

Agenda Item: 11.

## **Memorandum**

**To:** Programs, Projects and Operations Subcommittee  
**Re:** Interlocal Cooperation Act Agreement Between The City of Blair, Nebraska and Papio-Missouri River Natural Resources District for California Bend Restoration Project Public Access  
**From:** Jim Becic  
**Date:** 2 June, 2017

The approximately 220 acre, California Bend Environmental Restoration Project is owned by the NRD and is adjacent to and north of Blair, Nebraska along the Missouri River. The habitat restoration project was completed in 2003 utilizing the Corps of Engineers' Section 1135 funding authority, the Nebraska Environmental Trust and NRD contributing costs. Limited public recreation opportunities were to be allowed at a future date. Following the restoration construction at the site, the City of Blair and the NRD jointly developed the California Bend Recreation & Habitat Master Plan for the purpose of allowing the general public access to the site for fishing, hiking, biking, nature observation and what are generally considered passive activities.

The attached Interlocal Cooperation Act Agreement Between The City of Blair, Nebraska and the Papio-Missouri River Natural Resources District for California Bend Restoration Project Public Access (ICA) has been drafted to allow the City of Blair, with NRD Management's review and approval, to make improvements to the site, maintain these improvements and provide signage that would facilitate access for the general public.



**Management therefore recommends that the Programs, Projects and Operations Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute this Interlocal Cooperation Act Agreement Between The City of Blair, Nebraska and Papio-Missouri River Natural Resources District for California Bend Restoration Project Public Access, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

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# CALIFORNIA BEND ENVIRONMENTAL RESTORATION PROJECT

## Legend



-  ACCESS ROAD
-  NRD BOUNDARY



**EXHIBIT "A"**

**INTERLOCAL COOPERATION ACT AGREEMENT**  
**Between**  
**THE CITY OF BLAIR, NEBRASKA**  
**And**  
**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**  
**For**  
**CALIFORNIA BEND RESTORATION PROJECT**  
**PUBLIC ACCESS**

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**THIS AGREEMENT ("THIS AGREEMENT")** is made pursuant to the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. Sections 13-801 to 13-827, et seq., by and between the following parties ("the **PARTIES**"), to wit: the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** ("the **NRD**"), and the **CITY OF BLAIR, NEBRASKA** ("the **CITY**").

**RECITALS:**

**WHEREAS**, the California Bend environmental restoration project ("**CALIFORNIA BEND PROJECT**") is comprised of approximately 220 acres of land owned by and/or subject to easements of the **NRD** located on the west bank of the Missouri River floodplain between river miles 648.4 and 650.2, northeast of the **CITY** in Washington County, Nebraska in Section 32, Township 19 North and Range 12 East and Section 5, Township 18 North and Range 12 East; and

**WHEREAS**, the **NRD** is separately a party to a Project Cooperation Agreement with the U.S. Army Corps of Engineers under which the **NRD** has certain responsibilities for maintenance and operation of the **CALIFORNIA BEND PROJECT**, and under which the **NRD** has agreed to certain use restrictions related to the project area; and

**WHEREAS**, the **CITY** desires to facilitate public access to the **CALIFORNIA BEND PROJECT** area consistent with the terms of the **NRD's** Project Cooperation Agreement,

**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. FACILITATION OF PUBLIC ACCESS.** Subject to approval by the general manager of the **NRD**, the **CITY** may, at its sole expense, make certain improvements ("**IMPROVEMENTS**") to facilitate public access to, and use of, the **CALIFORNIA BEND PROJECT** area as follows:

a. The **CITY** may rock and maintain the existing access roads/trails marked on Exhibit A, attached hereto.

b. The **CITY** may develop several points of public entry to features or areas of interest inside the boundaries of the **CALIFORNIA BEND PROJECT** area for passive recreational activities including but not limited to fishing, birdwatching, biking, hiking and photography.

c. The **CITY** may install a new controlled public entrance at the south end of the **CALIFORNIA BEND PROJECT** area, as marked on Exhibit A, attached hereto, to allow public access by foot and/or bicycle, but which restricts access by vehicles.

**2. MAINTENANCE OF IMPROVEMENTS.** The **CITY** agrees to maintain, at its sole expense, any **IMPROVEMENTS** placed in or on the **CALIFORNIA BEND PROJECT** area until and unless such time as the **CITY** notifies the **NRD** it is discontinuing and/or removing said **IMPROVEMENTS**. The **CITY** agrees the **NRD** has

no obligation to maintain any **IMPROVEMENTS** made by the **CITY** or to reimburse the **CITY** for the value of any **IMPROVEMENTS** left in or on the **CALIFORNIA BEND PROJECT** area.

**3. SIGNAGE.** The **CITY** agrees to post signage, in a form and location approved by the **NRD**, notifying the public that in the **CALIFORNIA BEND PROJECT** area:

- a. No harvesting or collecting of berries, nuts, fruit, wood, vines or other material is permitted.
- b. No large public events or overnight camping is permitted.
- c. No dogs, other than service dogs, are allowed at any time.
- D. No hunting is allowed.

**4. HUNTING AND FISHING.** Public fishing is permitted with a valid license. Hunting is not permitted due to the danger and liability associated with the invitation of the public to enter the **CALIFORNIA BEND PROJECT** area for other activities.

**5. USE OF NRD PROPERTY.** The **NRD** shall permit access to the **CALIFORNIA BEND PROJECT** area by the **CITY** and by the public consistent with the terms of **THIS AGREEMENT**.

**6. NRD ACCESS.** Nothing in **THIS AGREEMENT** shall in any way restrict access to the **CALIFORNIA BEND PROJECT** area by the **NRD** for any purpose at any time, including any necessary access to fulfill responsibilities under the separate Project Cooperation Agreement.

7. **DURATION AND TERMINATION.** **THIS AGREEMENT** shall continue in effect for so long as mutually desired by the **PARTIES**. Either **PARTY** may terminate **THIS AGREEMENT** upon written notice to the other. Whereas the **NRD** is obligated to comply with the terms of the Project Cooperation Agreement with the U.S. Army Corps of Engineers, the failure of the **CITY** or the public to abide by the use restrictions set forth herein may result in termination of **THIS AGREEMENT** and the area being closed to public access.

8. **INDEMNIFICATIONS.** The **CITY** shall defend, indemnify, and hold the **NRD** harmless from and against all costs and expenses, including attorneys' fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the **CITY'S** construction, maintenance, repair, or replacement of the **IMPROVEMENTS**, excepting such personal injuries or property damages as may be caused by the negligence of the **NRD**. The **NRD** shall defend, indemnify, and hold the **CITY** harmless from and against all costs and expenses, including attorneys' fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the **NRD'S** operation or maintenance of the project area under its Project Cooperation Agreement with the U.S. Army Corps of Engineers, excepting such personal injuries or property damages as may be caused by the negligence of the **CITY**.

9. **NOTICES.** Any notice under the terms of **THIS AGREEMENT** shall be deemed to have been given upon actual receipt by mail or electronic mail, or within forty-eight (48) hours after written notice has been deposited in the United States mail; and

a) Notices to the **CITY** provided for in **THIS AGREEMENT** shall be addressed to:

Mayor  
City of Blair, Nebraska  
218 South 16<sup>th</sup> Street  
Blair, Nebraska 68008

b) Notices to the **NRD** provided for in **THIS AGREEMENT** shall be addressed to:

General Manager  
Papio-Missouri River NRD  
8901 South 154th Street  
Omaha, Nebraska 68138-3621

or to such other respective address(s) as the **PARTIES** may designate to each other from time to time in writing.

**10. NONDISCRIMINATION.** The **PARTIES** shall not, 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 under the Americans with Disabilities Act, political or religious opinions, affiliations or national origin.

**11. APPLICABLE LAW.** The **PARTIES** to **THIS AGREEMENT** shall conform to all existing and applicable state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under **THIS AGREEMENT**.

**12. MODIFICATION. THIS AGREEMENT** contains the entire agreement of the **PARTIES**. No representations were made or relied upon by either of the **PARTIES** other than those that may be 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 each **PARTY**.

**13. INTERLOCAL COOPERATION ACT PROVISIONS. THIS AGREEMENT** shall not create any separate legal or administrative entity. It shall be administered jointly by the **PARTIES** as provided herein through representatives to be designated by and on behalf of each **PARTY**. Each **PARTY** shall separately finance and budget its own duties and functions under **THIS AGREEMENT**. There shall be no jointly held property as a result of **THIS AGREEMENT**. Upon termination, the **NRD** shall have ownership of any **IMPROVEMENTS** made to the property. **THIS AGREEMENT** does not authorize the levying, collecting or accounting of any tax.

**14. NON-WAIVER.** No delay or failure by either of the **PARTIES** to exercise any right under **THIS AGREEMENT**, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein.

**15. EFFECTIVE DATE. THIS AGREEMENT** shall become effective upon its execution by the **PARTIES**.

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

The **CITY** executed **THIS AGREEMENT** on \_\_\_\_\_, 2017.



**THE CITY OF BLAIR, NEBRASKA**

By \_\_\_\_\_

**Attest:** \_\_\_\_\_, Mayor

\_\_\_\_\_

**City Clerk**

The **NRD** executed **THIS AGREEMENT** on \_\_\_\_\_, 2017.

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_

**JOHN WINKLER, General Manager**