

Memorandum

To: PPO Subcommittee
From: Amanda Grint, Water Resources Engineer
Date: February 3, 2020
Re: Amendment to Interlocal Agreement on WP6 and WP7 with the City of Papillion and Sarpy County

In October 2018, an interlocal amendment was approved by the Board and the City of Papillion for shared responsibilities of the WP6 and WP7 flood control reservoirs project. As part of the construction of the reservoirs there were supplemental projects associated with the work that is being shared by the City of Papillion and Sarpy County respectively. The proposed interlocal agreement outlines the shared project costs and future maintenance of the WP6 and WP7 projects. During 2018, the stakeholders from Sarpy County that were involved in constructing the interlocal agreement left the County for other opportunities and the interlocal agreement was not approved. Since the end of 2018, District staff has worked with Sarpy County to review the details and discuss possible revisions to the original interlocal. The proposed amendment meets the request of Sarpy County and is presented for consideration.

The following is a summary of the amendment:

- The reimbursement from Sarpy County for the County Road Sub-project (Cornhusker Road improvements) shall be paid 50% in July 2022 and 50% in July 2023. This reimbursement has been revised to extend the payment by one year to match the budget of Sarpy County.
- Provisions have been added to allow for Additional Sub-project work at the Cost of the City or County. In this case, the Exhibit B to the amendment shows the additional sub-project work that Sarpy County is requesting. It includes additional pavement to complete the Cornhusker Road connection to existing pavement. For this work the County would reimburse the District within 60 days of substantial completion.
- The amendment defines the ownership and maintenance responsibilities of the additional sub-project.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed First Amendment to the Interlocal Cooperation Act Agreement with the City of Papillion and Sarpy County for Papio Watershed Regional Flood Control Detention Basins WP-6 and WP-7 subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

FIRST AMENDMENT
TO THE
INTERLOCAL COOPERATION ACT AGREEMENT
Among
THE COUNTY OF SARPY, NEBRASKA,
THE CITY OF PAPILLION, NEBRASKA,
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
PAPIO WATERSHED REGIONAL FLOOD CONTROL DETENTION BASINS
WP-6 and WP-7

THIS FIRST AMENDMENT ("THIS AMENDMENT") is made pursuant to the Nebraska Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 to 13-827, et seq., by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** ("the **NRD**"), the **CITY OF PAPILLION, NEBRASKA** ("the **CITY**"), and the **COUNTY OF SARPY, NEBRASKA** ("the **COUNTY**"), collectively (the "**PARTIES**").

RECITALS:

WHEREAS, the NRD commissioned the Papillion Creek Multi-Reservoir Analysis, which was completed in September 2004 and which identified the need for flood control projects within the rapidly developing Papillion Creek watershed; and,

WHEREAS, the Implementation Plan of the Papillion Creek Watershed Partnership's Watershed Plan has identified flood control projects to be completed within the five-year period of 2014-2019; and,

WHEREAS, such identified projects include a multi-purpose flood control and recreation dam and reservoir project, including an associated water quality basin, that the **PARTIES** desire to have constructed by the NRD on a site near 114th Street and Cornhusker Road in Sarpy County (collectively "the **WP-6 PROJECT**"); and,

WHEREAS, such identified projects include a multi-purpose flood control and recreation dam and reservoir project, including an associated water quality basin, that the **PARTIES** desire to have constructed by the NRD on a site near 108th Street and Lincoln Road in Sarpy County (collectively "the **WP-7 PROJECT**"); and,

WHEREAS, the PARTIES desire to provide herein for the cooperative design, construction, operation, maintenance, repair, replacement, regulation and ownership of the WP-6 PROJECT and the WP-7 PROJECT (collectively “the **FLOOD CONTROL PROJECTS**”) and to specify the rights, duties and obligations of the PARTIES in connection therewith; and,

WHEREAS, the PARTIES entered into an Interlocal Agreement (the “**AGREEMENT**”) to provide for the cooperative design, construction, operation, maintenance, repair, replacement, regulation and ownership of various projects and to allocate responsibility for the direct payment or reimbursement of certain costs incurred as a result of the **FLOOD CONTROL PROJECTS** and various sub-projects; and,

WHEREAS, the PARTIES desire to alter and amend the **AGREEMENT** with this **AMENDMENT**.

NOW, THEREFORE, for and in consideration of their mutual covenants contained in this **AMENDMENT** and in the **AGREEMENT**, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the **AGREEMENT** is amended as follows:

- 1) The following subsection c) shall be added immediately after subsection b) under Paragraph 4 SUB-PROJECTS of the **AGREEMENT**, stating as follows :

(c) The CITY may request additional items be designed and constructed in association with the CITY ROAD SUB-PROJECT and the COUNTY may request additional items be designed and constructed in association with the COUNTY ROAD SUB-PROJECT (collectively, “the **ADDITIONAL SUB-PROJECT WORK**”) prior to the issuance of the engineering certification of substantial completion of the SUB-PROJECTS. The actual costs of design, construction, engineering observation and administration of construction for the **ADDITIONAL SUB-PROJECT WORK** shall be paid by the requesting party pursuant to Paragraph 14(d) contained herein. If the **ADDITIONAL SUB-PROJECT WORK** is requested by either the CITY or the COUNTY after the approval of the **FINAL PLANS** as forth in Paragraph 10, the NRD shall submit the engineering plans and estimated construction costs for the **ADDITIONAL SUB-PROJECT WORK** to the requesting party for its written approval. The CITY and

COUNTY shall have a period of thirty (30) days to review and approve or disapprove of the same in writing or suggest amendment thereto. Such approval shall not be withheld or delayed unreasonably. If the ADDITIONAL SUB-PROJECT WORK work is requested by the CITY or COUNTY after the approval of the FINAL PLANS, the ADDITIONAL SUB-PROJECT WORK shall be added to the CONTRACT DOCUMENTS through a change order.

- 2) The following subsection d) shall be added immediately after subsection c) under Paragraph 14 ALLOCATION OF COSTS of the AGREEMENT, stating as follows :

d) the NRD shall pay, and the COUNTY or CITY, whichever requested the ADDITIONAL SUB-PROJECT WORK, shall reimburse the NRD for the costs of design, construction, engineering observation and administration of construction of the ADDITIONAL SUB-PROJECT WORK, previously approved by the requesting party. The CITY or COUNTY shall review, within ten (10) days of receipt, any required change orders for the ADDITIONAL SUB-PROJECT WORK which may exceed ten (10) percentage of the actual bid costs of the ADDITIONAL SUB-PROJECT WORK. The reimbursement by the COUNTY or CITY to the NRD for the ADDITIONAL SUB-PROJECT WORK shall be due and payable to the NRD sixty (60) days after the issuance of the engineering certificate of substantial completion of the SUB-PROJECTS.

- 3) Paragraph 15 of the AGREEMENT is deleted in its entirety and replaced with the following:

15. PAYMENT OF COSTS. Reimbursement by the CITY for the actual costs of design, construction, engineering, observation and administration of construction of the CITY ROAD SUB-PROJECT shall be due and payable to the NRD sixty (60) days after issuance of the engineering certificate of substantial completion of the FLOOD CONTROL PROJECTS and the SUB-PROJECTS. Reimbursement by the COUNTY for the actual costs of design, construction, engineering observation and administration of

construction of the COUNTY ROAD SUB-PROJECT shall be due and payable to the NRD as follows: 50% shall be paid July 1, 2022 and 50% shall be paid July 1, 2023.

4. Paragraphs 19 (e) and (f) of the AGREEMENT are deleted in their entirety and replaced with the following:

e) the CITY shall take possession of and, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the CITY ROAD SUB-PROJECT and CITY-requested ADDITIONAL SUB-PROJECT WORK, if any, as located on the remainder of the lands to be conveyed by the NRD to the CITY in accordance with THIS AGREEMENT; and

f) the COUNTY shall take possession of and, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the road and bridge improvements of the COUNTY ROAD SUB-PROJECT and COUNTY-requested ADDITIONAL SUB-PROJECT WORK, if any, (not including all flood control improvements, such as dam drains, principal spillway pipes, and auxiliary spillway) within the right of way dedicated for Cornhusker Road, as depicted on the attached Exhibit B.

5. Paragraph 20 of the AGREEMENT is deleted in its entirety and replaced with the following:

20. INDEMNIFICATION.

a) The CITY shall defend, indemnify, and hold the NRD and COUNTY harmless from and against all costs and expenses, including attorneys' fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the CITY'S operation, maintenance, repair, replacement, or regulation of the principal project components of the FLOOD CONTROL PROJECTS (except the DAMS) which the CITY has taken possession of pursuant to paragraph 21

below, and the CITY'S ROAD SUB-PROJECT and CITY-requested ADDITIONAL SUB-PROJECT WORK, if any, and excepting any costs, loss or damage solely caused by the negligence of the NRD or solely caused by the negligence of the COUNTY.

b) The NRD shall defend, indemnify, and hold the CITY and COUNTY harmless from and against all costs and expenses, including attorneys' fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the NRD'S operation, maintenance, repair, replacement, or regulation of the DAMS, and the MITIGATION IMPROVEMENTS (prior to their acceptance by the CORPS), and the WP-7 PROJECT (prior to the CITY taking possession of the principal project components pursuant to paragraph 21 below) and excepting any costs, loss or damage solely caused by the negligence of the CITY or solely caused by the negligence of the COUNTY.

c) The COUNTY shall defend, indemnify, and hold the NRD and the CITY harmless from and against all costs and expenses, including attorneys' fees and court costs, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from the COUNTY'S operation, maintenance, repair, replacement, or regulation of the road and bridge improvements of the COUNTY ROAD SUB-PROJECT and COUNTY-requested ADDITIONAL SUB-PROJECT WORK, if any, (not including all flood control improvements, such as dam drains, principal spillway pipes, and auxiliary spillway) within the right of way dedicated for Cornhusker Road as depicted on the attached Exhibit B, excepting any costs, loss or damage solely caused by the negligence of the NRD or solely caused by the negligence of the CITY.

6. All other terms and conditions of the AGREEMENT shall remain unchanged and are in full force and effect.

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

THIS AMENDMENT is executed by the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** on this ____ day of _____, 2020, pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL RESOURCES
DISTRICT**

By _____

**John Winkler,
General Manager**

THIS AMENDMENT is executed by the **CITY OF PAPILLION, NEBRASKA** on this _____ day of _____, 2020, pursuant to ordinance duly adopted by its City Council, City of Papillion, Nebraska

CITY OF PAPILLION, NEBRASKA

By _____

**David Black,
Mayor**

ATTEST:

City Clerk

THIS AMENDMENT is executed by the **COUNTY OF SARPY, NEBRASKA** on this _____ day of _____, 2020, pursuant to resolution duly adopted by its Board of Commissioners.

COUNTY OF SARPY, NEBRASKA

By _____

**Chairperson,
Board of County Commissioners**



