

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Martin P. Cleveland

SUBJECT: Interlocal Cooperation Agreement with City of Omaha for Construction of Drainage Structure Rehabilitation for Little Papio Creek Levee/Channel Culverts Project

DATE: November 18, 2021

The Little Papio Creek Channel Project is located between Spaulding Street and Q Street in Omaha, NE and is a federally constructed flood control channel completed in January 1970. The District serves as the local project sponsor and is required to operate, maintain, and repair the channel and its appurtenances to keep it in safe operating condition to remain in Corps of Engineers Public Law (PL) 84-99 assistance program. The District periodically inspects the Little Papio Project culverts and has identified 45 culverts that need to be repaired due to deficiencies. Enclosed are location maps that show the deficient culvert sites. It has been determined that the City of Omaha is responsible for twenty-three (23) of the forty-five culverts, as they are connected to a storm sewer system and were installed by the City.

On May 13, 2021, the Board of Directors approved the Little Papio Creek Channel Culverts Project Interlocal Cooperation Agreement with City of Omaha for Design of Drainage Structure Rehabilitation. This agreement provided for the City of Omaha to reimburse design costs up to a maximum of \$350,000 for the design work associated with City owned culverts in the Project area. The design work should be completed in 2021.

During the design phase, it was decided to divide the culverts into Groups A and B based on the amount of design review required by Corps of Engineers (USACE) and to expediate the review process and start construction on a portion of the culverts as soon as feasible. Group A consists of 19 culverts and Group B consists of 26 culverts. Group B culverts require more USACE review than Group A culverts. The City of Omaha owns 10 of the Group A culverts and the District owns 9 of the Group A culverts.

Enclosed is a proposed Interlocal Cooperation Agreement with the City of Omaha for construction/rehabilitation and construction observation/administration of the nineteen (19) Group A Culverts (City of Omaha: Culverts LP-L12, LP-L33, LP-L37, LP-L44, LP-L63, LP-L84, LP-R13, LP-R15, LP-R19, LP-R24; District: Culverts LP-L06, LP-L26, LP-L35, LP-R07, LP-R08, LP-R33, LP-R37, LP-R47, LP-R65). The Agreement will provide for the City of Omaha to reimburse the District for construction expenditures associated with their share of the Group A Culverts (10 of 19) for a maximum not to exceed total amount of \$2,400,000. The District will submit invoices

to the City of Omaha for an estimated \$800,000 payment in calendar years 2022, 2023 and 2024. The District's cost for the remaining nine (9) culverts is estimated to be around \$1,400,000.

Management recommends that the Programs, Projects, and Operation 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 Construction of Group A Drainage Structure Rehabilitation for Little Papio Creek Levee/Channel Project, with a reimbursement maximum not to exceed amount of \$2,400,000 to be paid with up to \$800,000 maximum limit in calendar years 2022, 2023 and 2024, 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

**CONSTRUCTION OF DRAINAGE STRUCTURE REHABILITATION FOR
LITTLE PAPIO CREEK LEVEE/CHANNEL 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 (Neb. Rev. Stat. §§ 13-801, et seq.).

WHEREAS, twenty-three (23) culverts along or near the Little Papio Creek Levee/Channel from Keystone Drive in Omaha to north of L Street in Omaha which were installed by the CITY (Structure Nos. LP-Lo4, LP-Lo4A, LP-L12, LP-L13, LP-L15A, LP-L31, LP-L33, , LP-L36, LP-L37, LP-L38, LP-L44, , LP-L49, LP-L50, LP-L55, LP-L56, LP-L63, LP-L84, LP-R13, LP-R15, LP-R19, LP-R21, LP-R24, LP-R27 and as identified in the Little Papio Channel Culverts Rehabilitation Project- Pipe Inspection Report marked Exhibit "A" that is attached hereto and incorporated herein) (the "**CITY CULVERTS**"), and fourteen (14) culverts along or near the Little Papio Creek Levee/Channel from Keystone Drive in Omaha to north of L Street in Omaha which were installed or assumed by the NRD (Structure Nos. LP-Lo6, , LP-L67, LP-L82, LP-R07, LP-R08, LP-R14, LP-R17, LP-R22, LP-R36A, LP-R37, LP-R61, LP-R62, LP-R63, and LP-R65 also identified in the Pipe Inspect Report marked Exhibit "A" that is attached hereto and incorporated herein) (the "**NRD CULVERTS**"), and eight (8) culverts along or near the Little Papio Creek Levee/Channel from Keystone Drive in Omaha to north of L Street in Omaha which were installed or assumed by other property owners (Structure Nos. LP-Lo7, LP-L23, LP-

L26, LP-L35, LP-L48, LP-R33, LP-R47 and LP-R51 also identified in the Pipe Inspect Report marked Exhibit "A" that is attached hereto and incorporated herein) (the "**OTHER CULVERTS**"). The **OTHER CULVERTS**, **NRD CULVERTS** and **CITY CULVERTS**, (collectively, the "**CULVERTS**"), are in need of rehabilitation and repair; and,

WHEREAS, the **NRD** and **CITY** have decided to divide the rehabilitation and repair of the **CULVERTS** into two groups based upon the amount of design review required by the United States Army Corps of Engineers and to expediate the review process and start construction on a portion of the culverts project as soon as feasible; and,

WHEREAS, the **NRD** and the **CITY** have identified nineteen (19) culverts to be rehabilitated and repaired for the Group A portion of the project which consists of ten (10) culverts that were installed by the **CITY** (LP-L12, LP-L33, LP-L37, LP-L44, LP-L63, LP-L84, LP-R13, LP-R15, LP-R19, LP-R24) (the "**CITY GROUP A CULVERTS**") and nine (9) culverts which were installed or assumed by the **NRD** or other property owners (LP-L06, LP-L26, LP-L35, LP-R07, LP-R08, LP-R33, LP-R37, LP-R47, LP-R65) (the "**NRD GROUP A CULVERTS**"). The **CITY GROUP A CULVERTS** and the **NRD GROUP A CULVERTS** shall collectively be referred to as the "**GROUP A CULVERTS**."

WHEREAS, the **NRD** and the **CITY** desire to repair, rehabilitate and restore the **GROUP A CULVERTS** (the "**PROJECT**"); and,

WHEREAS, the **NRD** and the **CITY** already entered into an Interlocal Cooperation Act agreement where the parties agreed to allocate the cost and the responsibilities and obligations of the design for the **PROJECT**; and,

WHEREAS, the engineer retained by the **NRD** pursuant to the existing interlocal agreement has completed its design of the **PROJECT** and the parties are ready to proceed with the construction of the **PROJECT**; and,

WHEREAS, the **NRD** desires to receive cost-sharing assistance from the **CITY** for the costs of the **PROJECT** relating to the engineering and construction of the **CITY GROUP A CULVERTS**; and,

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. **THE ENGINEERING CONTRACT.** The NRD has already entered into a professional services contract with ENGINEERS in the form as determined by the NRD in its sole discretion, pursuant to which the ENGINEERS have prepared the contract documents and prepared documents to obtain the necessary permits and provided an opinion of probable construction costs. Upon execution of THIS AGREEMENT, the NRD will amend the professional service agreement with the ENGINEERS for bid phase assistance and construction administration services for the PROJECT ("**ENGINEERS' AMENDMENT**"). The cost of the ENGINEERS' AMENDMENT shall be deemed to be GENERAL COSTS, as defined in Paragraph 8 below, of the PROJECT.

4. **CITY TECHNICAL ASSISTANCE.** The CITY shall provide technical assistance to the NRD and shall attend all necessary meetings regarding the PROJECT, as may be requested by the NRD.

5. **CONSTRUCTION CONTRACT.** After receipt by the NRD of the CITY'S written approval of the FINAL PLANS, the NRD shall deliver to the CITY for their approval (such approval to not be withheld or delayed unreasonably) the NRD's proposed contract documents ("the **CONTRACT DOCUMENTS**") for competitive bidding for construction of the PROJECT. The CITY shall have a period of 14 days to review the CONTRACT DOCUMENTS and to approve or disapprove of the same in writing or suggest amendments thereto. Such approvals shall not be withheld or delayed unreasonably.

6. **CONSTRUCTION OF THE PROJECT.** After the CITY approves of the CONTRACT DOCUMENTS, and in accordance with the NRD's purchasing regulations, the

NRD will seek competitive bids for construction of the PROJECT. Upon receipt of the competitive bids, the NRD shall make the bids available to the CITY for review. The CITY shall review the CITY GROUP A CULVERTS portion of the competitive bids within ten (10) days from when the NRD makes the bids available to the CITY. The NRD shall award the contract for the PROJECT to the bidder that the NRD determines provides the lowest responsible bid.

7. **CONTRACTOR'S WARRANTIES.** The NRD shall enforce all bonds and warranties given by the ENGINEERS, construction contractors and their subcontractors, including without limitation bonds and warranties given in connection with or pertaining to the PROJECT.

8. **GENERAL COSTS.** The costs and billings resulting from the ENGINEERS' AMENDMENT referenced in Paragraph 3, above, and the costs and billings resulting from the construction of the PROJECT shall constitute the GENERAL COSTS of the PROJECT. NRD and CITY agree that execution of this Interlocal Cooperation Agreement does not amend, alter nor modify the existing Interlocal Cooperation Act Agreement previously entered into by the NRD and CITY for the design of the PROJECT.

9. **CITY CONTRIBUTION.** As its contribution towards the aforesaid costs of the PROJECT, the CITY shall pay to the NRD one hundred percent (100%) of the billings rendered to the NRD for the GENERAL COSTS associated with or relating to the CITY GROUP A CULVERTS not to exceed a total amount of Two Million and Four Hundred Thousand Dollars (\$2,400,000). The NRD shall submit three invoices to the CITY in the calendar years of 2022, 2023 and 2024. It is estimated that each invoice will be Eight Hundred Thousand Dollars (\$800,000) per year. Within forty-five (45) days of the CITY'S receipt of the invoice, the CITY shall pay the NRD the amount invoiced.

10. **NRD CONTRIBUTION.** In addition to the costs associated with being the lead agency for the PROJECT, the NRD shall be solely responsible for the billings rendered to the NRD for the GENERAL COSTS associated with or relating to the NRD GROUP A CULVERTS.

11. **OPERATION AND MAINTENANCE.** The CITY shall remain responsible for the operation, maintenance, repair and replacement of the CITY

CULVERTS upon completion of the PROJECT. The NRD shall remain responsible for the operation, maintenance, repair and replacement of the NRD CULVERTS upon completion of the PROJECT.

12. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall be in force and effect upon and after its execution by the parties hereto. The term of THIS AGREEMENT shall expire when the CITY has made its full and final contributions in accordance with Paragraph 9. THIS AGREEMENT may be terminated before its expiration by mutual agreement of the parties in writing.

13. 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.

14. DRUG FREE POLICY. Each party provides assurance that it has established and maintains a drug free workplace policy.

15. 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. THIS AGREEMENT may be amended upon mutual written consent of the parties.

16. DEFAULT. If either party shall default hereunder, the other party shall be entitled to enforce specific performance of THIS AGREEMENT or may have any other remedy allowed by law or equity.

17. 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.

18. 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.

19. APPLICABLE LAW. Each party to THIS AGREEMENT shall follow all applicable federal and state statutes and regulations in carrying out the faithful performance and terms of THIS AGREEMENT. The parties agree that any consultants or contractors retained for the PROJECT shall comply with the Equal Opportunity Clause and LB 403 as set forth in Exhibits B-1 and B-2. Nebraska law will govern the terms and the performance under this Agreement.

20. 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.

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

22. INTERLOCAL COOPERATION ACT PROVISIONS. THIS AGREEMENT shall not create any separate legal or administrative entities. 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. Upon terminations, 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.

[SIGNATURES ON FOLLOWING PAGE]

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 _____, 2021.

The CITY of OMAHA

By _____

JEAN STOTHERT, Mayor

Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2021.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____

JOHN WINKLER, General Manager


LITTLE PAPIO CHANNEL CULVERTS REHABILITATION PROJECT



LITTLE PAPIO CHANNEL CULVERTS REHABILITATION PROJECT

Center St. - Dodge St.





0 500 1,000 US Feet


Date Printed: 1/13/2021

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LITTLE PAPIO CHANNEL CULVERTS REHABILITATION PROJECT

Dodge St. - Keystone Dr.





0 500 1,000 US Feet

Date Printed: 1/13/2021

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EXHIBIT B-1

EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the contractor agrees as follows:

1. The contractor shall not discriminate against any employee applicant for employment because of race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. The contractor shall ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.
2. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, gender identity or national origin, age, disability.
3. The contractor shall send to each representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of the contractor's commitments under the equal employment opportunity clause of the city and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor shall furnish to the human rights and relations director all federal forms containing the information and reports required by the federal government for federal contracts under federal rules and regulations, including the information required by section 10-192 to 10-194, inclusive, and shall permit reasonable access to his records. Records accessible to the human rights and relations director shall be those which are related to paragraphs (1) through (7) of this subsection and only after reasonable notice is given the contractor. The purpose of this provision is to provide for investigation to ascertain compliance with the program provided for herein.
5. The contractor shall take such actions with respect to any subcontractor as the city may direct as a means of enforcing the provisions of paragraphs (1) through (7) herein, including penalties and sanctions for noncompliance; however, in the event the contractor becomes involved in or is threatened with litigation as the result of such directions by the city, the city will enter into such litigation as is necessary to protect the interests of the city and to effectuate these provisions of this division; and in the case of contracts receiving federal assistance, the contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.
6. The contractor shall file and shall cause his subcontractors, if any to file compliance reports with the contractor in the same form and to the same extent as required by the federal government for federal contracts under federal rules and regulations. Such compliance reports shall be filed with the human rights and relations director. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractor and his subcontractors.
7. The contractor shall include the provisions of paragraphs (1) through (7) of this section, "Equal employment opportunity clause," and section 10-193 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

EXHIBIT B-2

E-VERIFY

LB 403 Contract Provisions

NEW EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

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.