

Memorandum

To: PPO Subcommittee
From: Amanda Grint, Assistant General Manager
Date: October 5, 2022
Re: Lower Platte Collective Groundwater Modeling Interlocal Agreement

An interlocal agreement is proposed for the Lower Platte North NRD, Lower Platte South NRD, Nebraska Department of Natural Resources and the Papio Missouri River NRD to create the Lower Platte River Groundwater Modeling Collective (Collective).

The purpose of this agreement is for each of the public entities within the agreement to support the development of a baseline sub-regional groundwater flow model of the Lower Platte Basin financially, technically, and administratively. The Collective anticipates receiving a Water Sustainability Fund grant to provide a portion of the costs to develop the model. The cost breakdown below is outlined in the proposed agreement:

DNR	\$188,500
WSF	\$282,900
LPSNRD	\$62,866.67 (\$20,956 to be paid annually for three years)
LPNNRD	\$62,866.67 (\$20,956 to be paid annually for three years)
PMRNRD	\$62,866.67 (\$20,956 to be paid annually for three years)

The Collective will have the responsibility to select and enter into contract with a consultant and direct the study to develop the baseline sub-regional groundwater model. Decisions will be determined by unanimous consent and the Papio NRD shall serve as the Administrator as proposed. This agreement is proposed to be in effect for three years which is the duration of the basin development.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Lower Platte River Basin Sub-Regional Groundwater Modeling Interlocal Cooperation Agreement with the Department of Natural Resources, Lower Platte North NRD, and Lower Platte South NRD subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

LOWER PLATTE RIVER BASIN SUB-REGIONAL GROUNDWATER MODELING INTERLOCAL COOPERATION AGREEMENT

This Lower Platte River Basin Sub-Regional Groundwater Modeling Interlocal Cooperation Agreement (“Agreement”) is entered into by and between the Nebraska Department of Natural Resources (“Department”); Lower Platte South Natural Resources District (“LPSNRD”); Lower Platte North Natural Resources District (“LPNNRD”); and Papio-Missouri River Natural Resources District (“PMRNRD”); all of which are an agency or political subdivisions of the State of Nebraska, each sometimes hereinafter individually referred to as “Party” or collectively referred to as “Parties.” The natural resources districts are sometimes collectively referred to as “NRDs.”

WHEREAS, the Parties desire to work together, under the Interlocal Cooperation Act (“Act”), Neb. Rev. Stat. §§ 13-801 to 13-827, to make the most efficient use of their respective authorities and other powers by enabling them to cooperate with one another on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of each Party; and

WHEREAS, the Parties desire to form a joint agreement under Neb. Rev. Stat. § 13-807 authorized by the governing body of each Party to the agreement, and which shall set forth fully as provided in the Act the purposes, powers, rights, objectives, and responsibilities of the contracting parties; and

WHEREAS, the Department has certain statutory authorities and responsibilities pertaining to the surface water of the State, and also authorities and responsibilities granted under the Nebraska Ground Water Management and Protection Act (“GWMPA”), Neb. Rev. Stat. §§ 46-701 to 46-754 for integrated management of hydrologically connected ground water and surface water; and

WHEREAS, the NRDs are organized pursuant to Neb. Rev. Stat. §§ 2-3201 et seq. and have certain statutory authorities and responsibilities, particularly pertaining to the ground water in their respective districts of the State, and also authorities and responsibilities granted by the GWMPA for integrated management of hydrologically connected ground water and surface water; and

WHEREAS, the Lower Platte River Basin (“Basin”) is geographically large and diverse in its geology, land use, ground and surface water supplies, and water uses. Each of the Parties are charged with responsibilities for planning and managing water resources. In furtherance of those responsibilities, each of the Parties has an interest in the development of a baseline sub-regional groundwater flow model of the combined area of the Basin that will help establish groundwater and surface water management criteria for NDNR, the Lower Platte River Basin-wide Plan and each NRD’s Integrated Management Plan; and

WHEREAS, the Department developed the Lower Platte Missouri Tributaries Model in 2018. The existing model is not based on Airborne Electromagnetic (“AEM”) data which has recently been obtained by the NRDs over the last few years; and

WHEREAS, the Parties desire to enter into a new Agreement to contribute financially, provide the necessary data, technical support, and administer contracts necessary to develop the baseline sub-regional groundwater flow model of the Basin.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties, it is agreed by and among the Parties hereto as follows:

1. PARTIES:

1.01 All Parties to this Agreement are public agencies within the meaning of Neb. Rev. Stat. §13-803(2).

2. AUTHORITY:

2.01 Neb. Rev. Stat. § 13-807 authorizes any two (2) or more public entities to enter into agreements with one another to perform any governmental service, activity, or undertaking, which at least one (1) of the public agencies entering into the agreement is authorized by law to perform.

2.02 The Parties enter into this Agreement pursuant to the authority conferred on each of them under the Act.

2.03 No part of this Agreement shall be interpreted as relieving the Department of any obligation or responsibility it may have to regulate water use or to compel compliance with any laws, regulations, interstate compacts or interstate agreements or as a delegation of its responsibilities and obligations to the Parties of this Agreement. No part of this Agreement may be or shall be interpreted as relieving the NRDs of any obligation or responsibility it may have to regulate water use or to compel compliance with any laws, regulations, interstate compacts or interstate agreements or as a delegation of its responsibilities and obligations to the Parties of this Agreement.

3. COLLECTIVE:

3.01 The Parties hereby create the Lower Platte River Groundwater Modeling Collective (“Collective”). The Collective shall be created immediately upon the execution of this Agreement by all Parties. The Collective shall be governed by the terms of this Agreement and applicable law. The Collective shall carry out the purposes as set forth in Section 5 of this Agreement. The Collective shall not be considered a joint entity separate and distinct from the respective Parties to this Agreement, but rather a collaborative working arrangement of the Parties.

4. DURATION:

4.01 The duration of this Agreement shall be for a period from the execution date of this Agreement by the last Party to December 31, 2025. This Agreement may be extended

for successive one (1) year terms by the mutual written agreement of all Parties hereto.

5. PURPOSES:

5.01 The purposes of this Agreement pursuant to Neb. Rev. Stat. § 13-804 (3)(c) are: (1) to form a Collective to financially support, provide the necessary data, technical support, and administer contracts necessary to develop the baseline sub-regional groundwater flow model of the Basin.

5.02 This Agreement shall provide the organizational and administrative structure and enumeration of the powers, privileges, and authority of the Collective and the financial cooperative effort necessary to carry out the purposes in Subsection 5.01 of this Agreement. The powers, privileges, and authorities of the Collective shall not be used in a manner that is in violation of any of the Parties' public purposes.

6. MANNER OF FINANCING AND OF ESTABLISHING AND MAINTAINING A BUDGET:

6.01 The manner of financing and expenditure accounting of the Collective pursuant to Neb. Rev. Stat. §13-804(3)(d) shall be as follows:

6.01.1 The Collective will be financed by the Parties and a contribution from the Nebraska Natural Resources Commission through a grant from the Water Sustainability Fund ("WSF") as follows:

Department:	\$188,500.00
WSF:	\$282,900.00
LPSNRD:	\$62,866.67 (\$20,956 to be paid annually for three years)
LPNNRD:	\$62,866.67 (\$20,956 to be paid annually for three years)
PMRNRD:	\$62,866.67 (\$20,956 to be paid annually for three years)

There are no other financial obligations of the Parties except those set forth above, unless otherwise consented to by the Parties.

6.01.2 The Collective shall have the authority to authorize applications for financial grants, to include use of Collective funds and in-kind services for match. Such applications shall be made by the Administrator on behalf of the Collective.

6.01.3 No bonds will be issued and no taxes will be levied or collected jointly by the Parties. Individual Parties may contribute funds derived from tax levies or bonds but these shall not be considered a tax levy or bond issuance by the Collective.

6.02 The manner of establishing and maintaining a budget pursuant to Neb. Rev. Stat. §13-804(3)(d) shall be as follows:

6.02.1 The Administrator as designated in Subsection 7.01.6 of this Agreement shall

prepare, establish, adopt, and maintain a budget of revenues and expenditures annually for each fiscal year. Such annual budget shall be adopted by formal resolution on or before April 15th of each year for the upcoming fiscal year by the Board of the Collective. The fiscal year will be July 1 through June 30 of the succeeding year.

6.02.2 Upon completion of each annual budget, the Administrator will determine whether any payments need to be made by each Party for such fiscal year.

6.02.2.1 Each payment obligation of a Party is subject to the availability of government funds which are appropriated or allocated for the payment of the obligations incurred by signing this Agreement. If funds are not apportioned or appropriated and available for the continuance of the obligations incurred, the Agreement may be terminated at the end of the period for which funds are available. A Party shall notify the other Parties at the earliest possible time of the obligations which will or may be affected by a shortage of funds. No penalty shall accrue to any Party if this provision is exercised.

7. ADMINISTRATION:

7.01 The Collective shall be composed of one (1) representative from each of the Parties.

7.01.1 Each representative on the Collective shall be entitled to one (1) vote by either the representative or alternate for each Party.

7.01.2 All decisions shall be made by unanimous consensus of the Collective Parties.

7.01.3 A quorum, which shall be the presence of a representative or alternate representative of each Party shall be required to transact any official discussions or business.

7.01.4 All meetings of the Collective shall follow the requirements of the Open Meetings Act.

7.01.5 Meetings of the Collective shall occur when the Collective Chair determines a meeting is necessary and schedules such meeting after input from the Collective's representatives. The Collective shall meet, at least, once a year.

7.01.6 The PMRNRD shall serve as the Administrator as required under Neb. Rev. Stat. § 13-804(4)(a). As Administrator, its responsibilities include: serving as the financial administrator, which includes collecting and holding the contributions from the Parties and other revenues, making the disbursements for expenses related to the Collective activities, and as grant applicant and administrator; serving as contracting member on behalf of the Collective and serving as day-to-day administration for the Collective, including information

dissemination to members and the general public, scheduling and organization of meetings, record-keeping, and coordination of Collective activities. The PMRNRD Representative shall serve as Chair for the Collective and as Collective Chair, shall preside at all Collective meetings and shall develop agendas for each meeting.

7.02 The Collective shall have such powers, privileges, and authority as authorized by the Parties, and as necessary to achieve the purposes of the Collective as set forth in this Agreement. Such powers, privileges, and authority shall include but not be limited to the following.

7.02.1 Schedule and conduct meetings to transact business.

7.02.2 Hold public meetings.

7.02.3 Enter into contracts and agreements with other public agencies and private sector vendors.

7.02.4 Undertake studies, investigations, or surveys and do research as may be necessary, and publish and disseminate the results.

7.02.5 Access private land, which will be coordinated with the landowner.

7.02.6 Procure and contract with legal and other professional services.

7.03 Any Party may withdraw from this Agreement and from representation on the Collective upon written notification to the Collective Chair. Such withdrawal shall be effective upon receipt of the written notification. There will be no financial reimbursement of remitted funds unless specifically authorized by the Collective.

7.04 New members can be added to the Collective with a vote of the Collective. Eligible entities shall be limited to political subdivisions or agencies of the State of Nebraska.

8. PROPERTY:

8.01 The manner of acquiring, holding, and disposing of real and personal property pursuant to Neb. Rev. Stat. § 13-804 (4)(b) is as follows.

8.01.1 In the event it becomes necessary for the Collective to purchase any property, either real or personal, the Collective will vote to determine how the property will be disposed of.

9. TERMINATION:

9.01 The permissible method or methods to be employed in accomplishing the complete or partial termination of this Agreement under Neb. Rev. Stat. §13-804(3)(e) shall be as follows.

9.01.1 This Agreement and the Collective created hereby shall be terminated upon the earlier of the completion of its purposes and objectives described herein or upon unanimous vote for the complete or partial termination of the Collective and this Agreement. Upon action to terminate the Collective, all outstanding debts and obligations of the Collective shall be paid and all unused funds and appropriations shall be returned to the remaining Parties in such proportions as represented by the pro rata share paid by each Party.

10. MISCELLANEOUS PROVISIONS:

10.01 All of the Parties' books, records, and documents relating to work performed or monies received or spent under this Agreement shall be subject to audit at any reasonable time after reasonable notice by the NRDs, Department, and the State Auditor or as required by any grant agreements, donations or other source of funds. The Administrator shall maintain all of such records throughout the existence of this Agreement and for a period of ten (10) full years from the date of termination of the Agreement, or until all issues related to an audit, litigation or other action are resolved, whichever is longer. All records shall be maintained in accordance with generally accepted accounting principles and record retention as required by the Secretary of State, Records Management Division.

10.02 Any governing body as defined in Neb. Rev. Stat. § 13-503 which is a Party to this Agreement shall provide information to the Auditor of Public Accounts regarding this Agreement as required in Neb. Rev. Stat. § 13-513.

10.03 No Party may assign its contractual rights or obligations under this Agreement without the prior written consent of all other Parties to this Agreement.

10.04 Each Party shall have taken, prior to the execution of this Agreement by such Party, appropriate action by ordinance, resolution, or otherwise pursuant to the law of the governing body of such Party so that this Agreement may enter into force consistent with the provisions of Neb. Rev. Stat. § 13-804(2).

10.05 This Agreement may be amended in a writing duly executed all of the Parties.

10.06 This Agreement contains the entire agreement of the Parties with respect to the Basin groundwater modeling. All prior and contemporaneous negotiations, discussions, memorandums of understanding and other writings are merged and incorporated herein, it being the intention of the Parties that this Agreement is a final and full expression of their agreement. No representations were made or relied

upon by any Party other than those expressly set forth herein.

10.07 This Agreement is governed by the laws of the State of Nebraska.

10.08 This Agreement becomes effective upon execution by all Parties.

10.09 This Agreement may be executed in any number of counterparts, each of which shall be an original, but all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have signed and executed this Agreement on the dates shown next to their respective signatures:

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

BY: _____

DATE: _____

LOWER PLATTE SOUTH NATURAL RESOURCES DISTRICT

BY: _____

DATE: _____

LOWER PLATTE NORTH NATURAL RESOURCES DISTRICT

BY: _____

DATE: _____

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

BY: _____

DATE: _____