

Agenda Item: 9.

MEMORANDUM

To: Programs, Projects and Operations Subcommittee
From: Amanda Grint, Water Resources Engineer
Date: January 4, 2018
Re: Amendment to Cole Creek Interlocal Agreement with the City of Omaha

In September 2002, the District and the City of Omaha entered into an Interlocal Agreement to acquire flood prone properties and make culvert improvements along Cole Creek. Through the agreement and four subsequent addendums, 35 properties have been purchased and improvements have been made to several culverts on Cole Creek. To date approximately \$6.8 million dollars have been spent on the Cole Creek Project, with a District contribution of nearly \$2,600,000. The District has reimbursed the City of Omaha fifty percent of local project costs and applied FEMA funding when applicable.

In 2015, after the buyout of two additional houses that were included in the fourth addendum, the work on Hillside Drive culvert was delayed and funding was not appropriated by the City. The City of Omaha and District staff meet to discuss the original Cole Creek study. Since new information on the hydrology and hydraulics were available, it was determined that an updated study should be completed to set priorities for the program moving forward.

The City of Omaha requests that a fifth addendum to the interlocal be considered to include an updated study and shift the funding for the Hillside culvert to later years. The addendum continues the project from FY18 through FY20. This would allow for a District cost share of \$50,000 toward updated flood study and analysis and \$700,000 toward culvert improvements at Hillside Drive. The cost share would be distributed as follows:

Year 2018	\$50,000
Year 2019	\$350,000
Year 2020	\$350,000

The District would pay 50% of actual costs up to the maximum contribution in each year.

To date the current contribution from the District is \$2,600,000. The fifth addendum to the Cole Creek agreement provides for fifty percent cost share from the District for an additional \$750,000, over FY18 through FY20, bringing the total District contribution up to \$3,350,000, to match the funds the City of Omaha has budgeted for this project.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Fifth Addendum to the Cole Creek Flood Mitigation Program Agreement with the City of Omaha for an additional \$750,000 bringing the total District contribution for the project to \$3,350,000, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

**FIFTH ADDENDUM TO
INTERLOCAL COOPERATION ACT AGREEMENT
Between
THE CITY OF OMAHA, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
COLE CREEK FLOOD MITIGATION PROGRAM**

This FIFTH ADDENDUM (“this FIFTH ADDENDUM”) adds a recital to and amends Paragraph 23 of the INTERLOCAL COOPERATION ACT AGREEMENT BETWEEN THE CITY OF OMAHA, NEBRASKA AND PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT FOR COLE CREEK FLOOD MITIGATION PROGRAM (“the AGREEMENT”), originally entered into by and between the CITY OF OMAHA, NEBRASKA (“the CITY”) and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (“the NRD”). The AGREEMENT was signed by the NRD on July 12, 2002 and by the CITY on September 12, 2002. The AGREEMENT is hereby amended as follows:

The following recital is added to the AGREEMENT, immediately preceding the paragraph starting “NOW, THEREFORE” on page 2 of the AGREEMENT:

WHEREAS, the parties desire for an updated study to be conducted in the year 2018 of the hydrology and hydraulics of the STUDY AREA to set the priorities for the MITIGATION PROGRAM moving forward (hereinafter referred to as the “UPDATED STUDY”),

Paragraph 23 of the AGREEMENT is hereby further amended as follows, to-wit:

23. COST-SHARING. As its contribution towards the CITY’S outlays to third parties, other than the CITY’S own personnel, for the costs of design, land, easements and rights-of-way, administration, construction, operation, maintenance, repair, replacement and regulation of the MITIGATION PROGRAM and its separate components (hereinafter referred to as “the PROGRAM COSTS”), and subject to the limitations hereinafter provided, the NRD shall pay to the CITY on the first day of June

in each of the years 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2013, 2014, ~~2017~~ and, 2018, 2019 and 2020 an annual installment payment equal to fifty percent (50%) of the total amount actually expended by the CITY during the preceding calendar year for PROGRAM COSTS (other than expenditures which are paid or reimbursed by federal or state grant programs or by ABUTTING LANDOWNERS, or recouped by sale of structures and other property in the STUDY AREA acquired by the CITY during the course of administering the MITIGATION PROGRAM); it is understood and agreed by the parties that the only expenditures by the CITY for the year 2018 shall be for the UPDATED STUDY; provided, however, the payments due on the first day of June in the years 2004 and 2005 shall not exceed FOUR HUNDRED THOUSAND DOLLARS (\$400,000), each, the payment due on the first day of June in the year 2006 shall not exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000), the payment due on the first day of June in the year 2003 shall not exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000), the payments due on the first day of June in the years 2007, 2008, 2009, 2010, 2013, and 2014 ~~and 2019~~ shall not exceed TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), each, the payment due from the NRD on the first day of June in the year 2018 for the UPDATED STUDY, shall not exceed FIFTY THOUSAND DOLLARS (\$50,000), and the contribution payment due from the NRD on the first day of June in the year ~~2017~~ 2019 and 2020, shall not exceed ~~SEVEN HUNDRED THOUSAND DOLLARS (\$700,000)~~ THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000), each, such annual installment to be payable without interest prior to said installment becoming due; and, provided further, the total of the contributions due to the CITY pursuant to this AGREEMENT shall not in any case exceed ~~THREE MILLION FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$3,550,000.00)~~ THREE MILLION THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$3,350,000); and, provided, finally, that if the PROGRAM COSTS paid by the CITY for the year 2015 do not at least equal the PROGRAM COSTS contributed by the NRD for the year 2014, then the aforesaid contribution to PROGRAM COSTS payable by the NRD for the year 2017 shall be reduced by the amount of such shortfall. The CITY shall be solely responsible for the payment of all remaining PROGRAM COSTS and other costs of the MITIGATION PROGRAM in any calendar year without

NRD contribution. At least 30 days and not more than 120 days prior to the date an annual installment payment is due to the CITY pursuant to this AGREEMENT, the CITY shall send a written invoice to the General Manager of the NRD itemizing the PROGRAM COSTS from the preceding calendar year for which NRD contribution is sought under this AGREEMENT. Grants or contributions made by third parties to the CITY for PROGRAM COSTS, other than federal or state grants and the contributions of ABUTTING LANDOWNERS, shall not be deemed to offset or diminish the NRD'S obligations under this AGREEMENT.

2. Except as amended by the FIRST ADDENDUM, the SECOND ADDENDUM, the THIRD ADDENDUM, the FOURTH ADDENDUM, and this FIFTH ADDENDUM, all pursuant to authorizing resolutions duly adopted at regularly-called meetings of their governing bodies, the AGREEMENT is ratified and confirmed in all respects.

The CITY has executed this FIFTH ADDENDUM on _____, 2018.

THE CITY OF OMAHA, NEBRASKA

By _____
Mayor

Attest:

City Clerk

The NRD has executed this FIFTH ADDENDUM on _____, 2018.

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT

By _____
General Manager