of existing backflow preventer and bladder tank from residence	1	EA.	\$400.00	\$400.00	\$228.00	\$228.00
14	Fire Hydrant Assembly, in place	1	EA.	\$3,150.00	\$3,150.00	\$2,133.56	\$2,133.56
15	Blow-off Hydrant Assembly, in place	1	EA.	\$790.00	\$790.00	\$668.75	\$668.75
16	Post Hydrant, in place	1	EA.	\$667.00	\$667.00	\$308.75	\$308.75
17	Remove & Reinstall Fence, if required	40	L.F.	\$2.00	\$80.00	\$0.42	\$16.80
	TOTAL BID				\$57,156.00		\$60,384.79

114 Estimate

Papio-Missouri River NRD

10/3/03

Estimate for Water Service to Walnut Creek Lake Recreational Area

File No. h:/1200\1202-104/spreadshets\Estimate1

Item	Description	Approx. Quantity	Unit	Unit Price	Amount
1	6" DIP Water Main, Pressure Class 350, In Place	615	L.F.	\$ 12.00	\$ 7,380.00
2	2" PVC Water Main, SDR 21, in Place	1,325	L.F.	\$ 5.00	\$ 6,625.00
3	Water Meter Vault with Equipment per Detail, In Place	1	EA.	\$ 2,000.00	\$ 2,000.00
4	Water Meter Enclosure with Equipment per Schematic, In Place	1	EA.	\$ 7,500.00	\$ 7,500.00
5	Tap Existing 10" PVC Water Main for 2" Water Service (City to do Actual Tap, Contractor to Excavate and Pay Tapping Fee)	1	EA.	\$ 750.00	\$ 750.00
6	Remove 6" Plug and Connect to Existing 6" Tee	1	EA.	\$ 100.00	\$ 100.00
7	Connect to Existing 2" Water Distribution Piping with Appropriate Fittings	3	EA.	\$ 150.00	\$ 450.00
8	Electrical Service to Heated Enclosure from Existing House	1	EA.	\$ 600.00	\$ 600.00
9	Dry Bore for 2" Water Main	168	L.F.	\$ 3.00	\$ 504.00
10	Remove and Replace Existing 4" Concrete Sidewalk	72	S.F.	\$ 5.00	\$ 360.00
11	Revisions to Existing Water Well Discharge Piping per Plans	2	EA.	\$ 500.00	\$ 1,000.00
12	Yard Hydrant, In Place	2	EA.	\$ 200.00	\$ 400.00
13	Removal of Existing Backflow Preventer and Bladder tank from Existing House	1	EA.	\$ 200.00	\$ 200.00
14	Fire Hydrant Assembly, In Place	1	EA.	\$ 2,000.00	\$ 2,000.00
15	Blow-off Hydrant Assembly, In Place	1	EA.	\$ 600.00	\$ 600.00
16	Post Hydrant, In Place	1	EA.	\$ 800.00	\$ 800.00
17	Remove and Reinstall Fence, If Required	40	L.F.	\$ 8.00	\$ 320.00
Total Estimated Construction					\$ 31,589.00
Contingencies (10% of Construction)					\$ 3,158.90
Estimated Total Project					\$ 34,747.90

Memo: Papio-Missouri River NRD Board of Directors
Subject: MoPac Trail
Date: October 24, 2003
From: Gerry Bowen

On October 22, 2003 bids were opened on the MoPac Trail project between Springfield, Nebraska and the Platte River generally following the abandoned Missouri Pacific Railroad right-of-way. Six bids were received, all of which met the specifications. The bid tabulation summary is attached. The lowest bid was received from TAB Construction Company in the amount of \$891,486.25. The most recent Engineer's Estimate for the project is \$1,124,594.00.

The bids are summarized below:

Contractor	Bid Amount
1. TAB Construction	\$891,486.25
2. Hawkins Construction	\$976,303.42
3. Meco-Henne Construction	\$1,028,060.88
4. All Purpose Utilities	\$1,029,766.28
5. Luxa Construction	\$1,123,256.87
6. Boyd Jones Construction	\$1,127,727.49

The staff recommends approval.

It is recommended that the subcommittee recommend to the Board that the General Manager be authorized to execute a contract with TAB Construction Company in the amount of \$891,486.25 for construction of the MoPac Trail Project (Springfield, Nebraska to the Platte River).



E&A CONSULTING GROUP, INC.
ENGINEERS • PLANNERS • SURVEYORS

12001 "Q" STREET
OMAHA, NEBRASKA 68137-3542
PHONE: (402) 895-4700
FAX: (402) 895-3599

"Building Our Reputation on Quality and Service"

7130 SOUTH 29TH STREET, SUITE D
LINCOLN, NEBRASKA 68516-5841
PHONE: (402) 420-7217
FAX: (402) 420-7218

October 24, 2003

Gerry Bowen
Natural Resources Planner
Papio-Missouri River NRD
8901 S. 154th Street
Omaha, NE 68138-3621

Project: MoPac Trail
Platte River to Springfield
STPB-77(43) CN 21994
E&A #99032

Dear Mr. Bowen:

Attached are copies of the Bid Tab summary and a listing of contractor bid totals for your records. All bids have been reviewed and appear acceptable. Each bid includes a 5% bid bond. I recommend acceptance of the low bid submitted by TAB Construction.

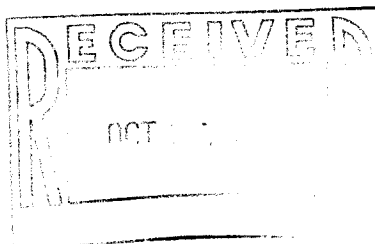
Also enclosed are all original bid proposals and bid bonds.
Please call if you have any questions.

Sincerely,

E&A CONSULTING GROUP, INC.

Fred Beck, P.E.
Senior Design Engineer

Enclosure



MoPac TRAIL IMPROVEMENTS: BID TAB SUMMARY SHEET

Date: 10/22/2003

Project Number: STPB-77(43)
Control Number: 21994

Page 1 of 2

				CONTRACTOR											
				W. Boyd Jones		TAB Construction		Luxa Construction		Hawkins Construction		Meco-Henne Construction		All Purpose Utilities, Inc.	
ITEM NO.	BID ITEM	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
1	CLEARING AND GRUBBING, GENERAL	1.00	LS	\$157,238.00	\$157,238.00	\$88,360.00	\$88,360.00	\$97,664.31	\$97,664.31	\$146,252.00	\$146,252.00	\$134,500.00	\$134,500.00	\$60,000.00	\$60,000.00
2	EXCAVATION	2954.00	CU. YDS.	\$5.67	\$16,749.18	\$5.00	\$14,770.00	\$4.90	\$14,474.60	\$1.44	\$4,253.76	\$1.45	\$4,283.30	\$1.50	\$4,431.00
3	EXCAVATION BORROW	8166.00	CU. YDS.	\$5.67	\$46,301.22	\$4.00	\$32,664.00	\$4.90	\$40,013.40	\$4.33	\$35,358.78	\$4.30	\$35,113.80	\$4.25	\$34,705.50
4	WATER	97.00	MGal	\$9.25	\$897.25	\$10.00	\$970.00	\$8.00	\$776.00	\$11.55	\$1,120.35	\$11.50	\$1,115.50	\$11.00	\$1,067.00
5	ROADWAY GRADING	225.30	STA	\$57.84	\$13,031.35	\$82.80	\$18,654.84	\$50.00	\$11,265.00	\$28.89	\$6,508.92	\$28.75	\$6,477.38	\$28.00	\$6,308.40
6	6" CRUSHED LIMESTONE	6,140.00	TONS	\$11.16	\$68,522.40	\$10.55	\$64,777.00	\$15.23	\$93,512.20	\$13.59	\$83,442.60	\$12.08	\$74,171.20	\$11.55	\$70,917.00
7	6" CONCRETE BIKEWAY, CLASS 47B-3000	2,661.00	SQ. YDS.	\$23.56	\$62,693.16	\$20.40	\$54,284.40	\$25.21	\$67,083.81	\$18.61	\$49,521.21	\$21.35	\$56,812.35	\$26.00	\$69,186.00
8	8" CONCRETE BIKEWAY, CLASS 47B-3000	1,621.00	SQ. YDS.	\$30.21	\$48,970.41	\$26.20	\$42,470.20	\$25.83	\$41,870.43	\$31.25	\$50,656.25	\$25.80	\$41,821.80	\$30.00	\$48,630.00
9	CONCRETE DRIVEWAY, CLASS 47B-3000	46.00	SQ. YDS.	\$38.50	\$1,771.00	\$33.00	\$1,518.00	\$1.60	\$73.60	\$27.25	\$1,253.50	\$28.00	\$1,288.00	\$42.00	\$1,932.00
10	6" CRUSHED ROCK SURFACE COURSE	254.00	TONS	\$21.28	\$5,405.12	\$15.00	\$3,810.00	\$18.01	\$4,574.54	\$19.69	\$5,001.26	\$17.25	\$4,381.50	\$16.50	\$4,191.00
11	SHOULDER CONSTRUCTION	541.90	STA	\$57.85	\$31,348.92	\$32.11	\$17,400.41	\$50.00	\$27,095.00	\$46.22	\$25,046.62	\$57.50	\$31,159.25	\$55.00	\$29,804.50
12	SUBGRADE PREPARATION	4,329.00	SQ. YDS.	\$1.27	\$5,497.83	\$0.70	\$3,030.30	\$2.08	\$9,004.32	\$0.71	\$3,073.59	\$1.50	\$6,493.50	\$1.50	\$6,493.50
13	WATER	148.00	MGal	\$9.25	\$1,369.00	\$10.00	\$1,480.00	\$8.00	\$1,184.00	\$3.12	\$461.76	\$11.15	\$1,650.20	\$11.00	\$1,628.00
14	REMOVE SIDEWALK	144.00	SQ. YDS.	\$4.63	\$666.72	\$5.20	\$748.80	\$4.00	\$576.00	\$5.78	\$832.32	\$5.75	\$828.00	\$5.50	\$792.00
15	REMOVE POST	14.00	EACH	\$10.10	\$141.40	\$15.50	\$217.00	\$10.00	\$140.00	\$17.33	\$242.62	\$17.00	\$238.00	\$5.00	\$70.00
16	LARGE TREE REMOVAL	18.00	EACH	\$347.00	\$6,246.00	\$300.00	\$5,400.00	\$300.00	\$5,400.00	\$288.85	\$5,199.30	\$290.00	\$5,220.00	\$280.00	\$5,040.00
17	ADJUST MANHOLE TO GRADE	2.00	EACH	\$231.00	\$462.00	\$107.00	\$214.00	\$213.22	\$426.44	\$125.00	\$250.00	\$150.00	\$300.00	\$350.00	\$700.00
18	ADJUST VALVE BOX TO GRADE	1.00	EACH	\$127.00	\$127.00	\$95.00	\$95.00	\$174.81	\$174.81	\$49.00	\$49.00	\$100.00	\$100.00	\$250.00	\$250.00
19	SEEDING, TYPE "A"	7.00	ACRE	\$1,450.00	\$10,150.00	\$965.00	\$6,755.00	\$1,400.00	\$9,800.00	\$1,155.00	\$8,085.00	\$1,725.00	\$12,075.00	\$1,375.00	\$9,625.00
20	PLACING HYDRIC SOIL	2,936.00	SQ. YDS.	\$2.75	\$8,074.00	\$3.25	\$9,542.00	\$2.38	\$6,987.68	\$3.47	\$10,187.92	\$3.45	\$10,129.20	\$3.50	\$10,276.00
21	WETLAND SEEDING	1.00	ACRE	\$1,725.00	\$1,725.00	\$912.00	\$912.00	\$2,800.00	\$2,800.00	\$1,155.00	\$1,155.00	\$2,300.00	\$2,300.00	\$1,640.00	\$1,640.00
22	WETLAND TREE PLANTINGS	1.00	LS	\$5,650.00	\$5,650.00	\$5,085.00	\$5,085.00	\$4,875.00	\$4,875.00	\$5,633.00	\$5,633.00	\$5,600.00	\$5,600.00	\$4,875.00	\$4,875.00
23	MUTCD SIGN, TYPE "A"	2.00	EACH	\$290.00	\$580.00	\$2,173.00	\$4,346.00	\$154.14	\$308.28	\$200.00	\$400.00	\$300.00	\$600.00	\$1,546.50	\$3,093.00
24	TRAIL SIGN, TYPE "A"	4.00	EACH	\$1,930.00	\$7,720.00	\$1,930.00	\$7,720.00	\$2,547.47	\$10,189.88	\$1,417.00	\$5,668.00	\$1,674.00	\$6,896.00	\$1,525.00	\$6,100.00
25	TRAIL SIGN, TYPE "B"	3.00	EACH	\$310.00	\$930.00	\$468.00	\$1,404.00	\$766.01	\$2,298.03	\$382.00	\$1,146.00	\$347.00	\$1,041.00	\$576.00	\$1,728.00
26	TRAIL SIGN, TYPE "C"	53.00	EACH	\$505.00	\$26,765.00	\$425.00	\$22,525.00	\$717.42	\$38,023.26	\$450.60	\$23,881.80	\$300.00	\$15,900.00	\$573.00	\$30,369.00
27	EXTRA SIGN PANEL, TYPE "A"	2.00	EACH	\$765.00	\$1,530.00	\$679.00	\$1,358.00	\$867.44	\$1,734.88	\$664.00	\$1,328.00	\$550.00	\$1,100.00	\$535.00	\$1,070.00
28	EXTRA SIGN PANEL, TYPE "B"	1.00	EACH	\$127.00	\$127.00	\$113.00	\$113.00	\$159.40	\$159.40	\$139.00	\$139.00	\$80.00	\$80.00	\$205.00	\$205.00
29	EXTRA SIGN PANEL, TYPE "C"	30.00	EACH	\$144.00	\$4,320.00	\$91.00	\$2,730.00	\$86.01	\$2,580.30	\$80.88	\$2,426.40	\$25.00	\$750.00	\$90.00	\$2,700.00
30	EROSION CONTROL	373.00	SQ. YDS.	\$1.75	\$652.75	\$1.55	\$578.15	\$1.50	\$559.50	\$3.47	\$1,294.31	\$1.80	\$671.40	\$2.50	\$932.50
31	EROSION CONTROL, TYPE "AA"	25.00	SQ. YDS.	\$4.35	\$108.75	\$5.00	\$125.00	\$6.00	\$150.00	\$17.33	\$433.25	\$2.50	\$62.50	\$5.50	\$137.50
32	SILT FENCE	1210.00	LIN. FT.	\$3.24	\$3,920.40	\$2.00	\$2,420.00	\$2.90	\$3,509.00	\$2.31	\$2,795.10	\$2.50	\$3,025.00	\$5.00	\$6,050.00
33	BOLLARD GATE	1.00	EACH	\$670.00	\$670.00	\$235.00	\$235.00	\$1,550.00	\$1,550.00	\$260.00	\$260.00	\$260.00	\$260.00	\$275.00	\$275.00
34	REMOVABLE BOLLARD GATE	16.00	EACH	\$378.00	\$6,048.00	\$290.00	\$4,640.00	\$464.00	\$7,424.00	\$317.74	\$5,083.84	\$316.00	\$5,056.00	\$305.00	\$4,880.00
35	SPLIT RAIL FENCE	261.00	LIN. FT.	\$10.70	\$2,792.70	\$5.35	\$1,396.35	\$4.72	\$1,231.92	\$5.93	\$1,547.73	\$5.90	\$1,539.90	\$5.65	\$1,474.65
36	BIKEWAY HANDRAIL	260.00	LIN. FT.	\$46.35	\$12,051.00	\$18.75	\$4,875.00	\$19.46	\$5,059.60	\$20.80	\$5,408.00	\$18.00	\$4,680.00	\$19.80	\$5,148.00
37	CONCRETE FOR BOX CULVERTS	190.92	CU. YDS.	\$579.00	\$110,542.68	\$295.00	\$56,321.40	\$641.41	\$122,458.00	\$233.92	\$44,680.01	\$350.00	\$66,822.00	\$525.00	\$100,233.00
38	STEEL FOR BOX CULVERTS	20374.00	LBS.	\$0.70	\$14,261.80	\$0.72	\$14,669.28	\$0.77	\$15,687.98	\$0.79	\$16,095.46	\$0.66	\$13,446.84	\$0.67	\$13,650.58
39	EXCAVATION FOR BOX CULVERTS	990.00	CU. YDS.	\$4.63	\$4,583.70	\$10.55	\$10,444.50	\$17.42	\$17,245.80	\$11.53	\$11,414.70	\$14.50	\$14,355.00	\$5.00	\$4,950.00
40	24" AUTOMATIC FLOOD CONTROL GATE	1.00	EACH	\$860.00	\$860.00	\$1,235.00	\$1,235.00	\$1,326.27	\$1,326.27	\$1,090.00	\$1,090.00	\$1,100.00	\$1,100.00	\$1,855.00	\$1,855.00
41	54" AUTOMATIC FLOOD CONTROL GATE	1.00	EACH	\$5,926.00	\$5,926.00	\$5,935.00	\$5,935.00	\$6,353.88	\$6,353.88	\$6,133.00	\$6,133.00	\$6,000.00	\$6,000.00	\$4,500.00	\$4,500.00

ITEM NO.	BID ITEM	ESTIMATED QUANTITY	UNIT	W. Boyd Jones		TAB Construction		Luxa Construction		Hawkins Construction		Meco-Henne Construction		All Purpose Utilities, Inc.	
				UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT	UNIT PRICE	TOTAL AMOUNT
42	18" REINFORCED CONCRETE PIPE	24.00	LIN. FT.	\$41.40	\$993.60	\$36.00	\$864.00	\$64.10	\$1,538.40	\$26.05	\$625.20	\$29.80	\$715.20	\$29.00	\$696.00
43	24" REINFORCED CONCRETE PIPE	26.00	LIN. FT.	\$48.70	\$1,266.20	\$42.10	\$1,094.60	\$68.05	\$1,769.30	\$33.74	\$877.24	\$41.10	\$1,068.60	\$36.00	\$936.00
44	30" REINFORCED CONCRETE PIPE	68.00	LIN. FT.	\$53.90	\$3,665.20	\$46.80	\$3,182.40	\$71.92	\$4,890.56	\$45.27	\$3,078.36	\$56.30	\$3,828.40	\$44.00	\$2,992.00
45	36" REINFORCED CONCRETE PIPE	48.00	LIN. FT.	\$73.00	\$3,504.00	\$63.15	\$3,031.20	\$81.13	\$3,894.24	\$64.88	\$3,114.24	\$76.15	\$3,655.20	\$60.00	\$2,880.00
46	18" CORRUGATED METAL PIPE	164.00	LIN. FT.	\$19.45	\$3,189.80	\$16.18	\$2,653.52	\$26.28	\$4,309.92	\$17.93	\$2,940.52	\$18.75	\$3,075.00	\$24.00	\$3,936.00
47	24" CORRUGATED METAL PIPE	371.00	LIN. FT.	\$27.80	\$10,313.80	\$24.00	\$8,904.00	\$37.67	\$13,975.57	\$23.60	\$8,755.60	\$23.13	\$8,581.23	\$26.00	\$9,646.00
48	30" CORRUGATED METAL PIPE	38.00	LIN. FT.	\$35.60	\$1,352.80	\$30.75	\$1,168.50	\$56.16	\$2,134.08	\$27.13	\$1,030.94	\$33.10	\$1,257.80	\$32.00	\$1,216.00
49	36" CORRUGATED METAL PIPE	40.00	LIN. FT.	\$39.80	\$1,592.00	\$34.40	\$1,376.00	\$57.90	\$2,316.00	\$46.98	\$1,879.20	\$52.30	\$2,092.00	\$35.00	\$1,400.00
50	42" CORRUGATED METAL PIPE	68.00	LIN. FT.	\$51.60	\$3,508.80	\$44.60	\$3,032.80	\$62.62	\$4,258.16	\$47.90	\$3,257.20	\$72.40	\$4,923.20	\$44.00	\$2,992.00
51	48" CORRUGATED METAL PIPE	57.00	LIN. FT.	\$58.90	\$3,357.30	\$50.90	\$2,901.30	\$73.44	\$4,186.08	\$56.40	\$3,214.80	\$80.30	\$4,577.10	\$48.00	\$2,336.00
52	36" ROUND EQUIVALENT CORRUGATED METAL PIPE	184.00	LIN. FT.	\$50.60	\$9,310.40	\$43.75	\$8,050.00	\$58.75	\$10,810.00	\$32.11	\$5,908.24	\$39.40	\$7,249.60	\$36.00	\$6,624.00
53	42" METAL FLARED END SECTION	1.00	EACH	\$500.00	\$500.00	\$431.80	\$431.80	\$576.91	\$576.91	\$649.00	\$649.00	\$500.00	\$500.00	\$788.00	\$788.00
54	54" FLARED END SECTION	1.00	EACH	\$685.00	\$685.00	\$592.10	\$592.10	\$716.48	\$716.48	\$744.00	\$744.00	\$650.00	\$650.00	\$980.00	\$980.00
55	EXCAVATION FOR CULVERT PIPES	734.00	CU. YDS.	\$10.64	\$7,809.76	\$7.30	\$5,358.20	\$9.73	\$7,141.82	\$0.03	\$22.02	\$10.20	\$7,486.80	\$5.00	\$3,670.00
56	REMOVE STRUCTURE AT STA. 1003+40-1003+72 LT.	1.00	EACH	\$1,160.00	\$1,160.00	\$1,135.00	\$1,135.00	\$3,913.26	\$3,913.26	\$518.00	\$518.00	\$4,600.00	\$4,600.00	\$4,500.00	\$4,500.00
57	REMOVE STRUCTURE AT STA. 1142+55.16	2.00	EACH	\$1,160.00	\$2,320.00	\$644.00	\$1,288.00	\$1,389.77	\$2,779.54	\$777.00	\$1,554.00	\$575.00	\$1,150.00	\$3,607.50	\$7,215.00
58	REMOVE STRUCTURE AT STA. 1233+52.2	1.00	EACH	\$580.00	\$580.00	\$2,390.00	\$2,390.00	\$4,019.35	\$4,019.35	\$518.00	\$518.00	\$575.00	\$575.00	\$600.00	\$600.00
59	BROKEN CONCRETE RIPRAP	11.00	TONS	\$41.64	\$458.04	\$36.00	\$396.00	\$17.94	\$197.34	\$8.52	\$93.72	\$28.00	\$308.00	\$18.00	\$198.00
60	ROCK RIPRAP, TYPE "B"	29.00	TONS	\$31.25	\$906.25	\$27.00	\$783.00	\$24.30	\$704.70	\$26.14	\$758.06	\$29.00	\$841.00	\$28.00	\$812.00
61	ROCK RIPRAP, TYPE "C"	258.00	TONS	\$28.90	\$7,444.20	\$22.35	\$5,766.30	\$25.20	\$6,501.60	\$26.14	\$6,744.12	\$29.00	\$7,482.00	\$28.00	\$7,224.00
62	RIPRAP FILTER FABRIC	245.00	SQ. YDS.	\$3.82	\$935.90	\$3.30	\$808.50	\$1.47	\$360.15	\$1.39	\$340.55	\$1.50	\$367.50	\$5.50	\$1,347.50
63	ABUTMENT NO. 1 EXCAVATION	2.00	LS	\$1,417.00	\$2,834.00	\$1,645.00	\$3,290.00	\$1,311.58	\$2,623.16	\$965.00	\$1,930.00	\$2,350.00	\$4,700.00	\$7,215.00	\$14,430.00
64	ABUTMENT NO. 2 EXCAVATION	2.00	LS	\$1,585.00	\$3,170.00	\$1,645.00	\$3,290.00	\$1,311.58	\$2,623.16	\$965.00	\$1,930.00	\$2,350.00	\$4,700.00	\$7,215.00	\$14,430.00
65	SUBSURFACE DRAINAGE MATTING	49.00	SQ. YDS.	\$46.25	\$2,266.25	\$32.00	\$1,568.00	\$36.07	\$1,767.43	\$19.14	\$937.86	\$5.00	\$245.00	\$146.00	\$7,154.00
66	HP10x42 PILING	800.00	LIN. FT.	\$48.87	\$39,096.00	\$42.00	\$33,600.00	\$34.68	\$27,744.00	\$18.02	\$14,416.00	\$28.00	\$22,400.00	\$54.80	\$43,840.00
67	CONCRETE FOR BRIDGE ABUTMENTS, CLASS 47BD-3000	52.20	CU. YDS.	\$473.34	\$24,708.35	\$592.00	\$30,902.40	\$373.32	\$19,487.30	\$476.61	\$24,879.04	\$415.00	\$21,663.00	\$995.00	\$51,939.00
68	STEEL FOR BRIDGE ABUTMENTS	5685.00	LBS.	\$0.91	\$5,173.35	\$0.90	\$5,116.50	\$0.98	\$5,571.30	\$1.00	\$5,685.00	\$0.89	\$5,059.65	\$2.20	\$12,507.00
69	PREFABRICATED BRIDGE SPAN AT STA. 1142+56.16	1.00	EACH	\$84,000.00	\$84,000.00	\$78,500.00	\$78,500.00	\$96,664.15	\$96,664.15	\$94,237.00	\$94,237.00	\$105,800.00	\$105,800.00	\$83,250.00	\$83,250.00
70	PREFABRICATED BRIDGE SPAN AT STA. 1189+45.71	1.00	EACH	\$140,000.00	\$140,000.00	\$110,900.00	\$110,900.00	\$158,561.51	\$158,561.51	\$159,264.00	\$159,264.00	\$164,700.00	\$164,700.00	\$127,650.00	\$127,650.00
71	MODULAR BLOCK WALL MATERIAL	1914.00	SQ. FT.	\$18.50	\$35,409.00	\$13.00	\$24,882.00	\$13.46	\$25,762.44	\$15.55	\$29,762.70	\$13.90	\$26,804.60	\$14.85	\$28,422.90
72	COMPACTED EARTH LEVELING PAD	510.00	LIN. FT.	\$1.16	\$591.60	\$4.65	\$2,371.50	\$0.71	\$362.10	\$0.82	\$418.20	\$2.50	\$1,275.00	\$0.75	\$382.50
73	SELECT GRANULAR BACKFILL	238.00	CU. YDS.	\$23.15	\$5,509.70	\$35.00	\$8,330.00	\$21.33	\$5,076.54	\$15.62	\$3,717.56	\$25.00	\$5,950.00	\$10.50	\$2,499.00
74	5-STRAND BARBED WIRE FENCE	4880.00	LIN. FT.	\$2.14	\$10,443.20	\$1.20	\$5,856.00	\$1.22	\$5,953.60	\$1.29	\$6,295.20	\$1.29	\$6,295.20	\$1.30	\$6,344.00
75	PULL POST	8.00	EACH	\$124.00	\$992.00	\$110.00	\$880.00	\$161.00	\$1,288.00	\$120.00	\$960.00	\$120.00	\$960.00	\$110.00	\$880.00
76	END POST	4.00	EACH	\$130.00	\$520.00	\$110.00	\$440.00	\$172.00	\$688.00	\$120.00	\$480.00	\$120.00	\$480.00	\$110.00	\$440.00
77	BARBED WIRE GATE	2.00	EACH	\$245.00	\$490.00	\$525.00	\$1,050.00	\$515.00	\$1,030.00	\$595.00	\$1,190.00	\$242.00	\$484.00	\$235.00	\$470.00
78	GATE	1.00	EACH	\$100.00	\$100.00	\$89.00	\$89.00	\$529.00	\$529.00	\$98.00	\$98.00	\$100.00	\$100.00	\$100.00	\$100.00
79	W-BEAM GUARDRAIL	168.75	LIN. FT.	\$21.00	\$3,543.75	\$15.60	\$2,632.50	\$12.15	\$2,050.31	\$14.04	\$2,369.25	\$17.25	\$2,910.94	\$18.00	\$3,037.50
80	REMOVE & SALVAGE GUARDRAIL	37.50	LIN. FT.	\$6.00	\$225.00	\$17.00	\$637.50	\$15.99	\$599.63	\$18.47	\$692.63	\$10.00	\$375.00	\$8.25	\$309.38
81	RESET GUARDRAIL	37.50	LIN. FT.	\$9.00	\$337.50	\$20.80	\$780.00	\$20.00	\$750.00	\$23.11	\$866.63	\$15.50	\$581.25	\$8.25	\$309.38
82	54" DRIVEWAY CULVERT PIPE	100.00	LIN. FT.	\$56.50	\$5,650.00	\$48.60	\$4,860.00	\$57.96	\$5,796.00	\$47.33	\$4,733.00	\$85.00	\$8,500.00	\$60.00	\$6,000.00
83	REMOVE ROW MARKER	1.00	EACH	\$150.00	\$150.00	\$75.00	\$75.00	\$114.66	\$114.66	\$29.00	\$29.00	\$50.00	\$50.00	\$70.00	\$70.00
Total Bid				\$1,127,727.49		\$891,486.25		\$1,123,256.87		\$976,303.42		\$1,028,060.88		\$1,029,766.28	

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee
SUBJECT: Purchase of FY2004 Hydraulic Excavator
BY: Marlin Petermann, Assistant General Manager
DATE: November 4, 2003

An October 28, 2003 memorandum from William Warren, Assistant Operation and Maintenance Superintendent, provided a summary of recent bids received for the purchase of a Hydraulic Excavator (see summary below). That memo recommended taking the low bid for a Volvo Excavator from Spreitzer.

Dealer/Make	Spreitzer	United Rental	Nebraska Machinery	Road Builders Machinery	Murphy Tractor
A. Total Price	\$164,500	\$175,000	\$220,628	\$179,427	\$198,646
B. 4 Payments Of	\$43,483.88	\$48,099	\$58,463	\$47,529	\$52,598.51
C. Equipment Type	Volvo EC290BLC	Linkbelt 290LX	Caterpillar 325CL	Komatsu PC270LC-7	John Deere 270CLC
D. Delivery Date	45-90 Days	30 Days	30 Days	45-90 Days	90 Days
E. Total Expense to District	\$173,935.52	\$192,396	\$233,852	\$190,116	\$210,394

At the last Subcommittee meeting there was considerable discussion about the importance of the level of service and repair provided by dealers for these Hydraulic Excavators. Therefore, William Warren has subsequently contacted four (4) companies/contractors that purchased and presently have Volvo equipment from Spreitzer to see how they like their machines and what kind of service/repair they are getting. Following are some excerpts from those reference checks:

- Spreitzer is very poor on parts and service.
- Need to call Cedar Rapids or Arkansas for parts.
- Would not buy any thing from them again.
- Service mechanics know very little.
- Take equipment to Road Builders Equipment Co. for repairs or repair with their mechanics
- The NRD would regret buying a machine from there.

The writer and Bill Warren have discussed the bids with Director Rich Jansen who also expressed concern about purchasing a Volvo Excavator from Spreitzer. Concerns about the machine include overall weight and resale value.

Bill Warren also made reference checks with four contractors who own a Komatsu backhoe from Road Builders Machinery and received favorable comments, such as the following.

- Very good with service and parts.
- Well trained mechanics, excellent
- Best machine, wouldn't own anything else
- Very pleased, great people, highly recommended

Based on these considerations, management is altering its recommendation to purchasing the Komatsu Hydraulic Excavator from Road Builders Machinery, which is the next low bidder. This would then be four equal payments of **\$47,529** over the next four years, totaling **\$190,116**. The Boards' policy calls for acceptance of the lowest and best bids when making purchases. The lowest bid is not always the best. This is one of those cases. The recommended Komatsu Excavator will cost an additional \$4,045.12 per year or a total of \$16,180.48 more than the Volvo Excavator.

Management recommends the lowest and best bid of \$47,529 for the next four years to purchase a PC270LC-7 Komatsu Hydraulic Excavator from Road Builders Machinery Company totaling \$190,116.00 be accepted.

Director Rich Jansen encourages Board members to contact him (297-8098 cell) concerning this matter.

MEMORANDUM (Original)

TO: Programs, Projects and Operations Subcommittee

SUBJ.: Purchase of FY 2004 Hydraulic Excavator

DATE: October 28, 2003

FROM: William Warren, Assistant Operation & Maintenance Superintendent

Request for bids for the purchase of a 2004 Hydraulic Excavator were received and opened on October 23 2003. The bid summary sheet is attached for your review. The recommendation for this item is the lowest and best bid submitted from Spreitzer be accepted for the purchase of a new Hydraulic Excavator. The excavator will be purchased over 4 years. Four equal payments of \$43,483.88 will be made over the next four years, totaling \$173,935.52.

Bid "C" Summary

Hydraulic Excavator

Opening: October 23, 2003 at 2:00 p.m.

Dealer/Make	<i>Spreitzer</i>	United Rental	Nebraska Machinery	Road Builders Machinery	Murphy Tractor
A. Total Price	<i>\$164,500</i>	\$175,000	\$220,628	\$179,427	\$198,646
B. 4 Payments Of	<i>\$43,483.88</i>	\$48,099	\$58,463	\$47,529	\$52,598.51
C. Equipment Type	<i>Volvo EC290BLC</i>	Linkbelt 290LX	Caterpillar 325CL	Komatsu PC270LC-7	John Deere 270CLC
D. Delivery Date	<i>45-90 days</i>	30 days	30 days	45-90 days	90 days
E. Total Expense To District	<i>\$173,935.52</i>	\$192,396	\$233,852	\$190,116	\$210,394

Staff recommends the low and best bid of \$43,483.88 for the next four years submitted by Spreitzer totaling \$173,935.52 be accepted.