

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee
FROM: Eric Williams, Natural Resources Planner
DATE: December 3, 2018
SUBJECT: Thomas Creek Improvements Phase 1
Interlocal Agreement with City of Omaha

The purpose of this Interlocal Agreement is to specify the terms and conditions upon which the City of Omaha and the NRD will collaborate to design, develop, construct, operate and maintain a portion of Thomas Creek.

The District approved a cost share application in April 2018 with the City of Omaha thru the Urban Drainageway Program for channel improvements along Thomas Creek, downstream of I-680 and near Ida Street. The project will provide creek stabilization, protection for existing infrastructure, and water quality improvements.

At the request of the City of Omaha, \$80,000 was included in the NRD FY 2019 budget. This agreement specifies funding of \$350,000 in FY 2020, and FY 2021, for the total cost share of \$780,000 over the expected three year timeline for the project.

The proposed Interlocal Agreement (attached) lays out the responsibilities of each party and the cost shares arrangement for each.

- **Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Interlocal Cooperation Agreement with the City of Omaha for Thomas Creek Improvements Phase 1, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

INTERLOCAL COOPERATION AGREEMENT
Between
THE CITY OF OMAHA, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
THOMAS CREEK IMPROVEMENT PHASE 1 PROJECT- URBAN
DRAINAGEWAY PROJECT

THIS AGREEMENT (hereinafter “**THIS AGREEMENT**”) is made by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (“the **NRD**”) and the **CITY OF OMAHA, NEBRASKA** (“the **CITY**”), pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1997, et seq.).

WHEREAS, the NRD administers its Urban Drainageway Program (the “PROGRAM”), which provides cost sharing with local governmental entities for the installation and maintenance of improvements to urban stream channels;

WHEREAS, the CITY desires to rehabilitate and restore the channel of Thomas Creek within the CITY’s jurisdiction (“the **PROJECT**”);

WHEREAS, the CITY desires to receive cost-sharing assistance from the NRD for a portion of the costs of the PROJECT through the PROGRAM; and,

WHEREAS, the Board of Directors of the NRD has approved the PROJECT for participation in the PROGRAM.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants of parties hereinafter expressed, the parties hereby agree as follows:

1. PROJECT BENEFITS. The parties do hereby find and determine that the PROJECT will be of predominantly general benefit to the CITY and the NRD, with only an incidental special benefit.

2. PROJECT PARTICIPANTS. The PROJECT shall be undertaken without any separate entity being created, and the duties and responsibilities of the parties with respect to the PROJECT shall be as defined by THIS AGREEMENT.

3. PROGRAM REQUIREMENTS. The CITY shall comply with the requirements for the Program as promulgated by the NRD and set forth in the NRD's Directors Policy Manual. THIS AGREEMENT and the PROGRAM'S requirements shall be construed in a manner giving full effect to both. In the event there is an unavoidable conflict between a specific provision of THIS AGREEMENT and a specific provision of the PROGRAM'S requirements, THIS AGREEMENT shall control.

4. APPLICATION AND SUBMISSION OF PLANS. The CITY'S application and documents accompanying that application to the PROGRAM are attached hereto as EXHIBIT A, and are incorporated into THIS AGREEMENT.

Prior to commencing performance of the relevant phase of the PROJECT, the CITY shall submit to the NRD the PROJECT plans, bid documents, construction contract, and implementation schedules (collectively the "DOCUMENTS"). If during any phase of the PROJECT, there are material changes to the application or the DOCUMENTS, the CITY shall timely inform the NRD, in writing, of the material change and submit an updated version of the relevant document or documents that were impacted by the material change.

5. NRD TECHNICAL ASSISTANCE. The NRD shall provide technical assistance to the CITY regarding the PROJECT within the limits of its expertise, as may be requested by the CITY.

6. RIGHTS-OF-WAY ACQUISITION. Lands, easements and rights-of-way, which the CITY determines is necessary for construction of the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT ("the **PROJECT RIGHTS-OF-WAY**"), shall be obtained by the CITY, which shall hold title thereto. The costs of the PROJECT RIGHTS-OF-WAY shall be deemed to be a cost of the PROJECT.

7. **PERMITS.** All necessary local, state and federal permits, which the CITY determines are necessary for construction of the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT, shall be obtained by the CITY, which shall hold the same. The cost of such permits shall be deemed a cost of the PROJECT.

8. **UTILITY RELOCATIONS.** The CITY shall be solely responsible for relocation of any utilities that are determined to interfere with construction of the PROJECT, or with the operation, maintenance, repair, replacement, management or regulation of the PROJECT. The cost of such utility relocations shall be deemed to be a cost of the PROJECT.

9. **CONSTRUCTION CONTRACT FOR PROJECT.** The CITY shall solicit competitive sealed bids for construction of the PROJECT. The provisions of the CONSTRUCTION CONTRACT shall include, but not be limited to, covenants and conditions providing that the NRD shall be named as an additional insured in all insurance provided to the CITY by the CONTRACTOR.

10. **COMPETITIVE BIDS.** Within a reasonable time after CITY'S receipt and opening of sealed bids for construction of the PROJECT, the CITY shall deliver a summary thereof to the NRD, together with the identification by the CITY of the bidder whom the CITY determines is the lowest responsible bidder. The CITY shall accept such bid and shall award to such bidder the contract to construct all or one or more portions of the PROJECT. In the event that the CITY selects a bidder who did not submit the lowest bid, the CITY shall provide a written explanation of its decision to select a higher bid to the NRD. The CITY, through the CONTRACTOR, shall construct the PROJECT in accordance with the plans and specifications the CITY submitted to the NRD.

11. **NRD CONTRIBUTION.** As its contribution(s) towards the aforesaid costs of the original engineering and construction and of the PROJECT ("the **NRD CONTRIBUTION**"), the NRD shall reimburse the CITY for up to a total of \$780,000 for the costs of the PROJECT. Such contribution(s) shall be paid in yearly installments. The first such installment shall be paid in the NRD'S 2019 fiscal year and shall not exceed \$80,000. The second installment shall be paid in the NRD'S 2020 fiscal year

and shall not exceed \$350,000. The third installment shall be paid in the NRD'S 2021 fiscal year and shall not exceed \$350,000.

The CITY shall provide an invoice(s) to the NRD detailing all of the billings and costs for which it seeks reimbursement prior to the NRD paying any of the installments. Each installment shall be paid to the CITY within 45 days of the CITY'S submission to the NRD of the invoice(s) referenced above. Under no circumstances shall the NRD CONTRIBUTION exceed the total sum of \$780,000, nor shall the NRD be responsible for paying any monies related to the PROJECT in excess of \$780,000.

The CITY shall be solely responsible to pay all other costs and expenses associated with the PROJECT, including but not limited to the operation and maintenance of the PROJECT, without any further NRD reimbursement or contribution. Any State, Federal, foundation or other grants received by either of the parties at any time for purposes of offsetting costs and expenses of the PROJECT shall be credited to both parties in equal shares against their respective obligations hereunder for costs and expenses of the PROJECT.

The CITY shall publicly acknowledge the DISTRICT'S contribution to the PROJECT on a permanent sign, plaque, or other fixture (containing at a minimum the DISTRICT'S name and logo), to be maintained by the CITY for the life of the PROJECT.

12. ABANDONMENT OF THE PROJECT. In the event the CITY abandons the PROJECT prior to its completion, the NRD shall not be responsible for any costs, payments, or billings related to the PROJECT. If at the time of abandonment, the NRD has paid the CITY an installment of the NRD CONTRIBUTION or any other monies related to the PROJECT, the CITY shall return and refund any and all installment(s) or monies related to the PROJECT paid by the NRD to the NRD.

13. OPERATION AND MAINTENANCE OF THE PROJECT. After completion of PROJECT and CITY acceptance of the PROJECT from the CONTRACTOR, the CITY, at its own and sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the PROJECT during its useful life, as the CITY determines necessary, and in accordance with applicable and generally-accepted engineering practices, state and federal statutes and regulations, including but

not limited to FEMA regulations and requirements for continuation of flood insurance, and any applicable USACE requirements necessary to preserve the eligibility of PROJECT for benefits under the Public Law 84-99 maintenance program.

14. RISK OF LOSS. The CITY shall have the insurable interest in, and shall bear the sole risk of loss of or damage to, the PROJECT and all PROJECT components, whether such loss or damage results from flood or other casualty whatsoever.

15. INDEMNIFICATION. The CITY shall indemnify and hold the NRD harmless from and against all liability and damages resulting from the PROJECT, including but not limited to the design, construction, operation, or maintenance of the PROJECT, and against all demands, causes of action, and claims arising therefrom including court costs and attorney fees, except as may be caused by the negligence of the NRD.

16. NON-DISCRIMINATION. The parties hereto shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination by any of its 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. The parties agree that any contractor retained by the CITY to perform work on the PROJECT shall comply with the requirements set forth in the attached Exhibit "A-1" and "A-2," which are incorporated into THIS AGREEMENT.

17. 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 PROJECT not expressly contained herein.

18. 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 either party may hereafter designate to the other party 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.

19. 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.

20. APPLICABLE LAW. Each party to THIS AGREEMENT shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance of THIS AGREEMENT. Nebraska law will govern the terms and the performance under THIS AGREEMENT.

21. SEVERABILITY. In the event any portion of THIS AGREEMENT is held invalid or unenforceable for any reason, it is agreed that any such invalidity or unenforceability shall not affect the remainder of THIS AGREEMENT, the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of THIS AGREEMENT so as to render it valid, reasonable and enforceable.

22. CAPTIONS. Captions used in THIS AGREEMENT are for convenience and not for use in the construction of THIS AGREEMENT.

23. Counterparts. THIS AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24. INTERLOCAL COOPERATION ACT PROVISIONS. 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. The Agreement shall terminate upon completion of the work contemplated by the Agreement, unless the parties consent in writing to an earlier termination. 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.

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.

The CITY has executed THIS AGREEMENT on _____, 2018.

THE CITY OF OMAHA

By _____

Jean Stothert, Mayor

Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2018.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____

JOHN WINKLER, General Manager