

COOPERATIVE AGREEMENT

BETWEEN

CITY OF LINCOLN, NEBRASKA

AND

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT

This Cooperative Agreement ("Agreement") made and entered into by and between the City of Lincoln, Nebraska ("City") and Lower Platte South Natural Resources District ("District").

WITNESSETH:

RECITALS

- A. City is a municipal corporation and pursuant to *Neb. Rev. Stat.* § 15-201 has the authority to make all contracts and do all other acts in relation to the property and concerns of the City necessary to the exercise of its corporate powers.
- B. District is a political subdivision of the State of Nebraska and pursuant to *Neb. Rev. Stat.* § 2-3235(1), has the authority to cooperate with or enter into an agreement with any agency, governmental or otherwise, for carrying out the projects for the benefit of the District as authorized by §§ 2-3201 to 2-3257 subject to such conditions as the board may deem necessary to advance the purposes of such sections.
- C. District, pursuant to *Neb. Rev. Stat.* § 2-3229, has the authority, among others, to develop and execute plans, facilities, works, and programs relating to "(6) development, management, utilization, and conservation of ground water and surface water; (11) development and management of recreational and park facilities, and (12) forestry and range management.
- D. City and District desire to enter into this Agreement for the purpose of providing for the management of City's Wetland Mitigation Bank.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, the parties agree as follows:

- 1. City is establishing a Wetland Mitigation Bank ("Bank") with the US Army Corps of Engineers ("COE") under a Banking Instrument dated Jan. 9, 2003, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference. The

purpose of the Bank is to provide mitigation for Section 404 wetland impacts. City is in the process of completing and complying with all of the requirements contained in the Banking Instrument and the Bank Plan (Plan), a copy of which is attached hereto as Exhibit B and incorporated herein by this reference.

2. Bank is located on land described as:

A part of the Southeast Quarter of Section 26 and part of the Northeast Quarter of Section 35, Township 11 North, Range 7 East, Lancaster County, Nebraska, as further described and shown on Exhibit C attached hereto and incorporated herein by this reference (the "Property").

3. District agrees to manage the Bank for the City and City agrees to pay the District annually the sum of \$3,500.00. The City on or before June 1st of each year shall make the annual payment to the District. The first payment is due on or before June 1, 2003.

4. District agrees to manage the Bank by performing the following routine management functions.

- (a) Mow the berms once each year after a killing frost;
- (b) Inspect the berms each year and perform minor repairs such as filling burrows;
- (c) Maintain perimeter fences around Wetland Mitigation Bank and parking lot;
- (d) Control noxious weeds and those plants considered invasive including salt cedar (*Tamarix* spp.);
- (e) Manipulate water levels using the stop log outlet structures subsequent to the full certification of the Bank by the COE.
- (f) Subsequent to full certification of the Bank, manage the grasslands as the District deems appropriate with grazing, mowing, haying or burning; and
- (g) Control woody vegetation and restrict it to the perimeter of the Bank, the ballast pits, along portions of the trail and manipulate species composition as District deems appropriate.

5. District also agrees to coordinate and complete the following:

- (a) Perform major repairs due to a natural disaster such as flooding. If such disaster occurs, District will submit to City an estimate of the cost of repair. City shall approve the estimate and pay the actual cost of repair within 30 days of receipt of a bill by District;
- (b) Contract for mowing during COE certification as requested by City or its agent. City agrees to pay for such mowing within 30 days of receipt of a bill by District; and

(c) If requested by City, Contract with a third party to grade and add rock to the parking lot located on the site of the Bank. City agrees to pay for the grading and rocking within 30 days of receipt of a bill by District.

6. City agrees to perform all of the duties and obligations required by the Banking Instrument with the COE, except for the obligations undertaken by the District pursuant to this agreement for the management of the Bank.

7. The initial term of this Agreement shall be for five years commencing on _____ and terminating on _____. Unless either party terminates this Agreement by giving prior written notice to the other party of at least 90 days before the expiration of the initial term or any renewal term, this Agreement shall automatically be renewed for additional successive five-year terms. At the beginning of each successive five-year term, the parties shall review and adjust the annual cost of management and update the tasks, if necessary. If updates and adjustments are agreed to, they will be reflected in a supplement to this Agreement within 90 days of the commencement of such five year term. If neither party has indicated that a cost adjustment or an update of the tasks are necessary within such 90 days, the same annual cost of management and tasks shall continue for such five year term.

8. City agrees to notify the District of any maintenance needs beyond those agreed to by District in this Agreement. District will use its best efforts to perform such maintenance. City agrees to pay District for such maintenance within 30 days of receipt of bill from District.

9. District agrees that any bill for services performed by the District pursuant to the terms of this Agreement and sent to City for payment will be at District's actual cost.

10. City further agrees to:

- (a) Construct and maintain all board walks located on the site of the Bank;
- (b) Erect and maintain all signs associated with the Bank;
- (c) Provide, maintain and empty all trash receptacles placed located on the Bank site; and
- (d) Mow the interpretive trail located on the Bank site.

11. City designates Devin Biesecker of the Public Works & Utilities Department as its representative to coordinate the implementation of this Agreement. District designates Dan Schulz, Resources Coordinator, as its representative to coordinate the implementation of this Agreement. Either party may change designation by giving written notice to the other. All notices will be sent by registered mail or hand delivered to:

901 N. 6th Street,
City at 555 South 10th Street, Lincoln, Nebraska, 68508, Attention:
Watershed Management, Devin Biesecker.

District at 3125 Portia St., PO Box 83581, 68501-3581, Lincoln, Nebraska,
Attention: Dan Schulz.

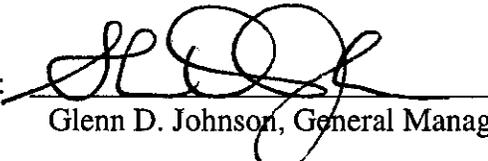
12. City acknowledges that District presently owns, operates, maintains and uses a monitoring well located on the Property. City agrees that the District may locate, operate, maintain, use and replace the monitoring well, and continue to take water samples and well measurement readings until such time that the District abandons such well. If District abandons such well, it will close the well in accordance with the requirements imposed by law.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date opposite the signature.

CITY OF LINCOLN, NEBRASKA

BY: _____

LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT,

BY:  _____
Glenn D. Johnson, General Manager