MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee
FROM: Eric Williams, Natural Resources Planner
DATE: October 7, 2019
SUBJECT: Buffalo Stream Bank Stabilization
Interlocal Agreement with Sarpy County

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

The District approved a cost share application in April 2019 with Sarpy County thru the Urban Drainageway Program for channel improvements along Buffalo Creek, along Buffalo Road east of 192nd Street. The project will provide creek stabilization, protection for existing infrastructure, and safety improvements.

This agreement specifies funding of $303,115 in FY 2020, FY 2021, and FY 2022, for the total cost share of $909,345 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 Sarpy County for Buffalo Stream Bank Stabilization, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.
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INTERLOCAL COOPERATION AGREEMENT

Between

SARPY COUNTY, NEBRASKA

And

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

For

BUFFALO STREAM BANK RESTORATION- URBAN DRAINAGEWAY PROJECT

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THIS AGREEMENT (hereinafter "THIS AGREEMENT") is made by and between the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT ("the NRD") and the SARPY COUNTY, NEBRASKA ("the COUNTY"), pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801, 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; and,

WHEREAS, the COUNTY desires to rehabilitate and restore the stream bank of Buffalo Stream within the COUNTY's jurisdiction ("the PROJECT"); and,

WHEREAS, the COUNTY 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 COUNTY 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 COUNTY 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 COUNTY’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 COUNTY 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 COUNTY 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 COUNTY regarding the PROJECT within the limits of its expertise, as may be requested by the COUNTY.

6. **RIGHTS-OF-WAY ACQUISITION.** Lands, easements and rights-of-way, which the COUNTY 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 COUNTY, 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 COUNTY 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 COUNTY, which shall hold the same. The cost of such permits shall be deemed a cost of the PROJECT.

8. **UTILITY RELOCATIONS.** The COUNTY 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 COUNTY 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 COUNTY by the CONTRACTOR.

10. **COMPETITIVE BIDS.** Within a reasonable time after COUNTY'S receipt and opening of sealed bids for construction of the PROJECT, the COUNTY shall deliver a summary thereof to the NRD, together with the identification by the COUNTY of the bidder whom the COUNTY determines is the lowest responsible bidder. The COUNTY 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 COUNTY selects a bidder who did not submit the lowest bid, the COUNTY shall provide a written explanation of its decision to select a higher bid to the NRD. The COUNTY, through the CONTRACTOR, shall construct the PROJECT in accordance with the plans and specifications the COUNTY 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 COUNTY for up to a total of $909,345 for the costs of the PROJECT. The NRD CONTRIBUTION shall be paid in yearly installments. The first such installment shall be paid in the NRD’S 2020 fiscal year and shall not exceed $303,115. The second installment shall be paid in the NRD’S 2021 fiscal
year and shall not exceed $303,115. The third installment shall be paid in the NRD’S 2022 fiscal year and shall not exceed $303,115.

The COUNTY 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 COUNTY within 45 days of the COUNTY’S submission to the NRD of the invoice(s) referenced above. Under no circumstances shall the NRD CONTRIBUTION exceed the total sum of $909,345, nor shall the NRD be responsible for paying any monies related to the PROJECT in excess of $909,345.

The COUNTY 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 COUNTY 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 COUNTY for the life of the PROJECT.

12. **ABANDONMENT OF THE PROJECT.** In the event the COUNTY 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 COUNTY an installment of the NRD CONTRIBUTION or any other monies related to the PROJECT, the COUNTY 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 COUNTY acceptance of the PROJECT from the CONTRACTOR, the COUNTY, 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 COUNTY 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 COUNTY 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. **MUTUAL INDEMNIFICATION.** The COUNTY and the NRD shall mutually indemnify and hold the each other harmless from and against all liability and damages resulting from their respective role and obligations on 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 other party.

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 COUNTY 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.

**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 COUNTY has executed THIS AGREEMENT on ____________________, 2019.

SARPY COUNTY, NEBRASKA

By ________________________________
Donald R. Kelly, Board Chairperson

Attest:

__________________________
COUNTY Clerk

Approved as to Form:

__________________________
Sarpy County Attorney

The NRD has executed THIS AGREEMENT on __________________, 2019.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By ________________________________
JOHN WINKLER, General Manager
Urban Drainageway Program – Application Form

Project name	Buffalo Stream Bank Stabilization

Project location (attach location map) East of 192nd Street on Buffalo Road

Sponsor organization Sarpy County

Sponsor address 15100 S. 84th Street

City Papillion

State NE

ZIP 68046

Contact person Krista K. Wassenaar, PE

Title Senior Engineer

Email address kwassenaar@sarpy.com

Daytime phone 402-537-6924

Description of problem (attach additional sheets as needed)

The stream bank has been stabilized multiple times in the past years, but the stabilization has not worked. The stream is coming closer to Buffalo Road which is impacting the potential safety of people traveling along this road.

Proposed solution (attach additional sheets as needed)

We are wanting to permanently stabilize the stream bank to reduce future safety issues. See attached plans/report for more information. The project is near final design, but is not currently planned for construction due to project costs. Additional funding would allow us to complete the project. We are requesting funding only for construction activities.

Level of Design Level 1 [ ] Level 2 [ ] Level 3 [x]

Total estimated cost $ 2,273,360

Cost share request $ 909,344

Signature

Date 3/22/2019

County Engineer

Title

Form 17.17 A Updated 2015-02-12
# Engineer's Preliminary Opinion of Approximate Costs

**Structure:** Sarpy County - Meander Channel  
**Date:** 3/26/2014  
**Quantity by:** V. Tverdoychub

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**Sub-Total**  
Engineering, Bid-Phase and Permitting (10%)  
Contingencies (28%)  

**Total** $1,903,900

Estimate escalated to 2020 costs (3% per year) = $2,273,360
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 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.