

January 27, 2006

MOA No. 06AG602086

MEMORANDUM OF AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
AND  
THE VILLAGE OF NIOBRARA, NEBRASKA

FOR THE SANTEE SIOUX MUNICIPAL, RURAL, AND INDUSTRIAL (MR&I) WATER SUPPLY  
SYSTEM FEASIBILITY STUDY

This MEMORANDUM of Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between the UNITED STATES OF AMERICA, hereinafter referred to as Reclamation, and the Village of Niobrara, hereinafter referred to as the Village, for the purpose of conducting the Santee Sioux MR&I Water Supply System Feasibility Study, hereinafter referred to as the Santee Feasibility Study.

Purpose of the MEMORANDUM of Agreement:

The purpose of this MEMORANDUM of Agreement (MOA) is to finalize a cost sharing arrangement for the Santee Feasibility Study. Reclamation Manual, Directives and Standards, Feasibility Studies (Web Address: [www.usbr.gov/recman/cmpicmp05-02.htm](http://www.usbr.gov/recman/cmpicmp05-02.htm)) requires that feasibility studies be cost shared with a non-Federal sponsor. The non-Federal cost share will be equal to or exceed 50 percent of the total (prorated) Santee Feasibility Study cost. The Federal cost share is limited to no more than 50 percent of the total (prorated) Santee Feasibility Study and environmental document cost.

Cost sharing agreements are to be in accordance with OMB Circulars A-21, A-87, A-122, and A-133, and Reclamation's "Criteria and Procedures for Reviewing Cost-Share Agreements on Reclamation Projects," November 17, 1999. The Plan of Study, Attachment A, for the Santee Feasibility Study identifies the specific tasks.

**BUREAU OF RECLAMATION**

**For** Donald E Moorman  
Great Plains Region  
Regional Director

2/15/06  
Date

**VILLAGE OF NIOBRARA, NEBRASKA**

Stanley A. Dyck  
Chairman, Village Board of Trustees

02-07-2006  
Date

## I AUTHORITY

The Native American Technical Corrections Act of 2004 (P.L.108-204 Sec.125) specifically provided Reclamation the authority to conduct the Santee Feasibility Study. P.L.108-204 Sec.125 states:

"(a) Study.--Pursuant to reclamation laws, the Secretary, acting through the Bureau of Reclamation and in consultation with the Santee Sioux Tribe of Nebraska (referred to in this subtitle as the "Tribe"), shall conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water treatment and distribution system for the Santee Sioux Tribe of Nebraska that could serve the tribal community and adjacent communities and incorporate population growth and economic development activities for a period of 40 years.

(b) Cooperative Agreement.--At the request of the Tribe, the Secretary shall enter into a cooperative agreement with the Tribe for activities necessary to conduct the study required by subsection (a) regarding which the Tribe has unique expertise or knowledge.

(c) Report.--Not later than 1 year after funds are made available to carry out this subtitle, the Secretary shall submit to Congress a report containing the results of the study required by subsection (a).

(d) Authorization of Appropriations.--There is authorized to be appropriated to the Secretary to carry out this section \$500,000, to remain available until expended."

This MOA is entered into by Village pursuant to Resolution No. 2006-02, Attachment C to this MOA.

## II FEASIBILITY STUDY

The tasks identified in this document for Reclamation and the Village to perform as part of the Santee Feasibility Study shall commence upon the execution of this MOA. Reclamation and the Village will expeditiously perform and complete the Santee Feasibility Study tasks in compliance with this MOA, the attached Plan of Study, and with the "Reclamation Manual, Directives and Standards, Feasibility Studies." The study period shall end with Reclamation's submittal of the final feasibility report through the Department of the Interior to the Office of Management and Budget, as stipulated in Executive Order 12322, for review of consistency with the policies and programs of the President, or ending with termination of this MOA, whichever is earlier.

As defined in the "Reclamation Manual, Directives and Standards, Feasibility Studies," a feasibility study is a detailed investigation specifically authorized by law to determine the desirability of seeking congressional authorization for implementation. It requires acquisition of primary data and participation of public agencies and entities and the general public to develop a preferred plan from a range of alternative courses of action to meet recognized needs, problems, and opportunities associated with the planning area of concern. The feasibility study will be conducted consistent with the "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G)," dated March 10, 1983.

The Santee Feasibility Study will include such items as: identification of present and future conditions; identification of problems and needs; evaluation of resource capabilities; formulation of alternative plans; analyses and comparison of alternatives; and plan selection. A screening process will be defined and used to refine alternatives to arrive at a plan that reasonably maximizes net National Economic Development (NED) benefits with acceptable impact to the ecosystem and human environment. Alternatives

optimizing environmental quality, Regional Economic Development (RED), and other social effects may also be developed and presented.

The Santee Feasibility Study will be in compliance with the National Environmental Policy Act (NEPA), Fish and Wildlife Coordination Act, Endangered Species Act (ESA), National Historical Preservation Act (NHPA) and other related Federal and state environmental and cultural resource laws. The Santee Feasibility Study will culminate in a feasibility report/environmental compliance document.

### **III. PUBLIC BENEFIT**

The benefits to be derived from the MOA are to fulfill Congressional requirements wherein the funds were appropriated. This study will assist the Santee Sioux Nation, non-Tribal members on the Santee Sioux Reservation, and the Village of Niobrara in achieving a safe and adequate water supply to meet year 2050 demands.

### **IV. Plan of Study**

The Plan of Study is a document that is jointly prepared by Reclamation, the Santee Nation, and the Village to conduct the feasibility study. The Plan of Study describes the activities to be performed by Reclamation, the Santee Nation, and the Village; the schedule for the completion of each activity; and the estimated cost for each activity. The Plan of Study is attached to this MOA.

#### The Village shall:

1. Designate a community representative to be the point of contact for this study. This person will serve as a conduit for the request of information and the sharing of study results.
2. Participate in technical meetings and conference calls conducted during the study.
3. Provide data on present and historic municipal, commercial, industrial, and residential demands, and system losses.
4. Provide information on current capacity of Village's supply wells and water quality analyses.
5. Provide data and as-built engineering specifications and drawings regarding the Village's existing water supply wells, treatment system, and water distribution system.
6. Provide assistance and review to the study team regarding population growth projections for the Village from present to year 2050.
7. Provide information regarding anticipated water supply demand growth from present to year 2050, accounting for any economic development information the Village may have, and including demand change for residential, municipal, industrial, and commercial uses.
8. Review draft study documents and provide comments in timely manner.
9. Notify Reclamation of any problems that may delay the completion of study components associated with this Agreement.

#### Reclamation will:

1. Conduct the Santee Feasibility Study as outlined in the attached Plan of Study.
2. Submit data requests to the Village.
3. Inform the Village of team meetings and conference calls.
4. Consult with and inform the Village of significant decisions during the study process.
5. Notify the Village of problems that may delay the completion of study components associated with this agreement.
6. Provide drafts of the feasibility report and environmental compliance document to the Village for their review and comment.

## V. FUNDING AND TERMS OF AGREEMENT

### Funding:

The Native American Technical Corrections Act of 2004 states that the maximum authorized Federal cost for the Santee Feasibility Study is \$500,000. Currently, the estimated cost for completion of the feasibility study is \$500,000 as noted in the referenced Plan of Study. To date, Reclamation has received \$269,000 of those authorized funds.

After the initiation of the feasibility study, the tasks, deliverables, and milestones identified in the Plan of Study may change. Adjustments can be made to the total study cost estimates as long as the Federal contribution does not exceed the authorized amount identified in the Native American Technical Corrections Act of 2004.

Adjustments that change the total feasibility study cost estimate and study tasks, deliverables, or milestones require a revised Plan of Study that must be mutually agreed upon in writing by both Reclamation and the Village. Reference is made to the Modification Section of the MOA for additional clarification.

### Payment:

Reclamation shall retain and disburse funds made available to it by the Village pursuant to this MOA without interest, credits, or debits. Funds made available by the Village which are not obligated by Reclamation within the Federal fiscal year (FFY) in which they are contributed shall be carried over for obligation in the subsequent FFY. (The FFY starts October 1 and ends on September 30).

The Village shall submit to Reclamation funds for the feasibility study in accordance with the estimated annual study costs provided in Attachment B. Cash contributions by the Village shall be made in advance of the performance of work. Upon signing of this MOA by both parties, the Village will advance funds to Reclamation in accordance with the Budget estimate as detailed on Attachment B. Reclamation shall deposit the funds into a non-interest bearing trust account with the Department of Treasury established for the feasibility study. The Village may also provide additional cash or "in-kind" labor, services, travel, and materials to accomplish tasks identified in this MOA and the attached Plan of Study. Providing in-kind services by the Village, and the performance of any of the Village's obligations under this MOA shall be contingent upon an agreed-upon amount of work and the acceptance of the work by Reclamation.

The obligation of any Federal funds and the performance of any of Reclamation's obligations under this MOA shall be contingent upon the appropriation and allotment of sufficient Federal funds. In the absence of appropriation or allotment of Federal funds, the Village may perform any of its obligations under this MOA. Neither the United States of America, nor Reclamation shall be liable to the Village if sufficient Federal funds are not appropriated or allotted.

Should either Reclamation or the Village fail to obtain the funds sufficient to perform their respective obligations pursuant to this MOA and the attached Plan of Study, that party shall immediately notify the other cost sharing partner. At this time, Reclamation has received only a portion of the funds authorized under P.L.108-204 Sec.125. It is not known if Reclamation will obtain the additional funds necessary to complete the Santee Feasibility Study as defined in the Plan of Study.

### Modification:

This MOA may be modified through bilateral agreement between the parties. Any modification made to this MOA and the attached Plan of Study shall be confirmed in writing prior to performance of the change. Any change in the estimated total study cost for the feasibility study shall be confirmed in writing between the parties prior to performance of the work.

### Termination:

Either Reclamation or the Village may terminate this MOA by written notice to the other. Termination is effective 30 days after the written termination notice is received by the other party, or on such earlier date as Reclamation and the Village may agree upon in writing. Neither Reclamation nor the Village shall be required to share any feasibility study cost obligated after the effective date of termination either by payment of cash or provision of in-kind services. Reclamation shall use funds advanced to it by the Village pursuant to this MOA and attached Plan of Study to pay any reasonable and non-cancelable obligations incurred by Reclamation in the performance of this MOA up to the date of the notice to terminate, but not to exceed the balance of uncommitted funds advanced to Reclamation by the Village pursuant to this MOA.

In the event that the study is concluded or terminated prior to the completion of the feasibility study, a concluding report shall be prepared in lieu of draft and final versions of the feasibility report and environmental compliance document. The cost incurred to prepare the concluding report shall be considered part of the total feasibility study cost.

### Final Accounting and Contributions:

Within 90 days after the completion of all activities of this MOA or within 90 days after the termination of this MOA, the Study Management Team shall prepare a final accounting of the Study Cost, which shall display disbursements by Reclamation of Federal funds, cash contributions by the Village, and the credits for in-kind services of the Village. Subject to all other terms and conditions of this MOA, within 30 days after termination of this MOA, the Village shall provide Reclamation its prorated share of any cash contributions required so that the total non-Federal share is at least 50 percent of the prorated total feasibility study and environmental compliance document cost.

### Management of Records:

Reclamation and the Village shall keep books, records, documents, and other evidence pertaining to the cost of the feasibility study and expenses incurred pursuant to this MOA. Reclamation and the Village shall maintain such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties of the MOA. Such material shall remain available for review for a period of five (5) years following the termination of this MOA.

## VI. REQUIRED CLAUSES

During the performance of this MOA, the participants agree to abide by the terms of Executive Order 11246 on non-discrimination, and will not discriminate against any person because of race, color, religion, sex, national origin, age, or being handicapped. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, national origin, age, or being handicapped.

No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this MOA, or to any benefit, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

**VII. TECHNICAL REPRESENTATIVES**

The following representatives will be responsible for monitoring the work activities included in this MOA:

<u>Reclamation:</u>	Mark Phillips	<u>Village :</u>	Robert Olson
	Study Team Leader		Niobrara Village Clerk
	406-247-7743		402-857-3404

**VII. ATTACHMENTS**

**The following attachments are made a part of this MOA:**

- Attachment A. Plan of study**
- Attachment B. Determination of cost share**
- Attachment C. Village Resolution**

**Attachment B, MOA No. 06AG602086**  
**Determination of Cost Share for Village**

The Village's estimated 50 percent cost share amount for the feasibility study is prorated based on estimated year 2040 demands from Table 9-2 of Reclamation's March 2004 "Needs Assessment, MR&I Water System, Santee Indian Reservation, Nebraska." The following steps define the Village's estimated cost share:

1. Ratio of Village's year 2040 average demands to total project average year 2040 demands = 33,000 gallons per day / 694,000 gallons per day = .0476\*.
2. Village's total cost share for the study is one half of the above ratio multiplied by total study cost of \$500,000:  $0.5 \times .0476 \times \$500,000 = \$11,900^*$ .
3. Village's initial cost share amount is the total study cost share prorated to the Federal funds Reclamation has received for the study as of present and anticipated to be expended in FFY 2006:  $\$11,900 \times (\$269,000/\$500,000) = \$6400^*$ .
4. If additional Federal funds are received greater than \$269,000, the Village's additional cost share amount will be prorated based on the amount of additional funds received, but in no case will the total cost share amount exceed \$11,900\*.

\*values rounded

UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF RECLAMATION  
WATER SUPPLY SYSTEM FEASIBILITY STUDY  
RESOLUTION NO 2006-02

Whereas the Village of Niobrara desires to improve the quality of their water supply and

Whereas a feasibility study is being conducted by the Bureau of Reclamation for the Santee Sioux Reservation and

Whereas this study is authorized to be expanded to cover adjoining communities subject to a cost share agreement with the adjoining communities;

Now, Therefore Be It Resolved that the Chairman and Village Clerk of the Village of Niobrara be authorized to enter into a Memorandum of Agreement with the United States Department of Interior, Bureau of Reclamation pertaining to the feasibility study and providing for a cost share not to exceed \$11,900.00.

There was a motion by Trustee Henke and second by Trustee Kotrous to pass and approve this resolution. Roll call vote was as follows: Yeas-Henke, Peters, Janovec, Kotrous and Dryak. Nays-None. Motion carried.

Passed and approved this 7<sup>th</sup> day of February, 2006.

ATTEST: Robert L. Olson  
Robert L. Olson  
Village Clerk

Stanley O. Dryak  
Stanley O. Dryak, Chairman  
Village Board of Trustees  
Village of Niobrara