

Agenda Item: 7.

**MEMORANDUM**

**TO:** Programs, Projects, and Operations Subcommittee

**FROM:** Zach Nelson, Project Manager

**SUBJECT:** Review and Recommendation for the Interlocal Agreement with Washington County, Township Number 1 for the relocation of a 6" water main.

**DATE:** May 25, 2017

---

Township Number 1, in Washington County is proceeding forward with a project to lower a section of County Road 40, between Hwy 75 and County Road 45. The purpose of lowering the road elevation is to improve eyesight lines and improve roadway safety. The District's Washington County Rural Water System has a 6" diameter water main that is located in the County Road Right-of-Way and is within limits of construction. (See attached map).

The section of water main that is in conflict with the new road elevation was originally installed at a lower elevation to accommodate the future road lowering, however state roadway design criteria have been revised, resulting in the need to relocate the water main.

Attached is a copy of the proposed Interlocal agreement between Township Number 1 and the District. Under the Interlocal Agreement, the Township will be responsible for 100% of the cost to design and construct the water main relocation. The new water main will be designed and installed per the District's water main specifications.

**Staff recommends that the PPO Subcommittee recommend to the Board of Directors, that the General Manager be authorized to execute the proposed Interlocal Cooperation Act Agreement with Township 1, Washington County, Nebraska, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

**Township 1, Washington County, Nebraska - County Road 40 Lowering Project  
Washington County Rural Water - 6" Diameter Water Main Relocation Map  
Exhibit A**



**AGREEMENT**

**Between**

**TOWNSHIP 1, WASHINGTON COUNTY, NEBRASKA**

**And**

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

**For**

**WATER MAIN RELOCATION**

This AGREEMENT is made and entered into this \_\_\_\_\_ day of May, 2017 by and between TOWNSHIP 1, a subdivision of the State of Nebraska in Washington County, Nebraska (hereinafter referred to as "TOWNSHIP") and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a subdivision of the State of Nebraska (hereinafter referred to as "DISTRICT"), witnesseth:

WHEREAS, the DISTRICT, through an existing revenue-producing, special improvement project has constructed and now operates and maintains a water distribution system (hereinafter referred to as "WATER SYSTEM"), in Washington County, Nebraska;

WHEREAS, TOWNSHIP is responsible for maintaining County Road 40 in southern Washington County, Nebraska more particularly described on EXHIBIT A attached hereto and incorporated herein by reference (hereinafter referred to as "County Road 40");

WHEREAS, TOWNSHIP is undertaking a project to lower County Road 40 that will affect the DISTRICT's water main ("WATER MAIN") and require its relocation along with the relocation of multiple service connections;

WHEREAS, pursuant to Neb. Rev. Stat. § 2-3254, the Nebraska Department of Health and Human Services must review and approve the plans and specifications for the WATER MAIN to ensure compliance of the WATER MAIN with the Nebraska Safe Drinking Water Act.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THEIR MUTUAL COVENANTS, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. TOWNSHIP, on its own behalf and at its sole cost and expense, shall employ engineers to prepare plans and specifications for the relocation of the WATER MAIN (hereinafter referred to as the "SPECIFICATIONS") to be approved by the DISTRICT in the DISTRICT's sole and exclusive discretion. Any and all changes to the SPECIFICATIONS must be approved by the DISTRICT in the DISTRICT's sole and exclusive discretion.
2. TOWNSHIP, at its sole cost and expense, shall be responsible for obtaining and shall obtain any and all permits, licenses, consents and other third party approvals required to ensure the WATER MAIN complies with all applicable statutes, rules, and regulations during all phases of relocation and subsequent operation of the WATER MAIN.
3. TOWNSHIP shall include the relocation of the WATER MAIN in its bid package for work on County Road 40 so as to ensure coordination of the road work with the relocation of WATER MAIN.

4. Within one year after the date hereof, TOWNSHIP, on their own behalf and at their sole cost and expense, shall relocate the WATER MAIN in accordance with the SPECIFICATIONS, which must be approved, in writing, by the DISTRICT.
5. All contractors and subcontractors employed by TOWNSHIP shall be approved, in writing, by the DISTRICT prior to any such contractor and/or subcontractor performing any work related to this AGREEMENT.
6. The DISTRICT shall be responsible for reviewing the WATER MAIN plans and will provide staff to coordinate the WATER MAIN relocation with service to connecting customers.
7. TOWNSHIP, at its sole cost and expense, shall grant the DISTRICT such permanent and assignable easements, permits, and rights-of-way as the DISTRICT determines, in the DISTRICT's sole discretion, are necessary for the DISTRICT'S operation, maintenance, repair and replacement of the WATER MAIN following the DISTRICT'S acceptance of the WATER MAIN pursuant to this AGREEMENT. Said easements, permits, and rights-of-way shall be granted and evidence thereof shall be provided to the DISTRICT in a recordable form prior to connection of the WATER MAIN to the WATER SYSTEM.
8. All permanent easements, permits, and right-of-ways provided by TOWNSHIP for the WATER MAIN shall provide for an easement/permit corridor not less than twenty (20) feet wide; shall provide that the DISTRICT shall have the permanent right to enter the lands subject thereto and to inspect, operate, maintain, repair, and replace the pipelines, valves, devices and appurtenances comprising the WATER MAIN improvements located therein; and, shall further provide that the consideration recited therein shall constitute payment in full for any and all damages sustained by the applicable owner and his, her, or their successors and assigns by reason of the exercise of any of the rights or privileges therein expressly granted or reasonably implied.
9. Except at the locations of road crossings required by the terrain, the WATER MAIN corridor shall be outside the traveled portion or pavement of any existing or planned roadway.
10. TOWNSHIP shall notify the DISTRICT at least forty-eight (48) hours in advance of the commencement of relocation of the WATER MAIN and shall allow and shall cause its contractors and subcontractors to allow the DISTRICT'S personnel access to inspect the progress of all such construction and maintenance activities contemplated in this AGREEMENT. In addition, TOWNSHIP shall provide the DISTRICT a detailed written plan concerning how TOWNSHIP or its contractors or subcontractors will connect the WATER MAIN to the WATER SYSTEM four (4) weeks prior to beginning work on said connection. TOWNSHIP shall notify the DISTRICT at least seventy-two (72) hours in advance of TOWNSHIP or its contractors or subcontractors connecting the WATER MAIN to the WATER SYSTEM. TOWNSHIP and its contractors or subcontractors will not perform any work on the WATER SYSTEM, including specifically connecting the WATER LINE to the WATER SYSTEM, without DISTRICT personnel present to observe such work taking place. DISTRICT personnel shall have the right and authority to cease all work related to the connection of the WATER MAIN to the WATER SYSTEM.
11. TOWNSHIP shall not permit any construction activities, whether by itself or its contractors and/or subcontractors, during weekends and holidays without prior written permission

from the DISTRICT. Said restriction does not apply to TOWNSHIP's maintenance activities directed by the DISTRICT following the DISTRICT'S acceptance of the WATER MAIN.

12. The contract(s) between TOWNSHIP and its contractor(s) shall provide for a contractor's warranty of at least two (2) years after completion and acceptance of the WATER MAIN by the DISTRICT, and shall provide that such warranty may be assigned to and enforced by the DISTRICT. Such contractor warranties shall not relieve or limit TOWNSHIP warranties, liabilities, or indemnification obligations.
13. Prior to authorizing its contractor(s) to proceed with construction of the WATER MAIN, TOWNSHIP shall submit the contractor's certificate of insurance to the DISTRICT for approval in the DISTRICT'S sole and exclusive discretion.
14. Upon TOWNSHIP's completion of the relocation of the WATER MAIN and connection of the WATER MAIN to the WATER SYSTEM, TOWNSHIP shall submit to the DISTRICT a professional engineer's certification certifying that such WATER MAIN is fully operational, complete, in accordance with the approved SPECIFICATIONS, and construction of the WATER MAIN was performed and completed in accordance with generally accepted engineering principles, whereupon the DISTRICT shall inspect the WATER MAIN and, in the absence of good cause as determined by the DISTRICT in the DISTRICT'S sole discretion, shall accept the WATER MAIN as a part of the WATER SYSTEM.
15. In addition to the engineer's certification and prior to the DISTRICT's acceptance of the WATER MAIN, TOWNSHIP shall provide to the DISTRICT an executed confirmation of payment in full or a lien waiver from each and every contractor, subcontractor, and material supplier who provided labor and/or materials for construction of the WATER LINE and who are protected by the Nebraska Construction Lien Act, Neb. Rev. Stat. §§ 52-125 to 52-159.
16. For a period of two years after the DISTRICT'S acceptance of the WATER MAIN (referred to herein as the "MAINTENANCE PERIOD"), TOWNSHIP, at TOWNSHIP's sole cost and expense, shall perform (within six (6) hours of notification by the DISTRICT) such repairs and replacements of the WATER MAIN and its main connection to the WATER SYSTEM as required to maintain the same in "as built" condition and in conformance with the approved SPECIFICATIONS, except for such repairs and replacements as may be required as a sole and proximate result of water pressures in the WATER SYSTEM exceeding the manufacturer's rated design capacity for the PVC components specified for the WATER MAIN or other causes not related to the quality of workmanship or materials provided by TOWNSHIP or TOWNSHIP's contractors and/or subcontractors. Notwithstanding anything to the contrary in this Section 14, TOWNSHIP shall provide the DISTRICT with notice immediately upon obtaining any knowledge of repairs, replacements, damage, or malfunction of the WATER MAIN and its main connection to the WATER SYSTEM. After the expiration of the MAINTENANCE PERIOD, the DISTRICT shall inspect, operate, maintain, repair and replace the WATER MAIN at such times and in such manner as may be prescribed by the Board of Directors of the DISTRICT in its sole and absolute discretion.
17. Upon the DISTRICT'S acceptance of the WATER MAIN, said WATER MAIN shall become the property of the DISTRICT and incorporated in to the WATER SYSTEM.

TOWNSHIP shall have no claims of ownership or rights in the WATER LINE following the DISTRICT'S acceptance.

18. Until the expiration of the MAINTENANCE PERIOD, TOWNSHIP shall indemnify and hold the DISTRICT harmless from and against any claims, costs, losses, and damages (including but not limited to all fees and costs associated with attorneys, engineers, and other professionals, and all court or arbitration costs) arising out of or relating to TOWNSHIP's obligations under this AGREEMENT, including, but not limited to, the construction and maintenance of the WATER MAIN, the WATER MAIN connection to the WATER SYSTEM, any harm to the WATER SYSTEM caused by the WATER MAIN, and the easements granted relating to the WATER MAIN.
19. TOWNSHIP at its sole and exclusive expense shall purchase and maintain or shall cause its contractor(s) to purchase and maintain, until the expiration of two years after acceptance of the WATER MAIN by the DISTRICT, a commercial general liability insurance policy with a minimum coverage of \$1,000,000 per occurrence, and a general aggregate coverage of \$2,000,000. Said insurance policy shall include an endorsement with the DISTRICT as an additional insured, and shall require that thirty (30) days written notice be provided to the DISTRICT prior to termination or change in the coverage provided. The insurance coverage contemplated in this paragraph whether provided by TOWNSHIP or its contractor(s) shall comply with the requirements set forth herein. Prior to the commencement of work, TOWNSHIP, or its contractor(s) shall submit certificates in a form acceptable to the DISTRICT evidencing that the said insurance policy is in effect.
20. TOWNSHIP binds itself, its successors and assigns to all covenants, agreements, and obligations contained in this AGREEMENT.
21. TOWNSHIP shall not assign any of its rights or obligations in or under this AGREEMENT without receiving prior, written consent of the DISTRICT.
22. No delay or failure by either party 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. A valid waiver by either party must be in writing and executed by the waiving party.
23. The parties acknowledge that each person executing this AGREEMENT on behalf of a party does hereby personally represent and warrant that he/she has the authority to execute this AGREEMENT on behalf of, and to fully bind, said party.
24. The parties acknowledge that this AGREEMENT contains the entire agreement between the parties, and the terms of this AGREEMENT are contractual in nature in all respects and not a mere recital. The parties further acknowledge that neither party has made representations or promises related to the subject matter of this AGREEMENT that have not been made part of this AGREEMENT.
25. This AGREEMENT may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

## **TOWNSHIP 1**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

By: \_\_\_\_\_

Name: John Winkler

Position: General Manager