

Memorandum

To: Programs, Projects, and Operations Subcommittee
From: Amanda Grint, Water Resources Engineer
Date: September 2, 2008
Re: Interlocal Agreement for Crystal Creek Improvements

In the enclosed Interlocal Agreement with Sarpy County SID #236 and McCune Development Company, the District would agree to cost share for the design and construction of improvements to Crystal Creek located southeast of Hwy 31 and Cornhusker Road near Gretna. An attached map describes the project location.

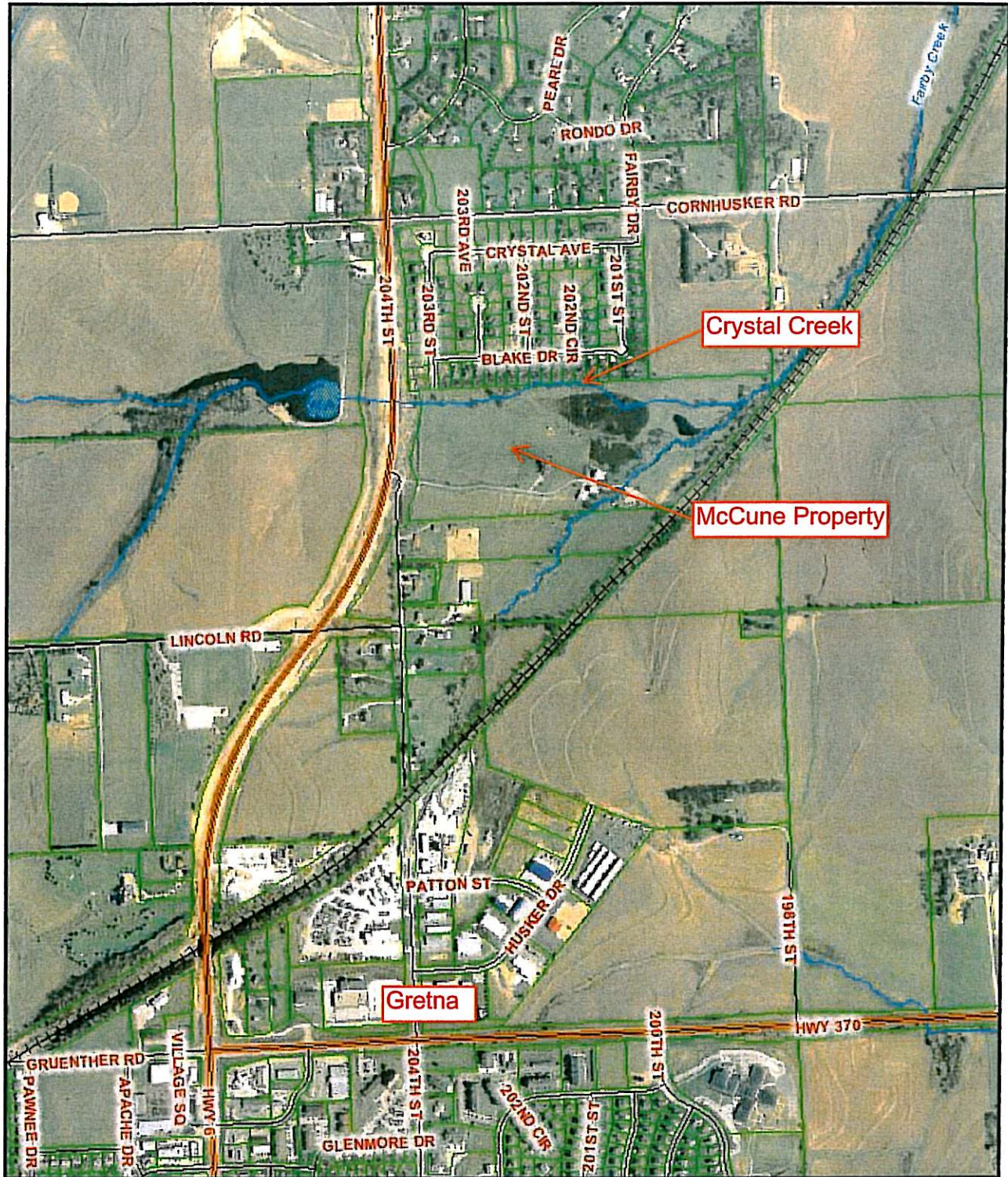
Crystal Creek has recently experienced severe flash flooding which impacted several residents on the southeast side of the development. Photographs are attached showing flooding that occurred during the June 19, 2008 rain event. Property was damaged during this and other storms this summer.

The creek has accumulated a large amount of sediment and is not functioning properly. The improvements proposed include reshaping the drainageway, removing accumulated sediment and providing a berm and swale along the south Crystal Creek properties to direct flows east toward the channel and away from the subdivision.

All land rights and easements would be provided by the SID and developer as well as operation and maintenance. The District would provide 1/3 of the cost to design and construct the improvements up to a maximum of \$10,000.00. The total cost of the project is expected to be approximately \$30,000.

- **Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Interlocal Agreement with the Sarpy County SID #236 and McCune Development Company for the Crystal Creek Improvement Project, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Council.**

Sarpy County, Nebraska



Disclaimer: This data is for informational purposes only, and should not be substituted for a true titles search, property appraisal, survey, or for zoning district verification. Sarpy County and the Sarpy County GIS Coalition assume no legal responsibility for the information contained in this data.

Map Scale
1 inch = 924 feet



COOPERATIVE AGREEMENT

**SANITARY AND IMPROVEMENT DISTRICT NO. 236 OF SARPY COUNTY,
NEBRASKA**

**McCUNE DEVELOPMENT COMPANY
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

CRYSTAL CREEK FLOOD AND EROSION CONTROL 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: **SANITARY AND IMPROVEMENT DISTRICT NO. 236 OF SARPY COUNTY, NEBRASKA** (hereinafter referred to as "the **SID**"); **McCUNE DEVELOPMENT COMPANY** (hereinafter referred to as "**McCUNE**"), a Nebraska corporation; and, **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as "the **NRD**").

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 parallel to Blake Drive in Crystal Creek Addition to Sarpy County, Nebraska (hereinafter referred to as "**CRYSTAL CREEK ADDITION**"); and,

WHEREAS, the **CHANNEL** is heavily sedimented and frequently overflows its banks and floods mitigation wetlands and other properties in **CRYSTAL CREEK ADDITION**; and,

WHEREAS, the **PARTIES** desire to have silt removed from the **CHANNEL** and to have constructed, operated and maintained public flood control improvements (hereinafter referred to collectively as "the **CHANNEL IMPROVEMENTS**"), consisting of re-shaping and removal of sedimentation in the **CHANNEL** and construction of a berm and swale to direct **CHANNEL** flood flows away from **CRYSTAL CREEK ADDITION**.

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 the CHANNEL IMPROVEMENTS will constitute a public flood control project that will be predominantly of general benefit to the NRD, with only an incidental special benefit.

2. **SURVEY, PLANS AND SPECIFICATIONS.** A topographic survey of the project area shall be prepared by a consultant retained and compensated by the SID. The plans and specifications for the CHANNEL IMPROVEMENTS (hereinafter referred to collectively as "the **PROJECT PLANS**") shall be prepared by engineering consultants retained and compensated by McCUNE and shall be submitted to the NRD and SID and be subject to the prior written approval of the NRD and SID.

3. **ACQUISITION OF RIGHTS OF WAY.** The SID shall acquire such land, permanent easements and temporary spoil areas, and provide relocations of utilities, existing structures, woody vegetation, landscaping and/or other improvements, all as the SID determines necessary or convenient for purposes of construction, operation and maintenance of the CHANNEL IMPROVEMENTS in conformance with the **PROJECT PLANS** or in facilitation thereof. McCUNE agrees to donate such permanent and temporary land rights over and across its real property as necessary or convenient for purposes of construction and permanent operation and maintenance of the CHANNEL IMPROVEMENTS in conformance with the **PROJECT PLANS**.

4. **PERMITS.** The SID agrees to obtain, at its own cost and expense, all necessary local, state and/or federal permits and utility relocations as the SID determines necessary or convenient for purposes of construction and permanent operation and maintenance of the CHANNEL IMPROVEMENTS in conformance with the **PROJECT PLANS**.

5. **CONSTRUCTION.** After receipt by the SID of the NRD's approval of the **PROJECT PLANS**, and receipt of the lands and permanent easements determined necessary for the CHANNEL IMPROVEMENTS, the SID agrees to retain and compensate contractors to construct the CHANNEL IMPROVEMENTS in accordance with the NRD-approved **PROJECT PLANS**.

6. **OPERATION AND MAINTENANCE.** After completion of construction of the CHANNEL IMPROVEMENTS, the SID shall permanently operate, maintain and repair the CHANNEL IMPROVEMENTS in accordance with the NRD-approved PROJECT PLANS and generally-accepted engineering practices applicable to the CHANNEL IMPROVEMENTS.

7. **NRD CONTRIBUTION.** The NRD agrees to contribute to the costs and expenses of topographic survey, design and construction of the CHANNEL IMPROVEMENTS by reimbursing the SID, within forty-five days after the SID's written demand, in an amount equal to one-third of the moneys expended by the SID for the topographic survey, and in an amount equal to one-third of the moneys expended by McCUNE for design and construction of the CHANNEL IMPROVEMENTS; provided, however, that the cumulative total of such contributions to the SID by the NRD shall not in any case exceed the sum of TEN THOUSAND DOLLARS (\$10,000.00).

8. **McCUNE CONTRIBUTION.** McCUNE agrees to contribute the total costs and expenses of topographic survey, design and construction of the CHANNEL IMPROVEMENTS, less those amounts provided by NRD and SID contributions. McCUNE shall reimburse the SID, within forty-five days after the SID's written demand, in an amount equal to one-third of the moneys expended by the SID for the topographic survey of the CHANNEL IMPROVEMENTS;

9. **SID CONTRIBUTION.** The SID agrees to contribute to the cost of the topographic survey in an amount equal to one-third of the moneys expended by the SID for the topographic survey. The SID shall reimburse McCUNE, within forty-five days after McCUNE's written demand, in an amount equal to the NRD's contribution for the design and construction of the CHANNEL IMPROVEMENTS.

10. **RISK OF LOSS.** The SID shall have and bear the sole risk of loss of or damage to the CHANNEL IMPROVEMENTS, regardless whether such loss or damage results from flood or other casualty.

11. **INDEMNIFICATION.** Except as otherwise specifically provided in THIS AGREEMENT, the SID shall defend and indemnify the NRD, and hold and save the NRD harmless, from and against (a) any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for design, land rights, construction,

operation, maintenance, repair or replacement of the CHANNEL IMPROVEMENTS; and (b) 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 SID, its employees, officers, contractors or agents, in the construction, operation, maintenance, repair or replacement of the CHANNEL IMPROVEMENTS pursuant to THIS AGREEMENT, excepting injuries or damages proximately caused by the negligence of the NRD or its employees, officers, contractors or agents.

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 representations or promises 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 SID has executed THIS AGREEMENT on _____, 20 ____.

**SANITARY AND IMPROVEMENT
DISTRICT NO. 236 OF SARPY COUNTY,
NEBRASKA**

By _____
Chairperson, Board of Trustees

Attest:

District Clerk

The NRD has executed THIS AGREEMENT on _____, 20 ____.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

McCUNE DEVELOPMENT COMPANY has executed THIS AGREEMENT on
_____, 20 ____.

McCUNE DEVELOPMENT COMPANY

By _____
President