

Memorandum

To: PPO Subcommittee

Re: Agreement for Forest Run Channel Improvement near Gretna, NE

Date: April 30, 2007

From: Paul Woodward, Water Resources Engineer

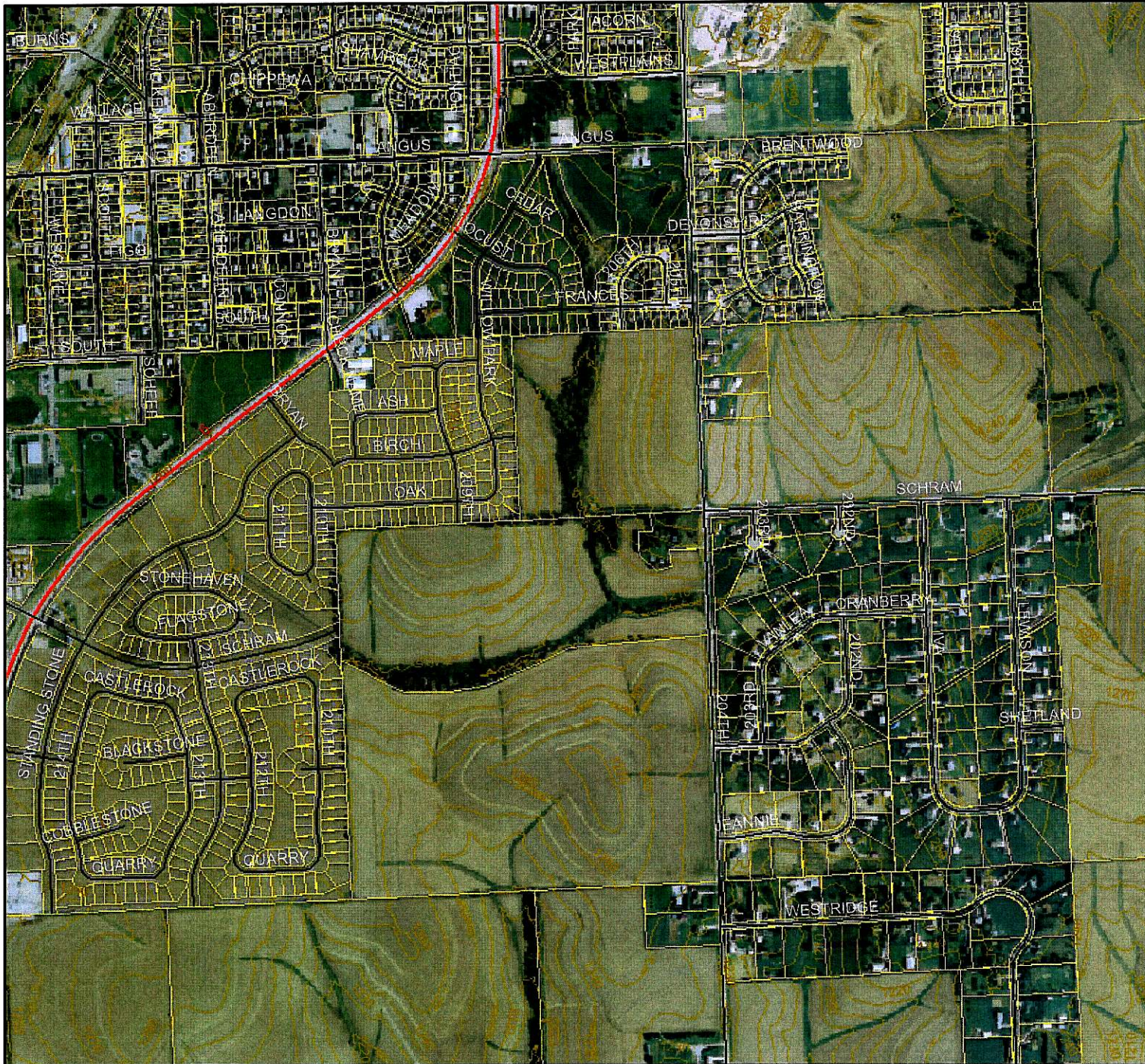
The Board previously requested that staff investigate the potential for a channel improvement project through the Forest Run Subdivision near Gretna, NE to alleviate flooding problems. Since then, Lamp, Rynearson & Associates (LRA) has analyzed a proposed channel improvement and provided the enclosed preliminary design and cost estimate.

Several District Board members and staff have met with representatives from the City of Gretna and Sarpy County along with homeowners from Forest Run to discuss the merits of the project and potential solutions. Based on the outcome of these meetings, the enclosed interlocal agreement was prepared to outline cooperation between the NRD, Gretna, Sarpy County and the Forest Run and Lyman Highlands Homeowners' Associations.

Provisions in the agreement provide for the District to construct the channel improvement as designed within the existing drainage easement. Soil excavated from the channel will need to be hauled offsite to a nearby location. Sarpy County has agreed to assist the District in excavating and hauling the soil away by providing additional equipment and operators. As another provision in the agreement, the Forest Run Homeowners' Association would be responsible for providing additional temporary easements needed during construction and making sure all utilities are relocated. Homeowners would also be responsible for providing ongoing maintenance of the as-built channel until such time that the City of Gretna annexes the subdivision. Upon annexation, the City of Gretna would take over responsibility of properly maintaining the channel as it is designed.

To summarize, the NRD and Sarpy County plan to begin construction of the channel improvement sometime in July provided the agreement is approved by all parties, all right-of-way is secured and utilities have been relocated. Following construction, homeowners and eventually the City of Gretna will be responsible for maintaining the channel.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Forest Run Channel Improvement Agreement with Sarpy County, the City of Gretna, Forest Run Homeowners' Association, and Lyman Highlands Homeowners' Association, subject to minor changes deemed necessary by the General Manager and approved as to form by District legal counsel.



O

Legend

- PARCELS
- Sarpy_Topo_10ft
- s_bfe
- s_wtr_in
- s fld_haz_in
- s_gen_struct
- s fld_haz_ar
- FLD_ZONE, FLOODWAY**
- 0.2 PCT ANNUAL CHANCE FLOO
- A,
- AE,
- AE, FLOODWAY
- AH,
- AO,
- X PROTECTED BY LEVEE,
- X,

0 500 1,000 2,000 3,000
Feet

Site Design

Assumptions/Comments:



	Bld Item Description	Approximate		Unit Price	Total
		Quantity	Unit		
1 .	CLEARING AND GRUBBING GENERAL	1	LS	\$10,000.00	\$10,000.00
2 .	CONSTRUCT EROSION CONTROL BLANKET	10,000	SY	\$1.50	\$15,000.00
3 .	DRAINAGEWAY SEEDING	2.2	AC	\$1,500.00	\$3,300.00
4 .	CONSTRUCT SILT FENCE DITCH CHECK	500	LF	\$3.00	\$1,500.00
5 .	EARTHWORK (CHANNEL GRADING)	6,900	CY	\$6.00	\$41,400.00
6 .	ADJUST WATER VALVE TO GRADE	1	EA	\$500.00	\$500.00
7 .	REPAIR ASPHALT ROAD	1	LS	\$10,000.00	\$10,000.00
8 .	CONTINGENCY	20	%		\$16,340.00

Estimated Construction Costs: \$98,040.00

**Engineering Design and
20.00% Construction Administration:** \$19,608.00

Erosion Control Monitoring \$1,000.00

Total Estimated Soft Costs: \$20,608.00

UTILITY RELOCATION - QWEST (per Qwest) \$7,000.00

UTILITY RELOCATION - OPPD (per OPPD) \$5,000.00

UTILITY RELOCATION - COX \$3,000.00

Total Estimated Costs: **\$133,648.00**

COOPERATIVE AGREEMENT

**FOREST RUN HOMEOWNERS ASSOCIATION
LYMAN HYLANDS HOMEOWNERS ASSOCIATION
CITY OF GRETNA, NEBRASKA
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
SARPY COUNTY, NEBRASKA**

FOREST RUN FLOOD CONTROL CHANNEL IMPROVEMENT PROJECT

THIS AGREEMENT (hereinafter referred to as "**THIS AGREEMENT**") is made and entered into by and among the following parties (hereinafter referred to collectively as "the **PARTIES**"), to-wit:

FOREST RUN HOMEOWNERS ASSOCIATION, INC.
(hereinafter referred to as "the **FOREST RUN ASSOCIATION**");

LYMAN HYLANDS HOMEOWNERS ASSOCIATION, INC.
(hereinafter referred to as "the **LYMAN HYLANDS ASSOCIATION**");

CITY OF GRETNA, NEBRASKA (hereinafter referred to as "the **CITY**");

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
(hereinafter referred to as "the **NRD**"); and,

SARPY COUNTY, NEBRASKA (hereinafter referred to as "the **COUNTY**"),

WHEREAS, THIS AGREEMENT is made pursuant to the authority provided in §2-3225, R.R.S., 1997, et seq.).

WHEREAS, a drainage channel (hereinafter referred to as “the **CHANNEL**”) runs easterly from 204th Street in the CITY, thence along the boundary line between Forest Run Addition to Sarpy County (hereinafter referred to as “**FOREST RUN**”) and Forest Run II Addition to Sarpy County (hereinafter referred to as “**FOREST RUN II**”); thence into the portion of LYMAN HYLANDS Addition to Sarpy County (hereinafter referred to as “**LYMAN HYLANDS**”) lying west of Iva Street; thence west in culverts under Iva Street ((hereinafter referred to as “the **IVA STREET CULVERTS**”); and thence runs westerly in additional channels; and,

WHEREAS, the CHANNEL drains the aforesaid Additions and a portion of the CITY; and,

WHEREAS, the CHANNEL frequently overflows its banks and floods the residential properties in the portion of such the aforesaid Additions adjacent to the CHANNEL; and,

WHEREAS, the PARTIES desire to construct, operate and maintain public flood control improvements to the CHANNEL (hereinafter referred to as “the **CHANNEL IMPROVEMENTS**”) that will improve the capacity of the CHANNEL to convey flood waters away from such Additions,

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

1. **GENERAL BENEFIT.** The parties do hereby find, determine and agree that construction, operation and maintenance of the CHANNEL IMPROVEMENTS will constitute a public flood control project that will be predominantly of general benefit to the NRD, the CITY and the COUNTY, with only an incidental special benefit.

2. **PLANS.** Plans and specifications (hereinafter referred to collectively as “the **PROJECT PLANS**”) for the CHANNEL IMPROVEMENTS, previously drawn by Lamp, Rynearson & Associates for the NRD, are attached hereto collectively as

Exhibit "A" and incorporated herein by reference. The PROJECT PLANS are hereby approved by all of the PARTIES

3. **EXISTING DRAINAGE EASEMENTS.** The plats and dedications heretofore recorded for FOREST RUN and FOREST RUN II designate certain areas of land (hereinafter referred to as "the **EXISTING FOREST RUN DRAINAGE EASEMENTS**") along the boundary line between such subdivisions as drainage easements in favor of the FOREST RUN ASSOCIATION, the EXISTING FOREST RUN DRAINAGE EASEMENTS also being depicted in Exhibit "A." The plats and dedications heretofore recorded for LYMAN HIGHLANDS designate certain areas of land (hereinafter referred to as "the **EXISTING LYMAN HYLANDS DRAINAGE EASEMENTS**") as drainage easements in favor of the LYMAN HYLANDS ASSOCIATION, the EXISTING LYMAN HYLANDS DRAINAGE EASEMENTS also being depicted in Exhibit "A." (The EXISTING FOREST RUN DRAINAGE EASEMENTS and the EXISTING LYMAN HYLANDS DRAINAGE EASEMENTS are hereinafter referred to collectively as "the **EXISTING DRAINAGE EASEMENTS**"). The FOREST RUN ASSOCIATION and the LYMAN HYLANDS ASSOCIATION, respectively, agree to temporarily assign to the NRD the temporary and permanent rights expressed and implied by such EXISTING DRAINAGE EASEMENTS, such assignments to be granted on document form(s) prepared by the NRD.

4. **ACQUISITION OF ADDITIONAL RIGHTS OF WAY.** The following easements (hereinafter referred to collectively as "the **ADDITIONAL EASEMENTS**") shall be granted to the NRD on document form(s) prepared by the NRD:

a. The FOREST RUN ASSOCIATION agrees to acquire at its own cost and expense, and provide or assign to the NRD, such additional easements in, on, under, over and across additional areas of land in FOREST RUN and FOREST RUN II as the NRD reasonably deems necessary or convenient, for purposes of construction, operation or maintenance of the CHANNEL

IMPROVEMENTS or in facilitation thereof. Such additional easements shall include, but not be limited to:

i. Temporary work area easements across corridors of land twenty feet (20') in width abutting and outside of the parcels of land that are subject to the EXISTING FOREST RUN DRAINAGE EASEMENTS; and,

ii. A temporary easement providing for ingress and egress between 204th Street and the parcels of land that are subject to the EXISTING DRAINAGE EASEMENTS.

b. The LYMAN HYLANDS ASSOCIATION agrees to acquire at its own cost and expense, and provide or assign to the NRD, such additional easements in, on, under, over and across additional areas of land in LYMAN HYLANDS as the NRD reasonably deems necessary or convenient, for purposes of construction, operation or maintenance of the CHANNEL IMPROVEMENTS. Such additional easements shall include, but not be limited to temporary work area easements across corridors of land twenty feet (20') in width abutting and outside of the parcels of land that are subject to the EXISTING LYMAN HYLANDS DRAINAGE EASEMENTS, as shown in Exhibit "A".

c. The CITY and the COUNTY, respectively, agree to provide to the NRD such additional easements and rights-of-way in, on, under, over and across land owned by them or either of them, as the NRD reasonably deems necessary or convenient, for purposes of construction, operation or maintenance of the CHANNEL IMPROVEMENTS, as shown in Exhibit "A".

5. RELOCATIONS.

a. The FOREST RUN ASSOCIATION agrees to provide at its own cost and expense the removal and/or relocation of such existing utilities, structures, woody vegetation, landscaping and/or other improvements in, on,

under or across the parcels of land subject to the EXISTING FOREST RUN DRAINAGE EASEMENTS, and the ADDITIONAL EASEMENTS granted by the FOREST RUN ASSOCIATION and its homeowners, as the NRD reasonably deems necessary or convenient for purposes of construction, operation or maintenance of the CHANNEL IMPROVEMENTS, as shown in Exhibit "A".

b. The LYMAN HYLANDS ASSOCIATION agrees to provide at its own cost and expense the removal and/or relocation of such existing utilities, existing structures, woody vegetation, landscaping and/or other improvements in, on, under or across the parcels of land subject to the EXISTING LYMAN HYLANDS DRAINAGE EASEMENTS, and the ADDITIONAL EASEMENTS granted by LYMAN HYLANDS ASSOCIATION and its homeowners, as the NRD reasonably deems necessary or convenient for purposes of construction, operation or maintenance of the CHANNEL IMPROVEMENTS.

6. **PERMITS.** The NRD agrees to obtain, at its own cost and expense, all necessary local, state and/or federal permits that the NRD determines are necessary or convenient for purposes of construction of the CHANNEL IMPROVEMENTS.

7. **CONSTRUCTION.** After receipt by the NRD of lands, easements and rights-of-way as provided by Paragraphs 3 and 4, above, and permits as provided by Paragraph 6, above, and after performance of relocations as provided by Paragraph 5, above, the NRD, at its own cost and expense, agrees to perform construction staking and construct the CHANNEL IMPROVEMENTS, in accordance with the PROJECT PLANS, when and as the NRD acquires and appropriates the funds needed for such purpose. After performing construction staking the NRD shall give the FOREST RUN ASSOCIATION and the LYMAN HYLANDS ASSOCIATION and their members a reasonable amount of time to salvage landscaping improvements and vegetation from the parcels of land subject to the easements provided in THIS AGREEMENT.

8. **COUNTY COOPERATION.** During the NRD's construction of the CHANNEL IMPROVEMENTS, the COUNTY agrees to furnish, at COUNTY expense and for a period of ten working days, a backhoe excavator with operator and two

dump trucks with drivers, together with all necessary fuel, equipment servicing, insurance, transportation, supervision and other things needed to make such COUNTY equipment and personnel operational. During such period, such COUNTY equipment and personnel shall be utilized by the COUNTY to perform such earthen excavations and removals as the NRD reasonably requests in aid of construction of the CHANNEL IMPROVEMENTS.

9. **DISPOSAL AREA.** The CITY agrees to furnish, at CITY expense, a spoil area within a radius of two (2) miles of the CHANNEL IMPROVEMENTS, for use by the NRD and the COUNTY for the disposal of excess earthen materials resulting from construction of the CHANNEL IMPROVEMENTS.

10. **OPERATION AND MAINTENANCE.** After completion of construction of the CHANNEL IMPROVEMENTS:

a. The FOREST RUN ASSOCIATION shall permanently operate, maintain, and repair the CHANNEL IMPROVEMENTS in FOREST RUN in accordance with the PROJECT PLANS and generally-accepted engineering practices applicable to such CHANNEL IMPROVEMENTS; and, in the event FOREST RUN and/or FOREST RUN II, or any portion(s) thereof, is/are annexed by the CITY, the CITY agrees to undertake and relieve the FOREST RUN ASSOCIATION of all of the duties undertaken by the FOREST RUN ASSOCIATION in this sub-paragraph; and,

b. The LYMAN HYLANDS ASSOCIATION shall permanently operate, maintain, and repair

i. the CHANNEL IMPROVEMENTS in LYMAN HYLANDS west of Iva Street in accordance with the PROJECT PLANS and generally-accepted engineering practices applicable to such CHANNEL IMPROVEMENTS; and,

ii. the existing improvements to the CHANNEL in LYMAN HYLANDS, from Iva Street to Schram Road, in accordance with

generally-accepted engineering practices applicable to such existing improvements; and,

in the event LYMAN HYLANDS, or any portion(s) thereof, is/are annexed by the CITY, the CITY agrees to undertake and relieve the LYMAN HYLANDS ASSOCIATION of all of the duties undertaken by the LYMAN HYLANDS ASSOCIATION in this sub-paragraph; and,

c. The COUNTY agrees to permanently keep and maintain the IVA STREET CULVERTS in good condition and repair; and,

d. FOREST RUN ASSOCIATION shall have and bear the sole risk of loss of or damage to the CHANNEL IMPROVEMENTS in FOREST RUN and/or FOREST RUN II, regardless whether such loss or damage results from flood or other casualty whatsoever; and,

e. LYMAN HYLANDS ASSOCIATION shall have and bear the sole risk of loss of or damage to the CHANNEL IMPROVEMENTS in LYMAN HYLANDS, regardless whether such loss or damage results from flood or other casualty whatsoever.

11. **INDEMNIFICATION.** Except as otherwise specifically provided in THIS AGREEMENT, and excepting as to injuries or damages proximately caused by the negligence of the NRD or the COUNTY, respectively, or their respective employees, officers, contractors or agents:

a. The FOREST RUN ASSOCIATION shall defend and indemnify the NRD and the COUNTY, and hold and save the NRD and the COUNTY harmless, from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part caused by or arising out of the negligence or other actions or inactions of the FOREST RUN ASSOCIATION, its employees, officers, contractors or agents, in the

operation, maintenance or repair, of the CHANNEL IMPROVEMENTS in FOREST RUN and FOREST RUN II, and,

b. The LYMAN HYLANDS ASSOCIATION shall defend and indemnify the NRD and the COUNTY, and hold and save the NRD and the COUNTY harmless, from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part caused by or arising out of the negligence or other actions or inactions of the LYMAN HYLANDS ASSOCIATION, its employees, officers, contractors or agents, in the operation, maintenance or repair of the CHANNEL IMPROVEMENTS in LYMAN HYLANDS.

12. **NRD APPROVALS.** Except as otherwise specifically provided in THIS AGREEMENT, approvals and other NRD actions contemplated by THIS AGREEMENT are authorized to be provided by the General Manager of the NRD in his or her sole discretion.

13. **ENTIRE AGREEMENT.** THIS AGREEMENT contains the entire agreement among the PARTIES, and each of the PARTIES agree that none of the other PARTIES, nor any of their officers, agents or employees, have made any representation or promise with respect to the subjects of THIS AGREEMENT not expressly contained herein.

14. **TIME.** Time is of the essence of THIS AGREEMENT.

15. **DEFAULT.** If any of the PARTIES shall default hereunder in any material respect, the other PARTIES may terminate THIS AGREEMENT or exercise any such other remedies as may be available at law or in equity.

16. **EFFECTIVE DATE.** THIS AGREEMENT shall be in force and effect from and after its execution by all of the PARTIES, and shall have permanent duration.

17. **CAPTIONS.** Captions used in THIS AGREEMENT are for convenience and not for use in the construction of THIS AGREEMENT.

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

The FOREST RUN ASSOCIATION has executed THIS AGREEMENT on _____, 2007.

**FOREST RUN HOMEOWNERS ASSOCIATION,
INC.**

By _____
President

The LYMAN HIGHLANDS ASSOCIATION has executed THIS AGREEMENT on _____, 2007.

**LYMAN HIGHLANDS HOMEOWNERS
ASSOCIATION, INC.**

By _____
President

The CITY has executed THIS AGREEMENT on _____, 2007.

CITY OF GRETNA, NEBRASKA

By _____
Mayor

Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2007.

**PAPIO-MISSOURI RIVER NATURAL RESOURCES
DISTRICT**

By _____
JOHN WINKLER, GENERAL MANAGER

The COUNTY has executed THIS AGREEMENT on _____, 2007.

SARPY COUNTY, NEBRASKA

By _____
Chairperson of the Board of Commissioners

Attest:

County Clerk

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

On this _____ day of _____, 2007, before me, a Notary Public, personally came _____, to me personally known to be the Chairperson of the Board of Directors of the Forest Run Homeowners Association, Inc., whose name is affixed to the above and foregoing instrument, and he or she acknowledged the same to be his or her voluntary act and deed and the voluntary act and deed of such association.

WITNESS my hand and Notarial Seal the date last aforesaid.

NOTARY PUBLIC

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

On this _____ day of _____, 2007, before me, a Notary Public, personally came _____, to me personally known to be the Chairperson of the Board of Directors of the Lyman Hylands Homeowners Association, Inc., whose name is affixed to the above and foregoing instrument, and he or she acknowledged the same to be his or her voluntary act and deed and the voluntary act and deed of such association.

WITNESS my hand and Notarial Seal the date last aforesaid.

NOTARY PUBLIC

[illegible]

On this _____ day of _____, 2007, before me, a Notary Public, personally came _____, to me personally known to be the Mayor of the City of Gretna, Nebraska, whose name is affixed to the above and foregoing instrument, and he or she acknowledged the same to be his or her voluntary act and deed and the voluntary act and deed of such city.

WITNESS my hand and Notarial Seal the date last aforesaid.

NOTARY PUBLIC

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

On this _____ day of _____, 2007, before me, a Notary Public, personally came JOHN WINKLER, to me personally known to be the General Manager of the Papio-Missouri River Natural Resources District, whose name is affixed to the above and foregoing instrument, and he or she acknowledged the same to be his voluntary act and deed and the voluntary act and deed of such district.

WITNESS my hand and Notarial Seal the date last aforesaid.

NOTARY PUBLIC

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

On this _____ day of _____, 2007, before me, a Notary Public, personally came _____, to me personally known to be the Chairperson of the Board of Commissioners of Sarpy County, Nebraska, whose name is affixed to the above and foregoing instrument, and he or she acknowledged the same to be his or her voluntary act and deed and the voluntary act and deed of such county.

WITNESS my hand and Notarial Seal the date last aforesaid.

NOTARY PUBLIC