

Agenda Item: 6.

## MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee  
FROM: Eric Williams, Natural Resources Planner  
DATE: December 1, 2016  
SUBJECT: Portal Road Drainageway Improvements  
Interlocal Agreement with La Vista and Papillion

The purpose of this Interlocal Agreement is to specify the terms and conditions upon which Papillion, La Vista, and the NRD will collaborate to design, develop, construct, operate and maintain a portion of the "Portal Road Drainageway" (PRDW).

The District approved a cost share application in 2016 with the City of Papillion thru the Urban Drainageway Program for a channel stabilization project to the south of Portal Road along PRDW. This project extends across the jurisdictional boundary between La Vista upstream (north) of Portal Road, and Papillion downstream (south) of Portal Road. An Urban Conservation Assistance Program application with La Vista had previously been approved in 2014 to perform stabilization work on the same drainageway in their jurisdiction.

Cost share funding for these projects on both sides of Portal Road have been reviewed, approved, and included in the District's FY 2017 budget to help correct erosions issues. By working together, the three agencies have identified a plan for comprehensive drainage improvements at both ends of the culvert under Portal Road, with all work to be completed by the same contractor.

The proposed Interlocal Agreement (attached) lays out the responsibilities of each of the parties and the cost shares arrangement for each (see table below).

<u>Agency</u>	<u>Funding Type</u>	<u>Amount</u>
Papillion	Direct payment, lead administrator	\$ 90,000
La Vista	Contribution to Papillion	\$ 90,000
NRD to Papillion	Urban Drainageway Program	\$ 97,122
NRD to La Vista	Urban Conservation Assistance Program	\$ 30,000
Total expected project cost		<b><u>\$ 307,122</u></b>

- **Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Cooperation Agreement with the City of La Vista and the City of Papillion for Portal Road Drainageway Improvements, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

INTERLOCAL COOPERATION ACT AGREEMENT PORTAL ROAD DRAINAGEWAY  
IMPROVEMENTS (Portal Road to West Papillion Creek) AMONG THE CITY OF LA  
VISTA, THE CITY OF PAPIILLION, AND THE PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT

This agreement is hereby made and entered into as of this \_\_\_\_\_ of \_\_\_\_\_, 2016 by and among the CITY OF LA VISTA ("La Vista"), the CITY OF PAPIILLION ("Papillion"), municipal corporations organized and existing under the laws of the State of Nebraska located in Sarpy County, Nebraska, and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("District"), a natural resources district organized and existing under the laws of the State of Nebraska (all collectively referred to hereinafter as "the Parties").

WHEREAS, Papillion currently owns a portion of an unnamed tributary of the West Papillion Creek, extending south from the south line the Portal Road right-of-way to the West Papillion Creek in Sarpy County; and,

WHEREAS, La Vista currently owns a portion of an unnamed tributary of the West Papillion Creek, extending north from the south line of Portal Road right-of-way for approximately 120 linear feet in Sarpy County; and,

WHEREAS, La Vista has previously applied to the District in March 2014 for Urban Conservation Assistance Program funding in the amount of \$18,000; and

WHEREAS, District has agreed to increase the Urban Conservation Assistance Program funding to La Vista to \$30,000; and

WHEREAS, the Parties desire to rehabilitate and stabilize drainageway to preserve and enhance operation and maintenance of the Portal Road right of way as well as important existing infrastructure along the unnamed tributary; and,

WHEREAS, Papillion and La Vista requested additional grant funding from the District through their Urban Drainageway Program on March 18, 2016 to assist with stabilization of this urban drainageway; and,

WHEREAS, in order to serve their mutual interests and pursuant to the authority granted the Parties by the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13801, et.seq.), the Parties desire to enter into this agreement to delineate and provide for their specific rights and obligations with respect to the development, construction, operation,

maintenance and repairs of the Portal Road Drainageway Improvements (Portal Road to West Papillion Creek).

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the Parties do hereby mutually undertake, promise, agree, and contract each for itself and its successors and assigns as follows:

I. PURPOSE

The purpose of this agreement is to specify the terms and conditions upon which Papillion and La Vista will design, develop, construct, operate and maintain a portion of an unnamed tributary of the West Papillion Creek to be known as the "Portal Road Drainageway" ("PRDW") as more fully described in Exhibit A attached hereto and incorporated herein by reference, on parcels of real property currently owned by the Papillion and La Vista or to be acquired by the Papillion as hereinafter provided, generally extending from Portal Road (approximately 120 linear feet north of Portal Road to the West Papillion Creek).

II. RIGHTS, DUTIES, AND OBLIGATIONS OF PAPILLION

Papillion agrees to:

1. Act as the lead administrator for development of the PRDW;
2. Retain and compensate consultant(s) to provide professional engineering services in design, bidding and administration of construction of the PRDW;
3. Prior to bidding and construction of the PRDW, provide plans, specifications and construction documents to the Parties for review and approval;
4. Acquire any additional easements and/or rights-of-way necessary for the PRDW, and publicly bid and construct the PRDW after selecting and agreeing to compensate one or more contractors to build the PRDW in accordance with the plans, specifications, and construction documents approved by the Parties; provided, however, the Papillion shall not be required to expend more than a total of \$90,000 of its own funds for rights-of-way, engineering and construction of the PRDW without assurances of proportionate reimbursement by District and La Vista, in the proportions hereinafter stated.

5. Maintain records accounting for the land acquisitions, interim financing, design, development and construction of the PRDW, including receipt and application of private funds;
6. Permanently operate, maintain and repair the portions of the PRDW lying within the limits of Papillion's jurisdiction.

### III. RIGHTS, DUTIES, AND OBLIGATIONS OF DISTRICT

District agrees to:

1. Timely review and approve plans, specifications, and construction documents for the PRDW submitted by Papillion, such approvals to not be withheld or delayed unreasonably.
2. Reimburse to Papillion in one installment the amount of 40% of the Papillion's total costs expended for PRDW land rights, engineering and construction, but such reimbursement not exceeding \$97,122, such installment to become due and payable no more than sixty (60) days after completion of such construction. District shall not contribute more than a total of \$97,122 of its own funds for rights-of-way, engineering and construction of the PRDW unless the Parties agree in writing to amend this Agreement to provide additional participation if the total expenses exceed \$310,000.
3. Reimburse to La Vista in one installment the amount of \$30,000 according to the Urban Conservation Assistance Program application.

### IV. RIGHTS, DUTIES, AND OBLIGATIONS OF LA VISTA

La Vista agrees to:

1. Timely review and approve plans, specifications, and construction documents for the Trail, such approvals not to be withheld unreasonably.
2. Reimburse to Papillion in one installment, in an amount equal to Papillion's share of the total costs (after deduction of District contributions) expended for PRDW land rights, engineering and construction, but such reimbursement not exceeding \$120,000, such installment to become due and payable no more than sixty (60) days after completion of such

construction. La Vista shall not contribute more than a total of \$90,000 of its own funds, combined with \$30,000 received as reimbursement from District, for rights-of-way, engineering and construction of the PRDW unless the Parties agree in writing to amend this Agreement to provide additional participation if the total expenses exceed \$310,000.

3. Permanently operate, maintain, and repair the portions of the PRDW lying within La Vista's jurisdiction.

## V. GENERAL CONDITIONS

1. **NONDISCRIMINATION.** None of the Parties shall, 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, disability as defined under the Americans with Disabilities Act, political or religious opinions, affiliations, or national origin.
2. **CAPTIONS.** Captions used in this agreement are for convenience only.
3. **APPLICABLE LAW.** The Parties shall conform with all existing and applicable city ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this agreement.
4. **INTEREST OF THE PARTIES.** Each of the Parties to this agreement covenants with the other that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict with its performance under this agreement.
5. **MERGER.** This agreement shall not be merged into any other oral or written contract, lease, or deed of any type.
6. **MODIFICATION.** This agreement contains the complete and entire agreement of the parties. No representations were made or relied upon by any of the Parties other than those 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 the respective Parties.
7. **PROJECT SCHEDULE.** It is the mutual desire and intention of the Parties that the construction of improvements to the PRDW shall be completed by

June 30, 2017. Accordingly, the Parties hereby agree to cooperate with each other and make reasonable, good faith efforts to perform their obligations hereunder in a timely manner so as to achieve such construction by this date.

8. AMENDMENTS. This agreement may be amended upon the actions of the parties if done so in writing.
9. ASSIGNMENTS. A party may assign its rights under this agreement only by written consent of the other Parties.
10. EFFECTIVE DATE. This agreement shall become effective on the date that its execution by each and all of the Parties is complete.
11. COUNTERPARTS. This agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument. Email/scan copies or facsimile copies of this agreement will be deemed original copies.

## VI. INDEMNIFICATION

1. Each of the Parties agrees to indemnify and hold harmless the other Parties from and against any and all claims, demands and causes of action for damages to the person or property of third persons arising out of the comparative negligence of the indemnifying party in its performance of any of the covenants of this Agreement.

[ SIGNATURE PAGE TO FOLLOW ]

This Agreement is executed by PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By \_\_\_\_\_  
General Manager

This Agreement is executed by THE CITY OF PAPILLION this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

THE CITY OF PAPILLION

Attest:

By \_\_\_\_\_  
Mayor

\_\_\_\_\_  
CITY CLERK

This Agreement is executed by THE CITY OF LA VISTA this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

THE CITY OF LA VISTA

Attest:

By \_\_\_\_\_  
Mayor

\_\_\_\_\_  
CITY CLERK



Job Number: 181-601  
 thompson, dreessen & dorner, inc.  
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 Omaha, NE 68154  
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Date: 3-17-16  
 Drawn By: RTM  
 Reviewed By: DAK  
 Revision Date: 04-29-2016

City of Papillion

Portal Road Drainageway  
 Improvements EXHIBIT "A"