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

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 16th 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