

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee
FROM: Eric Williams, Natural Resources Planner
SUBJECT: West Papio Trail (Giles Road to Millard) Construction
Interlocal Agreement with Omaha, La Vista
DATE: September 7, 2017

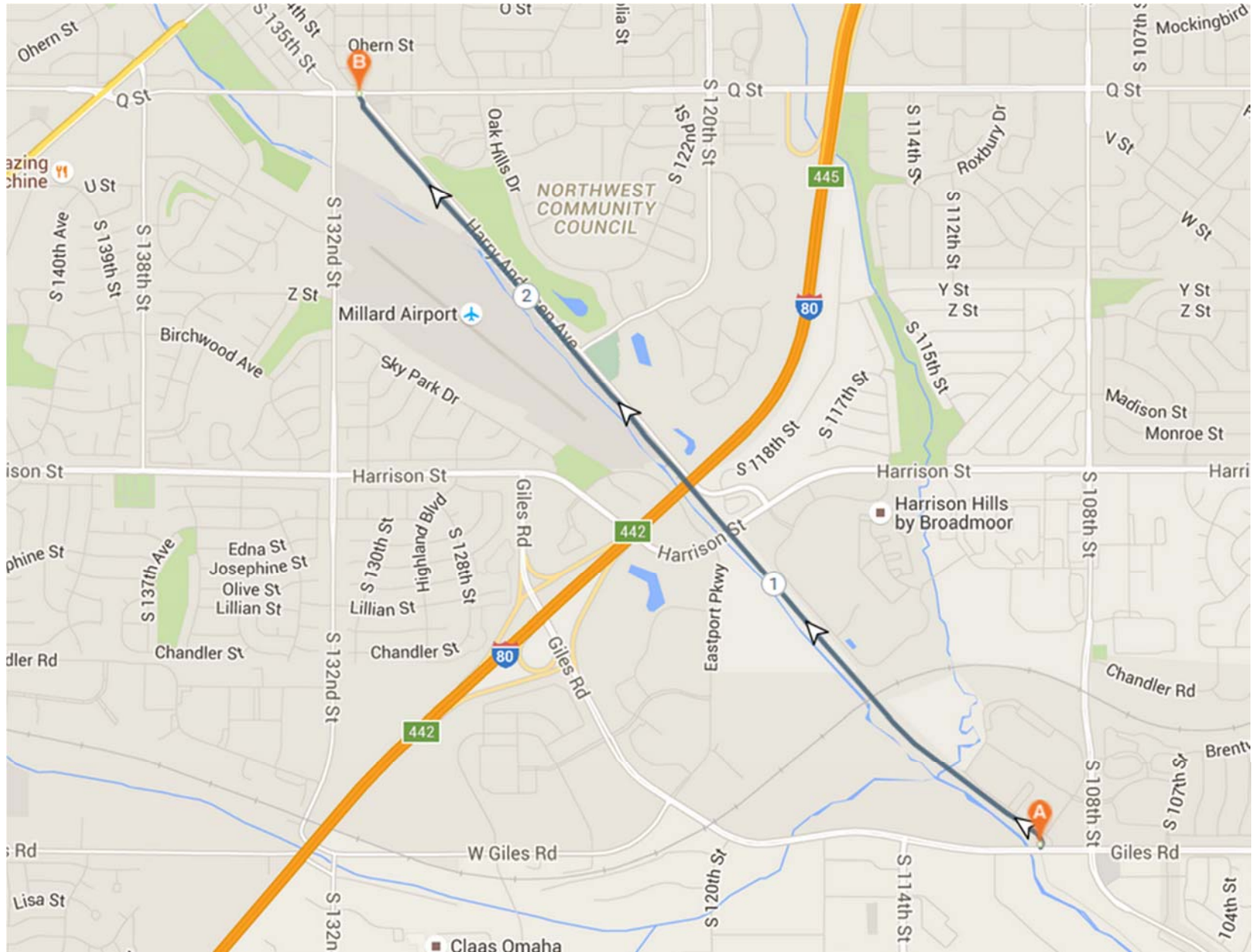
Beginning in 2016, the District has partnered with Omaha and La Vista for design of an extension to the West Papio Trail. This connection will continue from the end of the recently completed project at 108th & Giles in La Vista, and continue along the former railroad corridor up to the intersection of Harry Andersen Ave at Q Street in Omaha.

Design work is now complete, with plans, permits, and bidding documents being prepared for expected bidding this fall and construction to begin in early 2018. Through the attached Interlocal Agreement for construction of this project, it is proposed that the maximum total construction costs would be \$3,750,000 to be shared between the three agencies as follows:

| | | |
|----------|-----|-------------------|
| NRD | 60% | \$ 2,250,000 |
| Omaha | 20% | \$ 750,000 |
| La Vista | 20% | <u>\$ 750,000</u> |
| Total | | \$ 3,750,000 |

- **Management recommends that the PPO Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Agreement with the City of Omaha and City of La Vista for Construction of West Papio Trail Giles Road to Millard Expansion, with District cost not to exceed \$ 2,250,000, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

West Papio Trail, Giles Road to Millard



**INTERLOCAL COOPERATION ACT AGREEMENT FOR CONSTRUCTION OF
WEST PAPIO TRAIL GILES ROAD TO MILLARD EXPANSION
BETWEEN
THE CITY OF LA VISTA,
THE CITY OF OMAHA,
AND
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**

This Interlocal Cooperation Agreement (“Agreement”) is hereby made by and between the CITY OF LA VISTA (“LaVista”), the CITY OF OMAHA (“Omaha”), municipal corporations organized and existing under the laws of the State of Nebraska located in Sarpy and Douglas Counties, respectively, in 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, (collectively referred to as the “Parties”).

WHEREAS, LaVista and Omaha desire to obtain a trail connection to the West Papio Trail, generally from the north side of Giles Road at West Papio Creek to the intersection of Harry Anderson Avenue and Q Street (“Giles Road to Millard Expansion”); 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. §§ 13-801, et.seq.), the Parties desire to enter into this Agreement to delineate and provide for their specific rights and obligations, with respect to the construction, operation, maintenance, and repairs of the Giles Road to Millard Expansion.

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:

Section 1. Purpose. The purpose of this Agreement is to specify the terms and conditions upon which the Parties will construct the Giles Road to Millard Expansion in accordance with the design, plans, specifications, and construction documents approved by the Parties (the “Expansion Plans”).

Section 2. Term. This Agreement shall commence on the date of its signing and will terminate on **June 30, 2020**. This Agreement may be extended, on the same terms and conditions, for an additional one (1) year term, upon mutual written agreement of the parties. This Agreement may be terminated prior to **June 30, 2020**, upon mutual written agreement of the parties.

Section 3. Rights, Duties and Obligations of the District. The District agrees to:

A. Act as the lead administrator for construction of the Giles Road to Millard Expansion;

B. Maintain accounting records for construction of the Giles Road to Millard Expansion, including receipt and application of private funds;

C. Be responsible for **60%** of the costs, up to a maximum of **\$2,250,000**, for the construction and construction administration services of the Giles Road to Millard Expansion.

Section 4. Rights, Duties, and Obligations of LaVista. La Vista agrees to:

A. Timely review and approve any amendments, modifications or change orders to the Expansion Plans, such approvals not to be withheld, delayed or conditioned unreasonably;

B. Reimburse the District within thirty (30) days of invoice for **20%** of the costs, up to a maximum of **\$750,000**, for the construction and construction administration services of the Giles Road to Millard Expansion;

C. Permanently operate, maintain, and repair the Giles Road to Millard Expansion within its city limits and extraterritorial jurisdiction; and

D. Provide for occupation of La Vista property necessary for the project, at no cost to the District.

Section 5. Rights, Duties, and Obligations of Omaha. Omaha agrees to:

A. Timely review and approve any amendments, modifications or change orders to the Expansion Plans, such approvals not to be withheld, delayed or conditioned unreasonably;

B. Reimburse the District within thirty (30) days of invoice for **20%** of the costs, up to a maximum of **\$750,000**, for the construction and construction administration services of the Giles Road to Millard Expansion;

C. Permanently operate, maintain, and repair the Giles Road to Millard Expansion within its city limits and extraterritorial jurisdiction; and

D. Provide for occupation of Omaha property necessary for the project, at no cost to the District.

Section 6. Cooperation. The Parties agree and understand that cooperation and approval of certain other governmental and other third parties will be required for the Giles Road to Millard Expansion and to otherwise carry out the intent of this Agreement. The Parties agree to support one another and cooperate, in writing or as otherwise required and/or appropriate with respect to the foregoing, including with respect to any negotiations, discussions, meetings or hearings related to the foregoing and to otherwise carry out the intent of this Agreement.

Section 7. Indemnification. 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.

Section 8. Additional Terms and Conditions.

A. **Nondiscrimination.** The Parties hereto shall not, in the performance of this Agreement, discriminate or permit discrimination by any of their contractors in violation of federal or state laws or local ordinances because of race, disability, color, sex, age, political or religious opinions, affiliations or national origin.

B. **Separate Legal or Administrative Entity.** This Agreement does not establish any separate legal or administrative entity.

C. **Captions.** Captions used in this Agreement are for convenience.

D. **Applicable Law.** Parties to this Agreement shall conform with all existing and applicable city ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Parties agree that any consultants or contractors retained for the Giles Road to Millard Expansion shall comply with the Equal Opportunity Clause and LB 403 as set forth in Exhibits A-1 and A-2. Nebraska law will govern the terms and the performance under this Agreement.

E. **Interest of the Parties.** The Parties to this Agreement covenant that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict with their performance under this Agreement.

F. **Entire Agreement.** This Agreement contains the entire agreement between the Parties, and each party hereto agrees that neither the other party, nor any of the officers, agents, employees or contractors of the other party, have made any representations or promises with respect to the Giles Road to Millard Expansion not expressly contained herein.

G. **Amendments.** This Agreement may be amended upon the actions of the Parties if done so in writing.

H. **Effective Date.** This Agreement shall become effective upon execution by all Parties.

I. **Binding Effect.** The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the successors in interest and assigns of the respective Parties hereto.

J. **Notices.** All notices herein required shall be in writing and shall be served on the Parties at their principal offices, or at such other address as a Party may hereafter designate to the other Parties in writing for service of notice to itself. The mailing of a notice by certified or registered mail, return receipt requested, or delivery thereof by messenger, shall be sufficient service hereunder.

IN WITNESS WHEREOF, the Parties have executed this Agreement, on the respective dates hereinafter indicated, pursuant to authorizing resolutions duly adopted at regularly-called meetings of their governing bodies.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By: _____

Name: _____

Title: _____

Date: _____

THE CITY OF LAVISTA

By: _____

Name: _____

Title: _____

Date: _____

THE CITY OF OMAHA

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A-1

EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the contractor agrees as follows:

1. The contractor shall not discriminate against any employee applicant for employment because of race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. The contractor shall ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.
2. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, gender identity or national origin, age, disability.
3. The contractor shall send to each representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of the contractor's commitments under the equal employment opportunity clause of the city and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor shall furnish to the human rights and relations director all federal forms containing the information and reports required by the federal government for federal contracts under federal rules and regulations, including the information required by section 10-192 to 10-194, inclusive, and shall permit reasonable access to his records. Records accessible to the human rights and relations director shall be those which are related to paragraphs (1) through (7) of this subsection and only after reasonable notice is given the contractor. The purpose of this provision is to provide for investigation to ascertain compliance with the program provided for herein.
5. The contractor shall take such actions with respect to any subcontractor as the city may direct as a means of enforcing the provisions of paragraphs (1) through (7) herein, including penalties and sanctions for noncompliance; however, in the event the contractor becomes involved in or is threatened with litigation as the result of such directions by the city, the city will enter into such litigation as is necessary to protect the interests of the city and to effectuate these provisions of this division; and in the case of contracts receiving federal assistance, the contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.
6. The contractor shall file and shall cause his subcontractors, if any to file compliance reports with the contractor in the same form and to the same extent as required by the federal government for federal contracts under federal rules and regulations. Such compliance reports shall be filed with the human rights and relations director. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractor and his subcontractors.
7. The contractor shall include the provisions of paragraphs (1) through (7) of this section, "Equal employment opportunity clause," and section 10-193 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

Exhibit A-2

E-VERIFY

LB 403 Contract Provisions

NEW EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.

If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.