

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee
FROM: Eric Williams, Natural Resources Planner
SUBJECT: US Highway 34 Bike and Walking Trail, Interlocal Agreement
DATE: September 7, 2017

The District has collaborated with Bellevue, Plattsmouth, Lower Platte South NRD, Sarpy County, Cass County, the Nebraska Department of Transportation (NDOT), and the Metropolitan Area Planning Agency (MAPA) on design and construction of a trail connection alongside US Highway 34 over the Platte River. The highway piers were originally designed and constructed with additional width to incorporate a separated trail. NDOT is resurfacing the roadway, and simultaneous trail construction will show significant cost savings.

Phase 1 of this project is the design and installation of a total of 26 girders between the 14 piers over the Platte River. Design and construction are being overseen by NDOT as part of their roadway construction contract, and girder placement will be completed while the northbound lanes of US-34 are closed. Phase 1 is necessary to be completed at the same time as the roadway work to allow for large equipment and enough work space in the northbound lanes to install the girders. All parties agree that this is a priority project, it has been in long-term plans for many years, and that this is likely the only opportunity to complete this work. Closing the northbound lanes again is not acceptable to NDOT. MAPA and NDOT will have a separate agreement for 50% of the cost of Phase 1, but no financial contribution to Phase 1 will be required from any of the other local parties.

Phase 2 involved placement of the concrete trail surface on top of the girders, and design work is expected to begin after the completion of Phase 1. The District will act as project sponsor and will seek federal funding to provide 80% of the cost of Phase 2 design and construction, and the remaining 20% will be shared by the six local partners, up to the maximum show below, through the attached proposed Interlocal Agreement.

| | |
|--------------------------|------------------|
| MAPA (federal funding) | \$ 1,600,000 |
| City of Bellevue | \$ 60,000 |
| City of Plattsmouth | \$ 28,000 |
| Papio-Missouri River NRD | \$ 200,000 |
| Lower Platte South NRD | \$ 40,000 |
| Sarpy County | \$ 40,000 |
| <u>Cass County</u> | <u>\$ 32,000</u> |
| Total for Phase 2 | \$ 2,000,000 |

This Interlocal Cooperation Agreement also includes “Exhibit A, Operations and Maintenance” to cover both the expected normal work to keep the trail operational, as well as funding for unexpected repair work. The two cities, and two counties will carry out the trail surface cleaning work with a rotating two-year cycle. The District will serve as the project sponsor and the main point of contact for any work to be done on the project, and funding for any other outside of normal trail surface cleaning will be shared between all six agencies.

- **Management recommends that the PPO Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Cooperation Agreement for the US Highway 34 Bike and Walking Trail, with the District’s cost not to exceed \$ 200,000, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

INTERLOCAL COOPERATION AGREEMENT
FOR
U.S. HIGHWAY 34 BIKE AND WALKING TRAIL

This Interlocal Cooperation Agreement (the “Agreement”) is made and entered into, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. 13-801, et seq., (Reissue 1997) as of the dates affixed on the signature pages below, by and between the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (“PMRNRD”) and the party or parties that have agreed to be bound by the terms hereof as evidenced on their respective signatures shown on the signature pages below (each such other party, together with PMRNRD, are hereinafter collectively referred to as the “PARTIES”).

WHEREAS, the PARTIES are desirous of installing a bike and walking trail as part of the U.S.-34 improvements currently under construction at the crossing of said highway by the Platte River as shown in Attachment 1; and

WHEREAS, pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat., Section 13-801, et. seq., (Reissue 1997), each of the PARTIES’ governing bodies have concurred in the proposed bike/walking trail as part of the roadway improvements on that portion of US-34 at the Platte River crossing and have committed to proceed with the development of preliminary design activities to secure appropriate project design plans and to agree to certain cost allocations associated with the design and construction of the bike/walking trail on the terms set forth herein.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS, pursuant to Neb. Rev. Stat. Section 13-801 (1997) et. seq., as follows:

1. **PROJECT DESCRIPTION.** The project is proposed to be constructed in two phases to ensure minimal disruption in traffic flow on northbound US-34. Phase 1 will consist of placing 2 girders spanning between each of the existing fourteen (14) piers on the northbound US-34 Platte River Bridge (S034 38367) for a total of 26 girders to facilitate the placement of the bike/walking trail. The limits of this Phase 1 “bridge” project are generally parallel to the US-34 bridge, between the existing piers. The Nebraska Department of Transportation (“NDOT”) will design, contract for, and oversee construction of Phase 1.

Phase 2 of the project will consist of construction of the bike/walking trail bridge abutments on the north and south banks of the Platte River, and placement of the bridge deck, rails, fencing, and appurtenances as necessary for the bike/walking trail and constructing trail connections to Allied Road and Beach Road. Estimated local design and construction cost of Phase 2 is shown in Section 5 of this Agreement. The cost allocations are approximate at the time of execution of this agreement but will be further defined as additional engineering and bidding of the project phases is completed. All Parties executing this Agreement understand and acknowledge that by approving this Agreement they are committing funds for the cost of Phase 2 in the amounts set forth in Section 5 hereof.

2. **PROJECT SPONSOR.** The parties hereby designate PMRNRD as the project sponsor. As project sponsor, PMRNRD will be responsible for project scope development, completion and submittal of applications for review by applicable regulatory agencies, coordinate the project design review process, solicit and review bids for design engineering services for the design of Phase 2 of the proposed bike/walking trail and award contracts for the same, solicit and review bids for construction services

for the proposed bike/walking trail and award contracts for Phase 2 of the same, and to reasonably allocate among the PARTIES hereto of their respective local share of project costs through the completion of the project. PMRNRD will also be responsible for the collection of federal assistance and for the payment of project costs, a portion of which shall be reimbursed by the other PARTIES according to Section 5 upon written notice from PMRNRD. Reimbursement shall be requested by the PMRNRD from other parties at the time of executing a construction contract for Phase 2. Any change orders or other adjustments to the price of the contract will be requested for reimbursement, or refunded after final payment for construction of Phase 2 has been issued to the contractor.

3. **PROJECT COSTS.** The PARTIES acknowledge and agree that Phase 2 will have an estimated cost of approximately \$2,000,000, and the local share of which is allocated to the parties as set forth in Section 5 below. Actual project costs will be determined following bidding and a contract award for work at which time the project shares will be adjusted based on contract pricing for such work.

4. **FEDERAL PORTION.** PMRNRD will coordinate the receipt of federal assistance to fund a portion of the project through the Omaha-Council Bluffs Metropolitan Area Planning Agency ("MAPA"), contingent on availability of federal funds, which is anticipated to represent the largest share of project costs once bids have been received. MAPA will coordinate with NDOT to program regional STBG funding equal to 50% of the cost of Phase 1 on a mutually agreed upon NDOT project. Details of the funding from MAPA and NDOT will be addressed in a separate agreement by those two parties. If the federal aid portion is expected to cover 80% of eligible local project costs (estimated at \$1,600,000 for Phase 2), the remaining 20% local portion (estimated at \$400,000 for Phase 2) would be paid by the PARTIES. If the federal aid portion is not

expected to cover 80% of the eligible project costs, then PMRNRD may terminate this Agreement on 90 days' prior written notice to the other PARTIES.

5. **LOCAL PORTION ALLOCATIONS.** Each of the PARTIES hereto agree to allocate among themselves the approximate local portions of the project costs as follows:

| <u>PARTY</u> | <u>Phase 2 Commitment</u> | <u>Percentage</u> |
|---------------------|---------------------------|-------------------|
| CITY OF BELLEVUE | \$ 60,000 | 15 % |
| CITY OF PLATTSMOUTH | \$ 28,000 | 7 % |
| PMRNRD | \$ 200,000 | 50 % |
| LPSNRD | \$ 40,000 | 10 % |
| SARPY COUNTY | \$ 40,000 | 10 % |
| CASS COUNTY | \$ 32,000 | 8 % |

The PARTIES agree that the foregoing cost allocations are preliminary and that the project sponsor reserves the right to adjust allocations in accordance with Section 2 above once final project costs are determined. Any changes to the PARTIES' local contribution will be increased or decreased, as the case may be, based on each PARTY's respective percentage share set forth above.

6. **OTHER LOCAL FUNDING.** The PARTIES are encouraged to seek other local funding opportunities from respective beneficiary groups such as local tourism boards, economic development districts and other private interest organizations supportive of the project to help defray their allocations of the local share of total project costs.

7. **OPERATION AND MAINTENANCE AGREEMENT.** Each PARTY agrees to comply with the terms of the Exhibit A attached hereto and incorporated herein by reference with respect to the operations and maintenance of the trail.

8. **TERM AND TERMINATION.** This AGREEMENT shall have permanent duration, unless or until terminated by any of the PARTIES as provided herein. Upon accomplishment of the aforesaid purposes of the project, this AGREEMENT may be terminated by any of the PARTIES upon 90 days' notice to the other PARTIES. Such termination shall not affect any rights of reimbursement under this AGREEMENT for actions taken or responsibilities assumed by another of the PARTIES prior to the effective date of termination of this AGREEMENT.

9. **INDEMNIFICATIONS.** The PARTIES shall indemnify and hold harmless the other PARTIES, officers, elected officials, employees and assigns harmless from and against any and all claims, judgments, actions, loss, liability, damage or injury of any nature whatsoever, whether under the theory of tort, contract or otherwise, which may arise or result from, out of or in connection with any neglect or other act, error or omission of any PARTY (including any of their respective employees, agents contractors, subcontractors or representatives) in furtherance of this agreement or any other agreement contemplated by this agreement (including any acts and/or omissions in carrying out their respective obligations as set forth in Exhibit A) to be entered into by the PARTIES, including the failure to perform or properly perform as may be so required. Notwithstanding the preceding sentence, the PARTIES shall not be obligated to defend, indemnify or hold harmless an indemnified PARTY to the extent damages arise or result from any negligent or other act, error or omission of the indemnified PARTY.

10. **NO ASSIGNMENT.** Neither this agreement nor any obligations hereunder shall be assigned without the express written consent of the PARTIES which may be withheld in any PARTY's sole discretion.

11. **NON-WAIVER.** A waiver by any PARTY of any default, breach or failure of another shall not be construed as a continuing waiver of the same or of any subsequent or different default, breach or failure.

12. **GOVERNING LAW.** This agreement shall be governed exclusively by its provisions and by the laws of the State of Nebraska except to the extent such provisions may be superseded by applicable federal law or regulation, in which case the latter shall apply.

13. **ENTIRE AGREEMENT.** This Agreement, and Exhibits and any documents referenced in this Agreement (which are intended to be and hereby are specifically made a part of this agreement whether or not so stated) express the entire understanding and all agreements of the PARTIES with respect to the project design, construction, and cost allocations described herein. Specifically, this Agreement supersedes any prior written or oral agreement or understanding between any of the PARTIES, whether individually or collectively concerning the subject matter hereof.

14. **AMENDMENTS.** This Agreement may be modified only by a written agreement, executed by all PARTIES hereto; provided that the PARTIES agree, without cost to any individual party, to conform this agreement and all performance obligations hereunder to the requirements of any applicable laws, rules, regulations, standards and specifications of any governmental agency with jurisdiction over any such matter, including any amendment or change thereto.

15. **RELATIONSHIP OF THE PARTIES.** This Agreement shall not be construed to be a joint venture or a lease among any of the PARTIES.

16. **SURVIVAL.** If any provision of this Agreement or the applications of this Agreement to any PARTY or circumstance shall, for any reason and to any extent, be held

invalid or unenforceable, neither the remainder of this Agreement nor the application of this Agreement or such provision to any PARTY or circumstance or other instruments referred to in this Agreement or affected provision shall be affected thereby but, rather the same shall be enforced to the fullest extent permitted by law. In the event that any provision of this Agreement, or the application thereof, is held by any court of competent jurisdiction to be illegal or unenforceable, the PARTIES shall attempt in good faith to agree upon an equitable adjustment in order to overcome to the greatest extent possible the effect of such illegality or unenforceability.

17. **NON-DISCRIMINATION.** Under this Interlocal Cooperation Agreement, in performance of the requirements herein, no PARTY shall discriminate against any person(s) on account of national origin, disability, race, sex, age, or political affiliation in violation of applicable laws, rules and regulations of any government agency with jurisdiction over such matter.

18. **MISCELLANEOUS.** This Agreement shall not create any separate legal or administrative entity. It shall be administered jointly by the PARTIES, through one representative 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, each PARTY shall retain ownership of the property it owns at the time of termination. THIS AGREEMENT does not authorize the levying, collecting or accounting of any tax.

19. **NOTICES.** All payments, notices, statements, demands, requests, consents, approval, authorizations or other submissions required to be made by the PARTIES shall be in writing, whether or not so stated, and shall be deemed sufficient and served upon the other only if sent by United States certified mail, return receipt requested,

postage prepaid and addressed to the applicable party at the notice address shown the applicable signature page below.

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EXECUTED BY THE **PAPIO-MISSOURI RIVER NATURAL RESOURCES**
DISTRICT ON THIS _____ DAY OF SEPTEMBER, 2017

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____

JOHN WINKLER, General Manager

Notice Address

Attn: _____

EXECUTED BY THE **LOWER PLATTE SOUTH NATURAL RESOURCES**
DISTRICT ON THIS _____ DAY OF SEPTEMBER, 2017

**LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT**

By _____

PAUL ZILLIG, General Manager

Notice Address

Attn: _____

EXECUTED BY THE **CITY OF BELLEVUE, NEBRASKA** ON THIS
_____ DAY OF SEPTEMBER, 2017

CITY OF BELLEVUE, NEBRASKA

By _____

RITA SANDERS, Mayor

Attest:

City Clerk

Notice Address

Attn: _____

EXECUTED BY THE **CITY OF PLATTSMOUTH, NEBRASKA** ON THIS
_____ DAY OF SEPTEMBER, 2017

CITY OF PLATTSMOUTH, NEBRASKA

By _____

PAUL LAMBERT, Mayor

Attest:

City Clerk

Notice Address

Attn: _____

EXECUTED BY **COUNTY OF SARPY, NEBRASKA** ON THIS _____
DAY OF SEPTEMBER, 2017

COUNTY OF SARPY, NEBRASKA

By _____

**DON KELLY, Chairperson,
Board of County Commissioners**

Notice Address

Attn: _____

EXECUTED BY **COUNTY OF CASS, NEBRASKA** ON THIS _____
DAY OF OCTOBER, 2017

COUNTY OF CASS, NEBRASKA

By _____

DAN HENRY, Chairperson,

Board of County Commissioners

Notice Address

Attn: _____

EXECUTED BY **METROPOLITAN AREA PLANNING AGENCY** ON THIS
_____ DAY OF SEPTEMBER, 2017

METROPOLITAN AREA PLANNING AGENCY

By _____

RITA SANDERS, Chairperson,

Board of Directors

Notice Address

Attn: _____

EXHIBIT “A”

Operations and Maintenance

With respect to the parties' obligations for ongoing maintenance and operations of the trail after completion of Phase 2 of the construction there, the parties agree to the followings terms and conditions:

1. Trail Bridge Owner

PMRNRD will be the sponsor entity in connection with the use of any Nebraska Department of Transportation (“NDOT”) and/or MAPA funds applied to Phase 2 of the project. Nothing contained in this Agreement or this Exhibit A shall in any way limit or restrict PMRNRD's rights, duties, and obligations as a sponsor in connection with any NDOT and/or MAPA financial assistance. Each of the other party's hereto shall cooperate with PMRNRD in PMRNRD's carrying out of such rights, duties and obligations for normal operations and maintenance for the project.

2. Trail Surface Clearing

Clearing and/or sweeping of debris from the trail (including removal of snow and ice) will be performed by the City of Bellevue, the City of Plattsmouth, Sarpy County, and Cass County, as necessary. Responsibility for clearing and sweeping of the trail will be on a rotating 2-year cycle, beginning with City of Bellevue after completion of Phase 2, rotating to the City of Plattsmouth on October 1st of the year following Phase 2 completion, rotating to City of Plattsmouth, Sarpy County, Cass County, and returning to City of Bellevue on a normal two-year cycle beginning on October 1st each year.

Such parties are prohibited from moving snow and/or ice from the trail and onto the US-34 bridge thru any snow or ice control and removal operations.

Best practices for all operations and maintenance will be documented and shared between all parties. No salt, brine, or other ice removal treatment will be applied for two (2) years after completion of Phase 2 of the project without PMRNRD's prior consent in order to protect the concrete surface.

3. Maintenance and Repair Cost Share

PMRNRD will oversee design and construction for any needed repair work on the project, and request reimbursement from the other parties after the completion of the repair. Each of the parties shall be responsible for all reasonable repair and replacement costs (beyond ordinary surface clearing) for the trail based on their respective corresponding percentage shares as follows:

| <u>PARTY</u> | <u>Percentage</u> |
|---------------------|-------------------|
| CITY OF BELLEVUE | 20 % |
| CITY OF PLATTSMOUTH | 10 % |
| PMRNRD | 25 % |
| LPSNRD | 15 % |
| SARPY COUNTY | 20 % |
| CASS COUNTY | 10 % |

4. Inspection Duties

If required inspections are performed by NDOT along with structural inspections of the US-34 bridge, NDOT will submit an invoice to PMRNRD accordingly.

5. Repair or Removal by NDOT

Should US-34 Bike and Walking Trail (hereinafter the “Trail”) fall into disrepair, or become significantly damaged to warrant removal, and work is performed by NDOT to either repair or remove the project, NDOT will bill PMRNRD for any work completed. The cost of any such repair or removal work performed by NDOT that is billed to PMRNRD shall be shared by the parties pursuant to their respective percentage shares as set forth in Section 3 of this Exhibit A.

6. Temporary Closure

NDOT will allow for temporary closure of the US-34 northbound shoulder/lane for maintenance activities on the bridge (hereinafter the “Trail Bridge”), if required, via NDOT ROW permit.

7. Structural Maintenance

PMRNRD owns, operates, and maintains this structure including girder seats, girders, bridge deck, rail, fencing, abutments, drainage structures, and appurtenances to the Trail Bridge. NDOT will own, operate and maintain all other segments of the piers where Trail Bridge is attached to the piers under US-34.

8. Trail Bridge Deck

PMRNRD owns, operates, and maintains the Trail system including bridge deck, rails, fencing, and appurtenances as necessary for the Trail.

9. Freeway and Pier Maintenance

PMRNRD reserves the right to close or limit access to the Trail and/or Trail Bridge at any time in the event repairs, construction, or maintenance to the US-34 bridge and/or

the related roadway and/or piers require such closure. The Trail Bridge will be closed to trail users if needed to insure their safety and for completion of the US-34 work. The Trail Bridge Owner will be provided advanced notification if this occurs. NDOT shall maintain the piers which support both US 34 and the Bridge, and normal operations and maintenance of the Bridge will be performed according to NDOT standards including, but not limited to, Bridge debris cleaning.

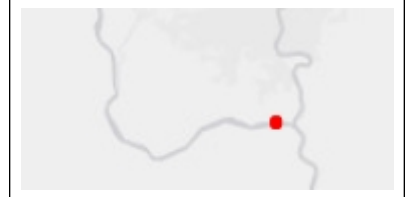
10. Amendments

The parties may amend the terms of this Exhibit A at any time upon a written amendment or agreement signed by the parties subject to the terms of this Exhibit A.

Attachment 1, US Highway 34 Bike and Walking Trail



Location



Sarpy County GIS



1210 Golden Gate Dr.
Suite 1130
Papillion, NE 68046
maps.sarpy.com

Legend

Project location
shown in green

1: 4,800

0 200 400 800 1200
Feet



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.