

Memorandum

To: Papio-Missouri River Natural Resources District Programs Projects and Operations Subcommittee
From: Amanda Grint, Assistant General Manager
Date: October 5, 2022
Re: Amendment to Lower Platte River Consortium Interlocal Agreement

In August 2016, the District entered an Interlocal Agreement amongst the Lower Platte South NRD, Lower Platte North NRD, City of Lincoln, Metropolitan Utilities District, and Nebraska Department of Natural Resources to form the Lower Platte River Consortium. The purpose of the Consortium is to study the long-term water supplies available to the lower Platte River sub-basin to enhance stream flows or aquifer storage during times of drought.

The District amended the original agreement two times to grant extensions through November 2022. The purpose of the attached Lower Platte River Consortium Interlocal Cooperation Agreement is to extend the duration of the agreement for another one (1) additional year.

The study conducted by the Consortium has led to the development and adoption of the Drought Contingency Plan at the end of 2019. The Consortium continues to implement the Drought Contingency Plan and provide a framework for coordination and communication addressing drought situations. The Lower Platte South NRD serves as the Administrator. There is no budget associated with this interlocal agreement and a budget will be presented to each party prior to any proposed projects or expenditures.

Management recommends that the subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Lower Platte River Consortium Interlocal Cooperation Agreement with the Lower Platte South NRD, Lower Platte North NRD, City of Lincoln, Metropolitan Utilities District, and Nebraska Department of Natural Resources, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

**LOWER PLATTE RIVER CONSORTIUM
INTERLOCAL COOPERATION AGREEMENT**

This Lower Platte River Consortium 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”); Papio-Missouri River Natural Resources District (“PMRNRD”); Lincoln Water System (“LWS”); and Metropolitan Utilities District (“MUD”); 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. In addition, the Department has authority to expend funds from the Water Resources Cash Fund to aid management actions taken to reduce consumptive uses of water or to enhance streamflows or ground water recharge in river basins, subbasins, or reaches which are deemed by the Department overappropriated or fully appropriated pursuant to the GWMPA or are the subject of an interstate compact or decree or a formal state contract or agreement; and

WHEREAS, the NRDs are organized pursuant to Neb. Rev. Stat. §§ 2- 201 et seq. and have certain statutory authorities and responsibilities, particularly pertaining to the ground water in their respective areas 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, MUD pursuant to its authorities provides water for the majority of the Omaha metropolitan area; and LWS pursuant to its authorities provides water to the City of Lincoln; 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, managing, and/or supplying water resources. The Parties are located and carry out their functions in the lower subbasin of the Basin, but much of

the water supplies that support these functions are derived from the upper subbasins of the Basin;
and

WHEREAS, the Parties entered into an Agreement on September 28, 2016 to collaboratively evaluate the water supplies available to the Basin during times of shortage and develop a drought contingency plan for the Basin. As a result of this effort, the Parties developed the Lower Platte River Drought Contingency Plan (“Drought Plan”), which is hereby attached and incorporated into this Agreement by this reference; and

WHEREAS, the Parties desire to enter into a new Agreement to administer and implement the Drought Plan.

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. No part of this Agreement shall be interpreted as relieving the LWS or MUD of any obligation or responsibility it may have as required by law or regulation.

3. CONSORTIUM

3.01 The Parties hereby create the Lower Platte River Consortium (“Consortium”). The

Consortium shall be governed by the terms of this Agreement and the Drought Plan. The Consortium shall carry out the purposes as set forth in Section 5 of this Agreement. The Consortium shall be responsible for the administrative, technical, and financial affairs of the Consortium and the Drought Plan. The Consortium 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 of one (1) year from the execution date of this Agreement by the last Party. This Agreement may be extended for successive one (1) year terms by the mutual agreement of all Parties hereto. The Parties may only extend this Agreement for ten (10) additional terms.

5. PURPOSES

5.01 The purposes of this Agreement pursuant to Neb. Rev. Stat. § 13-804 (3)(c) are: (1) to form a Consortium to evaluate long-term water supplies available to the Basin for enhancing streamflows or aquifer storage to support sustainable public water systems; and (2) to implement the Drought Plan.

5.01.1 The Drought Plan's purpose is to establish a framework for coordination and communication amongst Consortium members to address droughts in the Basin. The Drought Plan will refine the Consortium's collective understanding of drought vulnerabilities while developing more robust monitoring and forecasting tools coupled with timely triggers, new mitigation strategies, and responsive actions to create a sound, operational framework and to improve critical water supply needs of the area through drought periods.

5.02 This Agreement shall provide the organizational and administrative structure and enumeration of the powers, privileges, and authority of the Consortium 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 Consortium 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 Consortium pursuant Neb. Rev. Stat. §13-804(3)(d) shall be as follows:

6.01.1 The Consortium will be financed by the Parties as needed for certain projects

or activities the Consortium decides to pursue. Some years the Consortium will not have a budget because projects will not be pursued in that fiscal year. In years when the Consortium decides to pursue projects or activities, an annual budget will be adopted as described in other portions of Section 6 of this Agreement. Proportions of payments by each Party will be determined at the time the annual budget is adopted.

- 6.01.2 The Consortium shall have the authority to authorize applications for financial grants, to include use of Consortium funds and in-kind services for match. Such applications shall be made by the Administrator on behalf of the Consortium.
 - 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 Consortium.
- 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 7.02.7 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. 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 Consortium shall administer the Drought Plan in accordance with Section 6 of the Drought Plan and this Agreement.
- 7.02 The Consortium shall be composed of one (1) representative from each of the Parties.

- 7.02.1 Each representative on the Consortium shall be entitled to one (1) vote by either the representative or alternate for each Party.
 - 7.02.2 All decisions shall be made by unanimous consensus of the Consortium members.
 - 7.02.3 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.
 - 7.02.4 All meetings of the Consortium shall follow the requirements of the Open Meetings Act.
 - 7.02.5 Meetings of the Consortium shall be in accordance with the Drought Plan, or at the call of the Consortium Chair.
 - 7.02.6 The LPSNRD 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 members and other revenues, making the disbursements for expenses related to the Consortium activities, and as grant applicant and administrator; serving as contracting member on behalf of Consortium; and serving as day-to-day administration for the Consortium, including information dissemination to members and the general public, scheduling and organization of meetings, record-keeping, and coordination of Drought Plan activities. The LPSNRD Representative shall serve as Chair for the Consortium and as Consortium Chair, shall preside at all Consortium meetings and shall develop agendas for each meeting.
- 7.03 The Consortium shall have such powers, privileges, and authority as authorized by the Parties, and as necessary to achieve the purposes of the Consortium as set forth in this Agreement and the Drought Plan. Such powers, privileges, and authority shall include but not be limited to the following.
- 7.03.1 Schedule and conduct meetings to transact business.
 - 7.03.2 Hold public meetings.
 - 7.03.3 Enter into contracts and agreements with other public agencies and private sector vendors.
 - 7.03.4 Undertake studies, investigations, or surveys and do research as may be necessary, and publish and disseminate the results.

- 7.03.5 Take actions as set forth in the Drought Plan.
- 7.03.6 Access private land, which will be coordinated with the landowner.
- 7.03.7 Retain legal and other professional services.
- 7.04 Any Party may withdraw from this Agreement and from representation on the Consortium upon written notification to the Consortium 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 Consortium.
- 7.05 New members can be added to the Consortium with a vote of the Consortium. Eligible entities shall be limited to political subdivisions charged with responsibilities for planning, managing, and/or supplying water resources for public water systems in the Basin.

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 Consortium to purchase any property, either real or personal, the Consortium 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 Consortium created hereby shall be terminated upon the earlier of the completion of its purposes and objectives described herein or upon the vote of two-thirds of the then constituted Consortium for the complete or partial termination of the Consortium and this Agreement. Upon action to terminate the Consortium, all outstanding debts and obligations of the Consortium 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, LWS, MUD,

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 and its Attachment, the Drought Plan, contains the entire agreement of the Parties. 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: _____

LINCOLN WATER SYSTEM

BY: _____

DATE: _____

METROPOLITAN UTILITIES DISTRICT

BY: _____

DATE: _____