

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee
FROM: Eric Williams, Natural Resources Planner
DATE: October 3, 2019
SUBJECT: Amendment to Trail Over Platte River Bridge Agreement with LPSNRD and NGPC

The Papio-Missouri River NRD (P-MRNRD) has collaborated with Lower Platte South NRD (LPSNRD) to construct the MoPac Trail along the former Missouri Pacific Railroad line, including construction of a trail over the bridge across the Platte River. This bridge is commonly referred to as the Lied Bridge.

During the major flooding event in March 2019, high water and debris caused damage to the railing on the bridge, and caused the trail from the parking lot near Hwy 31 to the east end of the bridge to be buried and covered in sediment. An initial Interlocal Agreement (attached) specified the terms for the construction of the bridge and connecting trails to public access points on each side of the river. The agreement indicates that Nebraska Game and Parks Commission (NGPC) would be responsible for normal operations and maintenance of the bridge and connecting trails, but that both the P-MRNRD and the LPSNRD would be responsible for repairs to the bridge resulting from erosion and catastrophic events.

The proposed Amendment to the original agreement specifies terms for completing the needed repairs. The P-MRNRD will contract for debris removal from the bridge, seek federal funds for this work, and the NGPC will reimburse the P-MRNRD for all of the local cost of this work. It is expected that 75% of the funding will be reimbursed by FEMA for this work, to be carried out before the end of 2019. P-MRNRD will also contract for structural inspection of the bridge to determine what repairs are needed, and for the design and construction of repair work needed on the bridge. LPSNRD will share in 50% of the local cost of the bridge design and work. Timeline for the inspection, design, and repair to the bridge will be determined after the completion of the debris removal. Cleanup and repair of the connecting link trails will be the next phase of work.

- **Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Amendment to the Interlocal Cooperation Agreement with the Lower Platte South Natural Resources District, and the Nebraska Game and Parks Commission for the Trail Over Platte River Bridge (Lied Bridge), subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**

INTERLOCAL AGREEMENT

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT NEBRASKA GAME AND PARKS COMMISSION

TRAIL OVER PLATTE RIVER BRIDGE

THIS INTERLOCAL AGREEMENT is made and entered into by and among the **LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT**, a political subdivision of the State of Nebraska (hereinafter referred to as "LPS"); **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a political subdivision of the State of Nebraska (hereinafter referred to as "PAPIO"); and, the **NEBRASKA GAME AND PARKS COMMISSION**, an agency of the State of Nebraska (hereinafter referred to as "NG&PC").

WITNESSETH:

RECITALS

A. The State or any local government may exercise any of its powers or perform any of its functions jointly or in cooperation with any other governmental entity as authorized by art. XV § 18 of the Nebraska Constitution. Any two or more public agencies (county, city, village, school district, agency of the State government, or political subdivision of this State) are authorized by Neb. Rev. Stat. § 13-801 to 13-827 (Reissue 1991) to enter into interlocal agreements with one another for joint or cooperative action for any power or powers, privileges or authorities exercised or capable of exercise individually by such public agencies.

B. LPS and PAPIO each have the power and authority to develop and manage recreation and park facilities for public use pursuant to Neb. Rev. Stat. § 2-3229(11) (Reissue 1991), and, pursuant to such authority, each has developed and is developing recreational trails within its respective geographic boundaries.

C. NG&PC has the power and authority to establish recreational trails and trail-related projects pursuant to Neb. Rev. Stat. §§ 81-815.55 to 81-815.63 (Supp. 1993) and, pursuant to such authority, has developed and is developing recreational trails through the State.

D. The parties hereto deem it to be in the best interest of the public to jointly exercise powers and authorities as hereinafter described.

E. The parties desire to enter into an interlocal agreement pursuant to which, for recreational trail purposes, the parties will cooperate mutually to acquire, rehabilitate, maintain, repair and operate the abandoned Chicago, Rock Island and Pacific Railroad Company bridge across the Platte River and the approaches thereto (hereinafter referred to collectively as "the Bridge") located on the abandoned railroad rights-of-way in Cass and Sarpy Counties described in the legal description attached hereto as Exhibit "C" and incorporated herein by reference (hereinafter referred to as "the Bridge rights-of-way").

NOW, THEREFORE, in consideration of the above recitals and their mutual promises and covenants contained herein, the parties hereto mutually agree as follows:

ARTICLE I
OBJECTIVES AND PURPOSES

Section 1.01

The objectives and purposes of this Interlocal Agreement are to carry out those public powers, duties and obligations of the parties relating to the acquisition, rehabilitation, maintenance, repair, and operation of the Bridge as a recreational trail, for fish, wildlife and related purposes, and for the purposes of providing connecting links between future recreational trails to be located commencing on either end of the Bridge.

Section 1.01

In order to attain the objectives and purposes of this Interlocal Agreement, each party shall perform the applicable provisions of this Agreement in good faith and shall cooperate with the other parties where possible.

ARTICLE II
TERM OF AGREEMENT

Section 2.01

This Interlocal Agreement shall become effective and binding upon its execution by all of the parties hereto.

Section 2.02

Each party hereby agrees to participate with the other parties to this Interlocal Agreement in the conduct of the activities hereinafter described.

Section 2.03

In the event that a party fails to perform its obligations pursuant to this Interlocal Agreement, the other parties, either individually or jointly, may legally seek to enforce such obligation in any court of law or equity.

Section 2.04

The term of this Interlocal Agreement shall be thirty (30) years from the date of its adoption by the undersigned parties, unless terminated earlier pursuant to Section 3.05 or further extended by the mutual agreement of all parties. This Interlocal Agreement shall survive a transition of the form of government of a party from one form to another.

ARTICLE III

RESPONSIBILITIES OF THE PARTIES

Section 3.01

LPS and PAPIO agree to acquire those Bridge rights-of-way legally described on Exhibit "C" attached hereto and incorporated herein by this reference, to-wit: LPS agrees to acquire that portion of such Bridge rights-of-way located in Cass County and PAPIO agrees to acquire that portion of such Bridge rights-of way located in Sarpy County.

Section 3.02

LPS agrees to acquire such additional rights-of-way south of the Bridge rights-of-way as it determines necessary, and PAPIO agrees to acquire such additional rights-of-way north of the Bridge rights of way as it determines necessary, in order to provide connecting links from the Bridge rights of way to Nebraska Highways 31 and 66 (such

additional rights-of-way hereinafter being referred to as "the Connecting Links"). The costs of land acquisitions pursuant to this Interlocal Agreement shall be paid by the acquiring party, without reimbursement by the other parties hereto.

Section 3.03

LPS and PAPIO agree to receive donations and apply for grants and awards in order to obtain the funding necessary to acquire the Bridge rights-of-way and the Connecting Links, and necessary to rehabilitate and convert the Bridge and Connecting Links into an appropriate recreational trail; provided, however, that, except as provided by this section 3.03, nothing in this Interlocal Agreement shall in any manner obligate either LPS or PAPIO to expend their own funds for rehabilitation and conversion of the Bridge and Connecting Links. Such rehabilitation and conversion shall be contracted for by PAPIO, for itself and as agent for LPS, subject to the following:

1. Such rehabilitation and conversion shall be performed pursuant to plans and specifications prepared by or for PAPIO, which plans and specifications shall be subject to approval by all of the parties;
2. Such rehabilitation and conversion shall be performed by contractors retained by PAPIO, subject to the approval by LPS of such contractor and the contract documents, which approval shall not be withheld unreasonably;
3. Such rehabilitation and conversion shall be performed at such times, and in such manner as PAPIO reasonably determines is required by such contract documents, or in accordance with any written change orders which Papiio determines are necessary and which LPS shall approve, which approval shall

not be withheld unreasonably; and,

4. From time to time, as liability for the costs of such rehabilitation and conversion (exclusive of land acquisition expenses) is incurred by PAPIO for itself and as agent for LPS, LPS shall pay to PAPIO 50% of all such costs which PAPIO reasonably determines is required to be paid for such purpose, such payments to be made by LPS to PAPIO at least 15 days prior to the date of payment by PAPIO of such costs, or within 15 days after the date of receipt by LPS from PAPIO of written notice of the respective amount(s) and date(s) of such payment(s), whichever is later. PAPIO shall pay the remaining 50% of such costs without LPS reimbursement.

All donations, grants, and awards received by PAPIO or LPS for the rehabilitation or conversion of the Bridge and Connecting Links (exclusive of land acquisition expenses), and the proceeds of any claim, refund or indemnification which shall be obtained by PAPIO or LPS with respect to such work or with respect to the Bridge or Connecting Links, shall be applied or credited against the costs of such rehabilitation and conversion as though received by PAPIO and LPS, equally.

All donations, grants, and awards received by PAPIO or LPS for the operation and maintenance of the Bridge and Connecting Links shall be maintained separately and shall be used exclusively for the operation and maintenance by PAPIO or LPS or by the NG&PC under an amendment to this Agreement.

Section 3.04

After LPS and PAPIO have acquired ownership and title to the Bridge rights-of-

way and the Connecting Links, and have completed the rehabilitation and conversion of the Bridge and Connecting Links to a recreational trail, LPS and PAPIO agree to jointly execute a lease to NG&PC of the Bridge rights-of-way, legally described in Exhibit "C" hereto, and the Connecting Links, together with the Bridge and other improvements located thereon, such lease (hereinafter referred to as "the Lease") to be in the form as attached hereto as Exhibit "B" and incorporated herein by this reference.

Section 3.05

Within thirty (30) days after written notification by LPS and PAPIO that (1) they have acquired the Bridge rights-of-way and the Connecting Links; and (2) the Bridge has been rehabilitated and the Bridge and Connecting Links converted to a recreational trail. NG&PC shall inspect such rehabilitation and conversion work and, if such work is accepted by NG&PC (such acceptance not to be withheld without good cause), NG&PC also shall execute the Lease. If such written notification has not been given to NG&PC within five (5) years after the effective date of this Agreement, then NG&PC shall have the option of terminating this Interlocal Agreement upon thirty (30) days written notice to LPS and PAPIO, and this Interlocal Agreement and all obligations thereunder shall be rendered null and void.

Section 3.06

During the term of the Lease, NG&PC will operate the Bridge and the Connecting Links as a part of the State Recreational Trail system and will be responsible for the operation and maintenance thereof in accordance with the "Operation and Maintenance Manual" attached as Exhibit "F" to the Lease. LPS and PAPIO will be responsible only

for repairs to the Bridge necessitated by erosion or catastrophe, in accordance with Exhibit "F" of the Lease; provided, however, if the Bridge is damaged by erosion or catastrophe to such extent that either or both of the Boards of Directors of LPS and/or PAPIO, in its or their discretion, determine(s) that restoration of the Bridge is not financially practicable, then upon such determination the Lease shall terminate. Repairs by LPS and PAPIO made to the Bridge because of erosion or catastrophe shall be carried out and the costs thereof paid in the same manner as provided, above, for the initial rehabilitation and conversion.

Section 3.07

LPS and PAPIO each shall contribute to the other, equally, in the same manner as provided by this Interlocal Agreement for the sharing of the costs of rehabilitation and conversion of the Bridge and Connecting Links, with respect to financial outlays required to be made by such other party in defense or satisfaction of causes of action or claims brought by third parties for personal injury or property damage caused by the existence of the Bridge or trail improvements, or resulting from the use thereof, other than outlays made with respect to personal injury or property damage caused solely by the negligence of such other party.

Section 3.08

Upon termination of the Lease, LPS and PAPIO shall cooperate to secure other management arrangements or to dispose of the Bridge structure in an equitable manner, with all reasonable costs of such disposition which exceed the proceeds thereof to be shared by LPS and PAPIO in the same manner as provided by this Interlocal Agreement

for rehabilitation and conversion of the Bridge.

ARTICLE IV

POWERS

Section 4.01

Any party may propose an amendment to this Interlocal Agreement by submitting it in writing to the other parties, who shall immediately consider in good faith the proposed amendment; provided, however, that no such amendment shall, directly or indirectly, affect or impair any written contracts or agreements entered into prior to the effective date of such amendment.

Section 4.02

No amendment or other modification to this Interlocal Agreement shall be effective unless it is in writing and approved by all parties. Such amendment shall become effective after all three (3) parties have executed the same.


ARTICLE V

EXECUTION


This Interlocal Agreement shall not become effective until it has been executed by all three (3) parties.

IN WITNESS WHEREOF, each party has caused this Interlocal Agreement to be executed by its duly authorized officer as of the date and year shown below.

LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT,

By: 
Title: General Manager
Signed: November 21, 1996

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT,

By: 
Title: GENERAL MANAGER
Signed: NOVEMBER, 15, 1996

NEBRASKA GAME AND PARKS COMMISSION,


By: 
Title: Director
Signed: NOV, 27, 1996

EXHIBIT "B"

LEASE PURSUANT TO INTERLOCAL AGREEMENT

**LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
NEBRASKA GAME AND PARKS COMMISSION**

TRAIL OVER PLATTE RIVER BRIDGE

THIS LEASE, effective as of _____, 199__, is entered into by and among the **LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT**, a political subdivision of the State of Nebraska (hereinafter referred to as "LPS"); **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a political subdivision of the State of Nebraska (hereinafter referred to as "PAPIO"); and **THE STATE OF NEBRASKA**, acting by and through the **NEBRASKA GAME AND PARKS COMMISSION**, an agency of the State of Nebraska (hereinafter referred to as "NG&PC").

WITNESSETH:

RECITALS

A. This Lease is entered into pursuant to the provisions of and authority referred to in an Interlocal Agreement (hereinafter referred to as "the Interlocal Agreement") entered into by and among the parties, a copy of which is attached hereto marked Exhibit "A" and incorporated herein by this reference, which shall be read in conjunction with this Lease.

B. LPS and PAPIO have acquired title to the land upon which is located the abandoned Chicago, Rock Island and Pacific Railroad bridge across the Platte River and the approaches thereto (hereinafter referred to as "the "Bridge"), and additional rights-of-way south and north of the Bridge to Highways 31 and 66 (hereinafter referred to as "the Connecting Links"), the Bridge and the Connecting Links hereinafter being referred to collectively as "the Leased Premises" as legally described in Exhibit "C"), have completed the repairs and conversion of the Bridge for recreational trail purposes, and have given NG&PC the required notice, all as set forth in Section 3.05 of the Interlocal Agreement.

C. The Leased Premises create public use value and interest for recreational trail purposes, and also for fish and wildlife and related purposes.

D. The parties, therefore, in accordance with the provisions of the Interlocal Agreement enter into this Lease.

NOW, THEREFORE, IN CONSIDERATION of the above recitals and the mutual promises and covenants contained herein, the parties agree as follows:

PREMISES LEASED

1. LPS and PAPIO do hereby lease unto NG&PC, subject to the terms and conditions hereinafter provided, the Leased Premises, legally described in Exhibit "C" attached hereto and incorporated herein by this reference. From time to time Exhibit "C" may be amended, modified, or enlarged in writing by the mutual agreement of the parties hereto by adding additional lands or areas to the Leased Premises, and as otherwise hereinafter provided, without the necessity of re-executing this Lease or entering into a separate lease.

DEVELOPMENT PLANS

2. The parties hereto agree to follow the Trail Development Plan described in Exhibit "D" attached hereto and incorporated herein by this reference as to the trail area included in the Leased Premises herein recited in Exhibit "C" hereto, and the development of facilities. None of the provisions of this Lease shall be construed as preventing the further development of the trail area in accordance with Exhibit "D", which may be amended or supplemented by the parties from time to time.

It is agreed that any portion of the lands described in Exhibit "C" which shall be designated by the LPS and PAPIO as lands not appropriate to the purposes of this Lease shall be excluded from the Leased Premises.

TERMS AND CONDITIONS

3. This Lease is subject to the following exceptions:

(a) Prior rights which have attached before the date of this agreement, described in Exhibit "E" attached hereto and made a part hereof;

(b) The right of LPS and PAPIO, including its officers, directors, agents, employees, contractors, and permittees, at all times and places to have full ingress for passage over and egress from all of the Leased Premises for the purpose of performing certain repairs, if needed, in accordance with the Operation and Maintenance Manual, Exhibit "F" attached hereto; and, the right to direct that the Leased Premises be closed to the public in the event major repairs are required to be made by such parties.

(c) The right of LPS and PAPIO, its directors, agents, employees, and permittees to remove from the Leased Premises any and all material necessary

for construction, operation and maintenance of the project facilities or for other purposes;

(d) Title to all oil, gas, coal and other minerals in the Leased Premises, and rents and payments receivable from persons identified in Exhibit "E" as having prior rights in the Leased Premises, are excepted and reserved to the LPS and PAPIO. There is also excepted and reserved to LPS and PAPIO, its directors, agents, employees, lessees or permittees, the right to prospect and carry on the development for oil, gas, coal and other minerals and the right to issue leases or permits to prospect for oil, gas, or other minerals on the Leased Premises or run cables or conduits through the Leased Premises. However, NG&PC will be consulted and given an opportunity to comment concerning any proposals in the exercise of such rights. Prior to the execution of any such lease or permit, LPS and PAPIO will give consideration to any adverse effect such action might have on the recreational trail, fish and wildlife, and related uses.

USE, LOCATION, ARCHITECTURE

4. The use by NG&PC of land areas within the Leased Premises, and the location and architecture of improvements and facilities existing thereupon and constructed by NG&PC thereon, shall be in accordance with the minimum requirements provided in the Trail Development Plan described in Exhibit "D".

FACILITIES AND IMPROVEMENTS: NOTICE, REPAIR

5. NG&PC may construct facilities and improvements on the Leased Premises for the purpose of its administration, control and management over the recreational trail, and for fish and wildlife and related uses within the areas of the Leased Premises,

subject to the qualifications regarding use, location and architecture contained in the Trail Development Plan or any amendments thereto. The plans for any construction of facilities by NG&PC shall be approved in writing by LPS and PAPIO. NG&PC shall erect signs in conspicuous places at reasonable intervals within the Leased Premises, each containing a clear statement that the recreational trail, fish and wildlife, and related use areas affected hereunder are administered by NG&PC.

6. All improvements constructed in the Leased Premises by NG&PC shall be constructed, operated and maintained by NG&PC at its sole cost and expense and shall be and remain the property of NG&PC; provided, however, NG&PC shall, if requested by LPS and PAPIO, remove or cause to be removed the respective improvements at its sole cost and expense within ninety (90) days and after the termination of this Lease, and shall restore the land to a safe condition.

7. All improvements constructed by LPS and PAPIO upon the Leased Premises, and all improvements existing upon the Leased Premises at the time of the effective date of this Lease, shall be the property of LPS or PAPIO, as the ownership of the land shall appear, and shall remain so vested; except that such improvements shall be subject to the interest created by this Lease. NG&PC shall make no additions, alterations or improvements thereto without the prior written consent of LPS and PAPIO, and NG&PC's improvements to existing structures shall become the property of LPS or PAPIO, as the ownership of the land shall appear.

OPERATION AND MAINTENANCE

8. NG&PC shall employ good husbandry practices and keep and maintain all recreational improvements which exist at the time of the effective date of this Lease or

which shall be erected on the Leased Premises for administration and control purposes, in a good and reasonable state of repair, reasonable wear and tear excepted, at its own cost and expense to preserve said improvements. NG&PC will operate and maintain the Bridge and Connecting Links in accordance with the minimum requirements contained in the Operation and Maintenance Manual, attached hereto as Exhibit "F" and incorporated herein by this reference. Exhibit "F" may be modified in writing by mutual agreement of the parties without the necessity of re-execution of this Lease or entering into a separate lease. LPS and PAPIO shall repair the Bridge structure and supports, if needed, as provided for in Exhibit "F".

NG&PC'S RIGHTS

9. NG&PC shall have the right to award and administer concession contracts under which services are made available to the public in the Leased Premises. Authorization for any such concession services shall be at the sole discretion of NG&PC, so long as they conform to the purposes of the project. NG&PC may collect and retain all receipts, rents and profits derived from fees, licenses or permits which it issues or administers pursuant to fulfilling the obligations and responsibilities created by this Lease. The terms of said concession contracts shall not exceed the unexpired term of this Lease and each of said instruments shall contain the following provision:

"In the event of the termination of the Lease between the Lower Platte South Natural Resources District, the Papio-Missouri Natural Resources District and the State of Nebraska, Game and Parks Commission effective _____, the Lower Platte South Natural Resources District and the Papio-Missouri Natural Resources District shall be deemed to stand in the stead of NG&PC as grantor for the remainder of the term of this (license, permit, contract, sublease); provided, however, in the event of such termination, the Lower Platte South Natural Resources District and the Papio-Missouri Natural Resources District at any time within 90

days thereafter may terminate this (license, permit, contract, sublease) by giving to the (licensee, permittee, contractor, sublessee) 60 days written notice thereof and in such event (licensee, permittee, contractor, sublessee) shall have the privilege of selling or removing for a period of 30 days after termination of this (license, permit, contract, sublease) improvements which have been constructed on the premises at the sole cost or expense of the (licensee, permittee, contractor, sublessee) in such event to restore the land to safe and natural condition. Title to those improvements shall, unless so sold or removed, and unless the land is so restored, at the expiration of such time, vest in the Lower Platte South Natural Resources District and the Papio-Missouri Natural Resources District.

NG&PC shall have the further right, at its sole discretion, to establish and collect a user fee, as authorized by LB 296, Neb. Laws 1996, or other fees as allowed, for the use of the trail in the Leased Premises. NG&PC may collect and retain all receipts derived from such user fees and may use such fees for the maintenance and operation of the trail improvements identified in this Lease.

TERM OF LEASE

10. The term of this Lease shall be for a period of twenty-five (25) years commencing on the effective date hereof, unless sooner terminated, and may be renewed by NG&PC for additional periods of twenty-five (25) years upon giving written notice to LPS and PAPIO two (2) years prior to expiration of the term then in effect. The addition or deletion of lands or areas from the Exhibit "C" subsequent to the date of this Lease shall not operate to extend the term hereof.

MISCELLANEOUS

11. LPS and PAPIO assume no liability hereunder for damages to property or injuries to or death of NG&PC's officers, agents, servants or employees, or other persons, who may be on said Leased Premises at NG&PC's request or invitation, arising

from or incident to use of the trail. The NG&PC agrees to defend and indemnify the LPS and PAPIO and hold them harmless from and against all claims, demands, causes of action, including court costs and attorneys fees, for personal injuries or property damages arising out of the use by the NG&PC or its concessionaires or their officers, agents, and employees, or arising from the use by the public, of the Leased Premises, except such personal injuries or property damages as may be caused by the sole negligence of such indemnified party.

12. NG&PC shall assume the responsibility for the enforcement of all game, fish, and recreational laws on the Leased Premises and shall take all reasonable precautions and assist in the prevention, control and suppression of fires in the vicinity of the Leased Premises; and shall make and enforce such laws, rules, and regulations applicable to the recreation, fish, and wildlife use of the Leased Premises as it deems necessary and desirable to protect the health and safety of persons using the areas and for the preservation of law and order in the interest of public safety. NG&PC shall not engage in or permit any activity within the Leased Premises or allow any omission therein which will interfere with the safety, protection and operation of the trail.

13. Nothing in this Lease shall be construed or interpreted as authorizing NG&PC, its agents or employees, to act as agents or representatives for or on behalf of LPS and PAPIO, or to incur any obligation of any kind on behalf of LPS and PAPIO. Nothing in this Lease shall be construed or interpreted as authorizing LPS and PAPIO, its agents or employees, to act as agent or representative for or on behalf of NG&PC or to incur any obligation of any kind on behalf of NG&PC. NG&PC shall not subject or cause the Leased Premises, or any improvements thereon, to be subjected to or

pledged as security for any bond, lien, encumbrance, indebtedness or charge.

14. LPS and PAPIO shall not be liable for any loss, injury, or damage of any kind or nature whatsoever to any building or other structure belonging to NG&PC which may be constructed upon the Leased Premises, nor for any loss, injury, or damage of any kind of nature whatsoever to the contents of any building or structure upon the Leased Premises, or to any goods, merchandise, chattels, or any other property now or that may hereafter be upon said premises, whether belonging to NG&PC or others, and whether such loss, injury or damage results from fire or other cause; provided nothing herein excepts such damages as result from the negligence of LPS and PAPIO, its directors, officers, agents or employees.

TERMINATION

15. This Lease shall terminate and all rights of NG&PC hereunder shall cease, as hereinafter provided:

- (a) Upon expiration of the term of the Lease as provided in Section 10 above;
- (b) Upon the failure of NG&PC to observe any of the conditions, exceptions or reservations set out in the Lease; provided, however, the Chairpersons of the Boards of Directors of LPS and PAPIO shall give written notice to NG&PC of the obligations that are in default or the provisions of this Lease that have been violated, and NG&PC shall have ninety (90) days in which to correct the default or violation. Unless NG&PC shall have corrected such default or violation within such period, this Lease shall terminate on the ninety-first (91st) day following service of the written notice herein provided.

16. No assent, express or implied, by any party to any breach of any of the other's covenants shall be deemed to be a waiver of any succeeding or continuing breach of the same covenant.

17. Ninety (90) days following termination of this Lease under Section 10 or 15 above, or if this Lease is terminated for any other reason, NG&PC shall surrender the applicable premises, together with all of the improvements thereon which are owned or become vested in LPS and PAPIO by the provisions in this Lease, in such repair and conditions as shall be in accordance with the covenants therein contained. (Refer to Paragraph 6.)

18. If, during the term of this Lease, any improvements to the Leased Premises, made in accordance with the Federal Aid to Wildlife Restoration Act of September 2, 1937 (50 Stat. 917; 16 U.S.C.A. 669a et seq.), as amended, or the Federal Aid in Fish Restoration Act of August 9, 1950 (64 Stat. 430; 16 U.S.C.A. 777, et seq.), as amended, or the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Enhancements to ISTEA, or the Nebraska Recreational Trails Fund Program (NRTF (Neb. Rev. Stat. §§ 81-815.55 and 81-815.56), made to the lands and waters covered by the Trail Development Plan herein above referred to, shall not be impaired by this Lease; and, further, that before this Lease is terminated, an agreement safeguarding such improvements shall be entered into between LPS, PAPIO, and NG&PC.

19. NG&PC or its concessionaires shall not discriminate against any person or persons because of race, creed, color, sex or national origin in the conduct of its operations hereunder.

20. NG&PC warrants that no person or selling agency has been employed or

retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by NG&PC for the purpose of securing business. For breach or violation of this warranty, LPS and PAPIO shall have the right to annul this Lease without liability, or in its discretion to require the NG&PC to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

21. Unless other funds are available, the performance of any obligation or the expenditure of any funds by LPS and PAPIO under this Lease is made contingent on the necessary appropriations of funds by the Boards of Directors of LPS and PAPIO. In case such appropriations, as may be necessary to carry out this Lease, are not made, NG&PC hereby releases LPS and PAPIO from all liability due to the failure of the Boards of Directors to make such appropriations. Likewise, in the event the Legislature of the State of Nebraska fails to appropriate funds in any fiscal year or provide sufficient statutory authority to enable NG&PC to carry out this Lease, unless other funds are available, then this Lease shall terminate and LPS and PAPIO hereby release NG&PC from any liability or obligation undertaken herein, due to the failure of the State Legislature to make such appropriation.

22. No director, officer, agent or employee of LPS or NG&PC shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, but this restriction shall not be construed to extend this Lease if made with a company or corporation for its general benefit.

23. NG&PC represents that, in executing this Lease, it has complied and will

comply with all the applicable provisions of Nebraska law.

24. This Lease shall become effective as of the date first above written when signed by the Chairpersons of the Boards of Directors of LPS and PAPIO and by the Director, NG&PC. This Lease shall remain in force until terminated as provided in Articles 10, 15, 21 hereof.

25. This Lease may be amended in writing at any time by mutual consent of the parties.

26. The provisions of this Lease shall bind the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the dates indicated below.

LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT,

By: _____
Title: _____
Signed: _____, 1996

PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT,

By: _____
Title: _____
Signed: _____, 1996

NEBRASKA GAME AND PARKS
COMMISSION

By: _____
Title: _____
Signed: _____, 1996

EXHIBIT "C"
DEEDS AND EASEMENTS

The following described parcel of land situated in the Counties of Cass and Sarpy, State of Nebraska, described as follows:

Being a description of a strip of land varying widths formerly constituting a line of railroad as the centerline of said strip of land is more particularly described: Beginning at the intersection of said centerline and the West line of the Southeast Quarter of the Southeast Quarter (SE1/4 SE1/4) of Section 18, Township 12 North, Range 11 East, 6th P.M.; thence Southwesterly through the Southwest Quarter of the Southeast Quarter (SW1/4 SE1/4) of Section 18, the Northwest Quarter of the Northeast Quarter (NW1/4 NE1/4) and the Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4) and the Northwest Quarter of the Northwest Quarter (NW1/4 NW1/4) of Section 19, to a Termination at the West line of said Section 19. Township 12 North, Range 11 East of the 6th P.M.

Connecting Links right-of-way to Highways 31 and 66 to be described when acquired and incorporated and made a part of this Exhibit "C" without amending the Lease or Exhibit.

EXHIBIT "D"

TRAIL DEVELOPMENT PLAN

The trail will be developed according to acceptable standards for a facility of this nature and in accordance with a master plan to be developed and agreed to among the parties hereto. When such master plan is agreed upon, it will be incorporated and made a part of this Exhibit "D" without amending the Lease or Exhibit.

A minimum corridor will be established incorporating the Bridge, portions of the right-of-way and other accesses as may be necessary to connect the trail from Nebraska Highway 31 to Nebraska Highway 66 (Connecting Links) and further expanded to other recreation areas or trails as agreed to by all parties.

The trail will be fully operational and usable before it is opened to the general public.

The Bridge will be decked with suitable materials for pedestrian, bicycle and equestrian use, with appropriate handrails installed.

The trail will be graded and surfaced with suitable materials for pedestrian, bicycle and equestrian use.

User access points may be established at sites suitable for off-road parking.

Fencing, as desired and appropriate, will be installed along the Connecting Links.

LPS and Papio reserve the right, in their sole discretion, to name the Leased Premises.

EXHIBIT "E"
PRIOR RIGHTS, RESERVATIONS, AND EASEMENTS

- A. Easement granted to the Trustees of the Chicago, Rock Island and Pacific Railway Company for the installation and maintenance of drainage ditch recorded October 20, 1941, in Miscellaneous Book 11, Page 60 in the office of the Register of Deeds of Sarpy County, Nebraska.
- B. Terms and provisions of the Agreement for the installation and maintenance of a dike or levee recorded December 27, 1910, in Deed Book 44, Page 99 in the Office of the Register of Deeds of Sarpy County, Nebraska.
- C. Easement Grant granted to US Telecom, Inc., f/k/a United Telecom Communications, Inc. for the installation and maintenance of a fiber optic communication system recorded April 24, 1985, in Miscellaneous Book 58, Page 711; as amended by the Correction Easement Grant recorded June 29, 1987, in Miscellaneous Book 60, Page 2140; as further amended by the Amended Correction Easement Grant recorded October 19, 1987, in Miscellaneous Book 60, Page 3131 in the Office of the Register of Deeds of Sarpy County, Nebraska.
- D. Terms and provisions of reservation by Chicago Pacific Corporation of a perpetual easement for the installation and maintenance of energy transportation and transmission systems as set forth in the Quitclaim Deed recorded August 5, 1986, in Deed Book 161, Page 2000 in the Office of the Register of Deeds of Sarpy County, Nebraska.
- E. Terms and provisions of reservation of Joseph Kneib, his successors and assigns, of an easement for ingress and egress to the Platte River Bridge as set forth in the Quitclaim Deed recorded November 18, 1987, in Deed Book 162, Page 3198 in the Office of the Register of Deeds of Sarpy County, Nebraska.
- F. Terms and provisions of US Telecom, Inc., f/k/a United Telecom Communications, Inc. for the installation and maintenance of a fiber optic communication system recorded April 25, 1985, in Miscellaneous Book 31, Page 349; as amended by the Correction Easement Grant recorded October 13, 1987, in Miscellaneous Book 35, Page 220 in the Office of the Register of Deeds of Cass County, Nebraska.

EXHIBIT "F"
OPERATION AND MAINTENANCE

An operation and maintenance manual will be developed according to acceptable standards for a facility of this nature. When such a manual has been agreed to among the parties hereto, it will be incorporated and made a part of this Exhibit "F" without amending this Lease or Exhibit.

Nebraska Game and Parks Commission will operate the Bridge and accesses as a State Recreational Trail. Its responsibilities will include, but not be limited to: mowing, noxious weed control, debris removal, fence construction and repair, trail grading and resurfacing, deck and handrail repair, and other related repairs necessitated by normal use.

The Lower Platte South Natural Resources District and the Papio-Missouri Natural Resources District will be jointly responsible for catastrophic repairs to the Bridge resulting from ice floes, floods, dynamiting for flood relief, or other catastrophe. Such parties also will be responsible for water erosion repairs on the Bridge structure and supports that result in a hazardous condition endangering the health and well being of trail users.



Middle Island Dr

McPac Trail - PMNRD

Middle Island Dr

E Park Hwy

Lied Bridge Platte River Connection

E Park Hwy

66





**AMENDMENT TO
INTERLOCAL COOPERATION ACT AGREEMENT BETWEEN
LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT and
NEBRASKA GAME AND PARKS COMMISSION
FOR THE

TRAIL OVER PLATTE RIVER BRIDGE**

This Amendment to the Interlocal Cooperation Act Agreement (hereinafter "**THIS AMENDMENT**") is made by and among the following:

Lower Platte South Natural Resources District (hereinafter "**LPS**");
Papio-Missouri River Natural Resources District (hereinafter "**PAPIO**"); and
Nebraska Game and Parks Commission (hereinafter "**NG&PC**");
hereinafter referred to collectively as "the **PARTIES**".

In **THIS AMENDMENT**, the bridge constructed across the Platte River to support and connect a recreational trail near South Bend, Nebraska, named the Lied Platte River Bridge, will be referred to as "the **BRIDGE**." The right-of-way connecting the Bridge to Nebraska Highway 31 and 328th Street where a recreational trail has been constructed will be referred to as "the **CONNECTING LINKS**."

WHEREAS, in a 1996 INTERLOCAL COOPERATION ACT AGREEMENT, entered into by and among the **PARTIES**, the **PARTIES** agreed to cooperate to acquire, rehabilitate, maintain, repair and operate the **BRIDGE** and the trail approaches connecting the **BRIDGE**. Specifically, the **PARTIES** outlined certain Operation and Maintenance roles and responsibilities in Exhibit "F" of the 1996 INTERLOCAL

COOPERATION ACT AGREEMENT;

WHEREAS, in March 2019, the Platte River and the surrounding area, including the BRIDGE and the CONNECTING LINKS, endured a historical flooding event which caused significant damage to the BRIDGE and the Hwy 31 CONNECTING LINK as well as significant sand and debris deposits and erosion;

WHEREAS, the PARTIES desire to clarify their individual responsibilities to each other for the damages caused and remedial measures required as a result of the March 2019 Flooding; and,

WHEREAS, THIS AMENDMENT is made pursuant to authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §§ 13-801, et seq.), without a separate entity being created, and whenever possible, THIS AMENDMENT shall be construed in conformity therewith.

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

1) Exhibit “G” March 2019 Flood Remedial Efforts, as set forth below, shall be added to the 1996 INTERLOCAL COOPERATION ACT AGREEMENT immediately following Exhibit “F.”

EXHIBIT “G”

MARCH 2019 FLOOD REMEDIAL EFFORTS

The PARTIES hereby agree that the following actions shall be taken by the respective parties:

1) **BRIDGE DEBRIS REMOVAL.** The PAPIO will contract for the removal of

debris from the BRIDGE that accumulated as a result of the March 2019 Flooding. The PAPIO shall apply for and seek available federal funds for the reimbursement of costs associated with the BRIDGE debris removal. In the event that the PAPIO does not receive full reimbursement through available federal funds, NG&PC shall fully reimburse the PAPIO for all non-federally reimbursed costs for the BRIDGE debris removal within forty-five (45) days of receiving a written request from the PAPIO.

- 2) **BRIDGE REPAIR.** The PAPIO shall retain an engineering consultant to inspect and evaluate the damage to the BRIDGE structure as a result of the March 2019 Flooding (the “**BRIDGE EVALUATION.**”). Based upon the BRIDGE EVALUATION, and upon the recommendation of the retained engineering consultant, the PAPIO shall determine whether an engineering design is needed for the repairs to the BRIDGE structure. If a design is required, the PAPIO shall retain an engineering consultant to provide the design to repair the BRIDGE structure (the “**BRIDGE REPAIR DESIGN.**”) The PAPIO shall bid and contract for repairs to the BRIDGE structure to return the BRIDGE structure to its condition immediately before the March 2019 Flooding (the “**BRIDGE REPAIR WORK**”), whether a BRIDGE REPAIR DESIGN is required or not. The PAPIO shall apply for and seek available federal funds for the reimbursement of costs associated with the BRIDGE EVALUATION, BRIDGE REPAIR DESIGN and BRIDGE REPAIR WORK. In the event that the PAPIO does not receive full reimbursement through available federal funds, the LPS agrees to reimburse the PAPIO for fifty percent (50%) of the non-federally reimbursed costs for the BRIDGE EVALUATION, BRIDGE

REPAIR DESIGN and BRIDGE REPAIR WORK within forty-five (45) days of receiving a written request from the PAPIO.

2) **RATIFICATION.** Except as it is expressly amended by THIS AMENDMENT, the 1996 INTERLOCAL COOPERATION ACT AGREEMENT shall remain in effect and binding upon the PARTIES.

3) **EFFECTIVE DATE.** THIS AMENDMENT shall be deemed to have permanent duration, and shall become effective upon complete execution of counterparts of THIS AMENDMENT by the PARTIES.

IN WITNESS WHEREOF,

THIS AMENDMENT is executed by the Lower Platte South Natural Resources District on this _____ day of _____, 20 ____.

Lower Platte South Natural Resources District

By: _____

Title: _____

THIS AMENDMENT is executed by the Papio-Missouri River Natural Resources District on this _____ day of _____, 20 ____.

Papio-Missouri River Natural Resources District

By: _____

Title: _____

THIS AMENDMENT is executed by the Nebraska Game & Parks Commission on
this _____ day of _____, 20 ____.

Nebraska Game & Parks Commission

By: _____

Title: _____