

MEMORANDUM

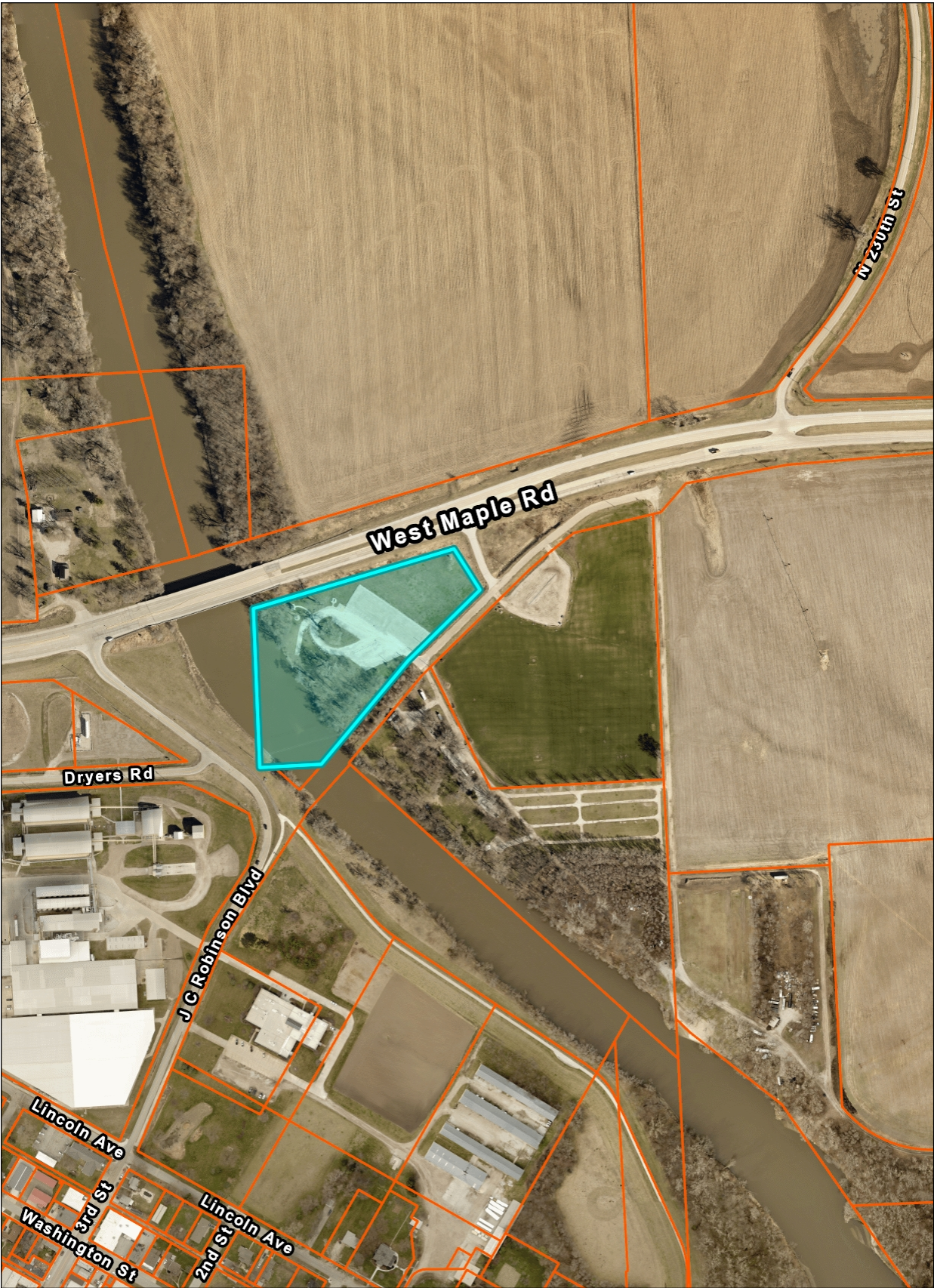
To: FEL Subcommittee
From: Amanda Grint, Assistant General Manager
Date: July 7, 2022
Re: Amendment and Quit Claim Deed with the Village of Waterloo for Transfer of Waterloo River Access

In 2004, the District and the Village of Waterloo entered an Interlocal Agreement to construct the Waterloo River Access along the Elkhorn River and West Maple Road. The Village operated the river access site until flooding in 2010 made the repairs and maintenance of the site too costly for the Village to continue. The District was able to secure FEMA funding to repair the site and agreed to take over the ownership of the site because the District has other river access points and is experienced in the maintenance. Although the agreement took place in 2010, the paperwork was never completed to transfer the river access.

The proposed first amendment to the interlocal agreement and quit claim deed transfers ownership of the river access from the Village of Waterloo to the District.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed First Amendment to the Interlocal Agreement with the Village of Waterloo for the Elkhorn River Canoe Access Site, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

Douglas County Property Info



Legend

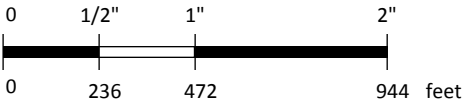
- Address Numbers
- Parcels


Notes

This map is a user-generated, static output. It is for reference only. Data on this map may not be accurate, current, or otherwise reliable. It is for informational purposes only, and may not be suitable for legal, engineering, or surveying purposes.



1 : 5,667
1 = 472



Douglas County GIS
 1819 Farnam St
Suite 402
Omaha NE, 68183

FIRST AMENDMENT
To
INTERLOCAL COOPERATION ACT AGREEMENT
Between
THE VILLAGE OF WATERLOO, NEBRASKA
And
THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
ELKHORN RIVER CANOE ACCESS SITE

THIS AMENDMENT (hereinafter referred to as "this **AMENDMENT**") is entered into by and between the **VILLAGE OF WATERLOO, NEBRASKA** (hereinafter referred to as "the **VILLAGE**") and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (hereinafter referred to as "the **NRD**"), all pursuant to the authority provided in the Nebraska Interlocal Cooperation Act (§§13-801, R.R.S., 1943, et seq.)

RECITALS:

WHEREAS, pursuant to an Agreement (hereinafter referred to as "the **AGREEMENT**") executed by the **VILLAGE** on August 24, 2004, and by the **NRD** on September 9, 2004, the **NRD** and the **VILLAGE** established a project (hereinafter referred to as "the **PROJECT**") to provide Elkhorn River canoe access improvements on a tract of land located near the West Maple Road crossing of the Elkhorn River in Douglas County, such tract of land being more particularly described in the legal description attached as Exhibit "A" to Exhibit "1" hereto, and incorporated herein by reference; and,

WHEREAS, also pursuant to the **AGREEMENT**, the **VILLAGE** obtained lands, easements and rights-of-way necessary for the **PROJECT** (referred to hereinafter and in Exhibit "1" hereto as "the **PROJECT RIGHTS-OF-WAY**"); the **NRD** constructed the **PROJECT**, in conformance with **VILLAGE**-approved final plans and specifications; and, the **VILLAGE** commenced to operate, maintain, repair, replace, manage and regulate the **PROJECT**; and,

WHEREAS, the **VILLAGE** now has determined that it prefers for the **NRD** to operate, maintain, repair, replace, manage and regulate the **PROJECT**, as those responsibilities were previously undertaken by the **VILLAGE** in the **AGREEMENT**; and,

WHEREAS, the contracting parties now desire to modify the AGREEMENT for the purpose of providing for the transfer from the VILLAGE to the NRD of the PROJECT RIGHTS-OF-WAY and for the assumption by the NRD of the VILLAGE'S responsibility for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT.

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

A. That the following numbered paragraphs of the AGREEMENT should be modified in the manner as set forth as follows:

The second Paragraph 1 be replaced with the following:

1. PROJECT PARTICIPANTS. The PROJECT shall be a joint undertaking by and between the NRD and the VILLAGE, without any separate entity being created, and the duties and responsibilities of the parties shall be as defined by the AGREEMENT as modified by this AMENDMENT.

Paragraph 7 of the Agreement be replaced with the following:

7. RIGHTS-OF-WAY ACQUISITION. Lands, easements and rights-of-way, that the ENGINEERS or the NRD determine are necessary for the PROJECT (hereinafter referred to as "the **PROJECT RIGHTS-OF-WAY**"), shall be provided by the VILLAGE. Within ten (10) days after the effective date of this AMENDMENT, the Village shall transfer all PROJECT RIGHTS-OF-WAY held in fee simple to the NRD by quit claim deed pursuant to or by virtue of the AGREEMENT, and transfer all other PROJECT RIGHTS-OF-WAY to the NRD.

Paragraph 13 of the Agreement be replaced with the following:

13. OPERATION AND MAINTENANCE OF PROJECT. After completion of construction of the PROJECT and the NRD's acceptance of the same from the PROJECT CONTRACTOR, and until the Effective Date of this AMENDMENT, the VILLAGE, at its sole cost and expense, shall operate, maintain, repair, replace, manage and regulate the PROJECT. After the Effective

Date of this AMENDMENT, the NRD, at its sole costs and expense, shall permanently operate, maintain, repair, replace, manage and regulate the PROJECT, all at such time and in such manner as the NRD in its sole discretion determines reasonable and feasible.

Paragraph 14 of the Agreement be replaced with the following:

14. OPERATIONAL RULES AND REGULATIONS. Prior to the Effective Date of this AMENDMENT, the operational rules and regulations adopted by the VILLAGE for the management of the PROJECT after its construction shall provide that no fee shall be required to be paid by members of the public as a condition to the use of the PROJECT, and shall contain such other rules and regulations as the VILLAGE may adopt that are consistent with state and federal laws, rules and regulations, and are approved in writing by the General Manager of the NRD. On and after the Effective Date of this AMENDMENT, the NRD shall solely operate, manage and regulate the PROJECT, at its sole cost and expense and in such manner as the NRD in its sole discretion determines reasonable and feasible.

Paragraph 15 of the Agreement be replaced with the following:

15. PROJECT RISK OF LOSS. After completion of the PROJECT and the NRD's acceptance of the same from the PROJECT CONTRACTOR, and until the effective date of this AMENDMENT, the VILLAGE, at its sole cost and expense, shall have and 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; and, the VILLAGE shall pay the cost of any insurance on the PROJECT that the VILLAGE determines necessary to cover such risks; provided, however, on and after the effective date of this AMENDMENT, the NRD, at its sole cost and expense, shall have and 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.

Paragraph 16 of the Agreement be replaced with the following:

16. INDEMNIFICATIONS. To the extent permitted by applicable law:

(a) The NRD shall defend and indemnify the VILLAGE and hold the VILLAGE harmless from and against any and all claims, demands, causes of action, costs and expenses, including without limitation court costs and attorneys' fees, for personal injuries or property damages in whole or in part arising out of or caused by the negligence or other actions or inactions of the NRD, its employees, officers, contractors and agents, in design or construction of the PROJECT arising out of the NRD's operation, maintenance, repair, replacement, management or regulation of the PROJECT after the Effective Date of this AMENDMENT; (b) the VILLAGE shall defend and indemnify the NRD and hold the NRD harmless from and against any and all claims, demands, causes of action, costs and expenses, including without limitation court costs and attorneys' fees, for personal injuries or property damages in whole or in part arising out of or caused by the negligence or other actions or inactions of the VILLAGE, its employees, officers, contractors and agents, in the operation, maintenance, repair, replacement, management or regulation of the PROJECT prior to the Effective Date of this AMENDMENT, or arising out of the use of the PROJECT by members of the public prior to the Effective Date of this AMENDMENT; and, (c) The VILLAGE shall defend and indemnify the NRD and hold the NRD harmless from and against any and all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorneys' fees, arising from the presence in or on any PROJECT RIGHTS-OF-WAY of asbestos or any form thereof, or any material or substance listed, defined, designated or otherwise regulated as hazardous, toxic, radioactive or dangerous under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, or under any other federal, state or local law, rule, regulation, ordinance, code or order now in effect or hereafter enacted to protect the environment; and, from and against any and all costs and expenses of clean-up and response with respect to any such materials or substances in or on any PROJECT RIGHTS-OF-WAY, and also including without limitation costs of any studies and investigations necessary to determine an appropriate response to any contamination in the PROJECT RIGHTS-OF-WAY, but excepting costs and expenses relating to any such substances or materials introduced by the NRD or its employees, officers, contractors or agents in

or on any PROJECT RIGHTS-OF-WAY.

Paragraph 17 of the Agreement be replaced with the following:

17. EFFECTIVE DATE. This AGREEMENT and AMENDMENT shall be in force and effect from and after its approval and execution by the VILLAGE and the NRD.

Paragraph 18 of the Agreement be replaced with the following:

18. TERM. The AGREEMENT and this AMENDMENT shall have permanent duration; provided, however, the AGREEMENT and this AMENDMENT may be terminated by the parties at any time as evidenced by formal resolution of their respective governing bodies or by written agreement of their respective designees as appointed by formal resolution.

Except as modified by this AMENDMENT, the AGREEMENT is ratified and confirmed in all respects.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT pursuant to authorizing resolutions duly adopted at regularly called meetings of their governingbodies.

The VILLAGE executed this AMENDMENT on _____, 2022.

VILLAGE OF WATERLOO, NEBRASKA

Chairperson

Attest:

Village Clerk

The NRD executed this AMENDMENT on _____, 2022.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

QUIT CLAIM DEED

For and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, in hand paid, the undersigned VILLAGE OF WATERLOO, NEBRASKA ("GRANTOR") hereby acknowledged, has remised, released, and quit-claimed, and by these presents do remise, release and forever quitclaim unto PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, a subdivision of the State of Nebraska ("GRANTEE"), the parcel of real estate in the County of Douglas, State of Nebraska, following-described real estate:

See Exhibit "A" attached hereto

Together with all and singular the hereditaments thereunto belonging. To have and to hold the above described real estate unto the said Grantee and to Grantee's heirs and assigns forever so that neither the said Grantor nor any person in its name and behalf shall or will hereafter claim or demand any right or title to the said premises or any part thereof, but they and every one of them shall by these presents be excluded and forever barred.

Dated at Waterloo, Nebraska this ____ day of _____ 2022.

VILLAGE OF WATERLOO, NEBRASKA

By: _____
Chairperson

Attest:

By: _____
Village Clerk

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, as Chairperson of the Village of Waterloo, Nebraska Board of Trustees, on behalf of the Village of Waterloo, Nebraska.

Notary Public

Exhibit "A"

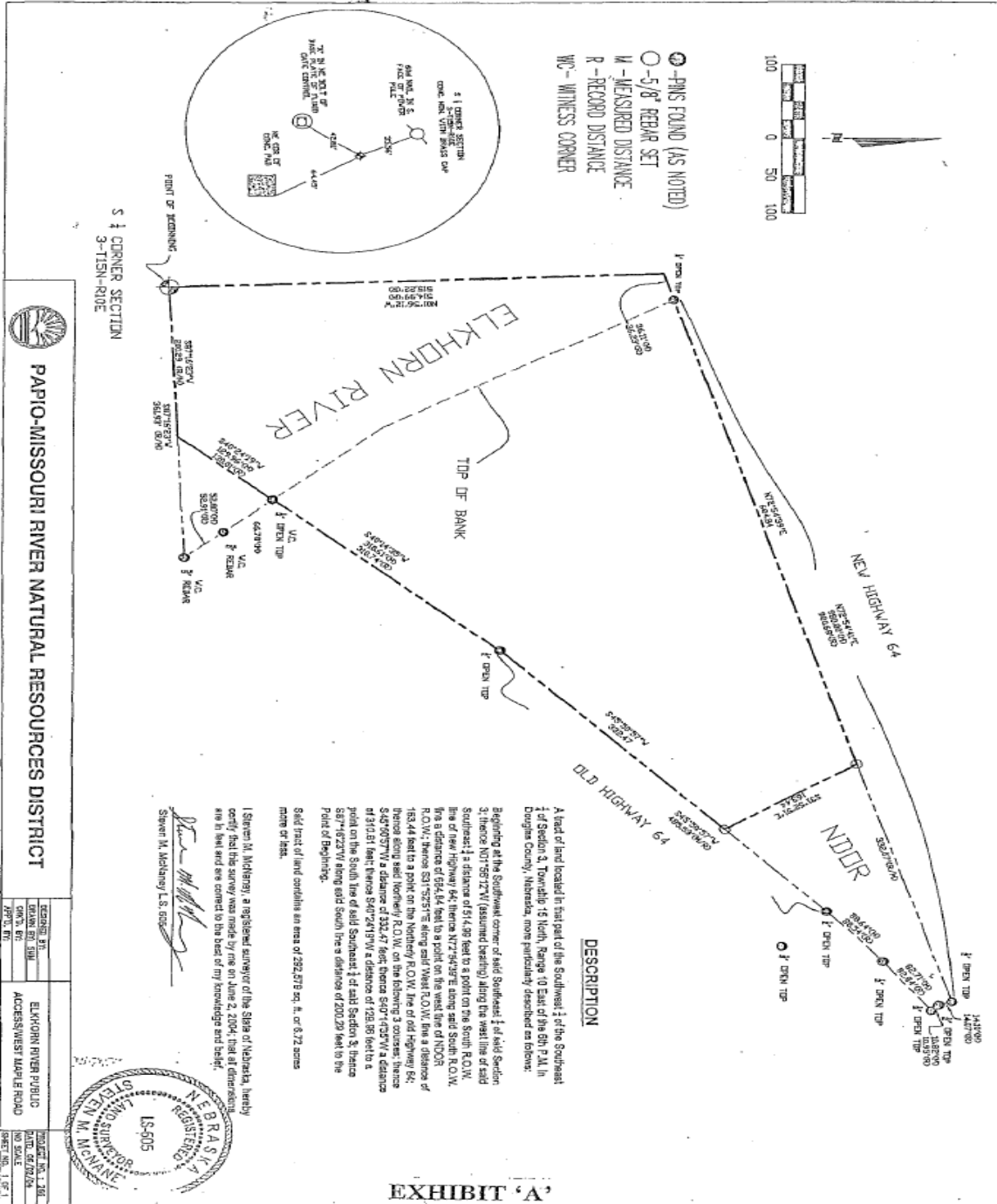


EXHIBIT 'A'