

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee

FROM: Ian Ghanavati, Water Resources Engineer

SUBJECT: Interlocal Agreement with the City of Omaha for WP-1

DATE: November 7, 2023

The District has been actively working on the planning, permitting, and design of the West Papillion Regional Basin 1 (WP-1) flood control reservoir since 2017. Preliminary design of WP-1 was completed in 2018; final design is in progress and construction is anticipated to begin in the summer of 2024. District staff and legal counsel have prepared the attached Interlocal Agreement with the City of Omaha outlining the responsibilities of the City and the District in the design, construction, ownership, and operation and maintenance of WP-1. WP-1 will be located approximately at 180th Street and Fort Street.

The following is a summary of the responsibilities set out within the interlocal agreement:

- The District will construct the main dam, water quality basin, flood control, and mitigation improvements.
- The District will construct recreational features including a bicycle-pedestrian trail, in-park access roads, emergency use boat ramp, kayak/canoe launch, picnic area and shelter, rest room facilities, two parking lots and fishery enhancements.
- The District will have sole discretion in naming the project in consideration of City and public recommendations.
- The District will operate and maintain the main and water quality basin embankments and flood control improvements in perpetuity.
- The District will own, operate, and maintain the remaining project features for five (5) years after completion of construction or until the City annexes any land adjacent to the WP-1 Project.

Management recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Papio Watershed Regional Flood Control Detention Basin WP-1 Interlocal Agreement with the City of Omaha, subject to such other terms and conditions as the General Manager determines necessary and Legal Counsel approves as to form.

INTERLOCAL COOPERATION ACT AGREEMENT

Among

THE CITY OF OMAHA, NEBRASKA

And

THE PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

For

PAPIO WATERSHED REGIONAL FLOOD CONTROL DETENTION BASIN

WP-1

THIS AGREEMENT ("THIS AGREEMENT") 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**") and the **CITY OF OMAHA, NEBRASKA** ("the **CITY**"), 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 **WP-1 PROJECT** within the rapidly developing Papillion Creek watershed; and,

WHEREAS, the Implementation Plan of the Papillion Creek Watershed Partnership's Watershed Plan has identified **WP-1 PROJECT** to be completed within the five-year period of 2020-2024; 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 180th Street and Fort Street in Douglas County (collectively "**the WP-1 PROJECT**"); and,

WHEREAS, the PARTIES desire to provide herein for the cooperative design, construction, operation, maintenance, repair, replacement, regulation and ownership of the WP-1 PROJECT and to specify the rights, duties and obligations of the PARTIES in connection therewith.

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

1. PROJECT PARTICIPANTS. The WP-1 PROJECT shall be undertaken by the PARTIES, as provided herein, without any separate entity being created, and the duties and responsibilities of the PARTIES with respect to the WP-1 PROJECT shall be as defined by THIS AGREEMENT.

2. PROJECT LAND. The WP-1 PROJECT shall be constructed on parcels of land in Sections 05 and 32, in Townships 15 North and 16 North respectively, all in Range 11 East of the 6th P.M. in Douglas County, Nebraska, conceptually depicted in the document attached hereto as Exhibit "A" and incorporated herein by reference ("the **PROJECT LAND**").

3. PRINCIPAL PROJECT COMPONENTS. The WP-1 PROJECT shall consist of the design, construction, engineering observation and administration of construction, at the NRD's sole cost and expense, of the following principal project components, to-wit:

a) The WP-1 PROJECT dam, reservoir, and water quality basin on the PROJECT LAND; and,

b) Wetland, channel, and riparian mitigation improvements ("the **MITIGATION IMPROVEMENTS**") on the PROJECT LAND required by the U.S. Army Corps of Engineers ("the **CORPS**") as a condition precedent to the issuance of Section 404 permits for the WP-1 PROJECT; and,

c) Basic recreational improvements that the NRD desires to have constructed at its own cost and expense for its own public purposes on the PROJECT LAND (the "**NRD'S RECREATIONAL IMPROVEMENTS**"), which include a bicycle-pedestrian trail around the reservoir located on the PROJECT LAND, in-park access roads to recreational improvements, an emergency use boat ramp, a kayak/canoe launch, a picnic area and shelter, rest room facilities, two parking lots and fishery enhancements.

5. GENERAL BENEFIT. The PARTIES do hereby find and agree that the WP-1 PROJECT will be of general benefit to the PARTIES, with only an incidental special benefit.

6. THE ENGINEERS. The NRD shall retain engineering consultants ("the **ENGINEERS**"), approved by the CITY, to design the WP-1 PROJECT and to prepare plans and specifications and contract documents for, and administer construction of, the WP-1 PROJECT.

7. PRELIMINARY PLANS. The ENGINEERS shall prepare preliminary plans and specifications for the WP-1 PROJECT ("the **PRELIMINARY PLANS**"), in accordance with the provisions of THIS AGREEMENT, subject to the following:

a) The PRELIMINARY PLANS shall be drawn in accordance with design criteria provided by the General Manager of the NRD.

b) The PRELIMINARY PLANS shall be in compliance with applicable Nebraska state and federal statutes, rules and regulations.

c) The PRELIMINARY PLANS shall be in accordance with the CITY design standards, rules and regulations.

d) The PRELIMINARY PLANS shall include plans, provisions or allowances for the principal components of the WP-1 PROJECT.

8. APPROVAL OF PRELIMINARY PLANS. After the ENGINEERS' completion of the PRELIMINARY PLANS, and approval of the same by the NRD, the PRELIMINARY PLANS shall be submitted to the CITY for their written approval, such approval to not be unreasonably withheld or delayed. The CITY shall have a period of thirty (30) days to review the PRELIMINARY PLANS and to approve or disapprove of the same in writing or suggest revisions thereto. If the CITY fail to respond within the thirty (30) day period, the PRELIMINARY PLANS shall be deemed approved.

9. PREPARATION OF FINAL PLANS. After receipt by the NRD of the CITY written approval of the PRELIMINARY PLANS, the NRD shall direct the ENGINEERS to prepare final plans and specifications for the WP-1 PROJECT ("the FINAL PLANS"), in accordance with the provisions of THIS AGREEMENT, subject to the following:

a) The FINAL PLANS shall be drawn in accordance with design criteria provided by the General Manager of the NRD.

b) The FINAL PLANS shall be in compliance with applicable Nebraska state and federal statutes, rules and regulations.

c) The FINAL PLANS shall include plans, provisions or allowances for the principal components of the WP-1 PROJECT.

d) The FINAL PLANS shall include legal descriptions of the PROJECT LAND to be acquired by the NRD at the NRD's sole cost and expense, as needed for the principal components of the WP-1 PROJECT.

e) The FINAL PLANS shall include a cost estimate for the WP-1 PROJECT.

10. APPROVAL OF FINAL PLANS FOR PROJECT. After the ENGINEERS' completion of the FINAL PLANS and approval of the same by the NRD, the FINAL PLANS shall

be submitted to the CITY for their written approval. The CITY shall have a period of 30 days to review and approve or disapprove of the same in writing or suggest amendments thereto. Such approval shall not be withheld or delayed unreasonably. The CITY shall have a period of thirty (30) days to review the FINAL PLANS and to approve or disapprove of the same in writing or suggest revisions thereto. If the CITY fail to respond within the thirty (30) day period, the FINAL PLANS shall be deemed approved.

11. CONSTRUCTION CONTRACT. After receipt by the NRD of the CITY 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 WP-1 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.

12. CONSTRUCTION OF THE WP-1 PROJECT. After the CITY approve of the **CONTRACT DOCUMENTS**, and in accordance with the NRD's purchasing regulations, the NRD will seek competitive bids for construction of the WP-1 PROJECT. Upon receipt of the competitive bids, the NRD shall make the bids available to the CITY for review. The NRD shall award the contract for such construction to the bidder that the NRD determines provides the lowest responsible bid.

13. CONTRACTOR'S WARRANTIES. The NRD shall enforce all bonds and warranties given by the ENGINEERS, construction contractors and their subcontractors.

14. ALLOCATION OF COSTS. Except as otherwise provided in THIS AGREEMENT,

15. NAMING RIGHTS. The NRD and the CITY shall have the responsibility of gathering public input on the names for the WP-1 PROJECT. After receiving input from the public and written recommendations from the CITY, the NRD shall have sole discretion in the selection of the name of the WP-1 PROJECT.

16. CONSTRUCTION OBSERVATION. The NRD will provide for engineering observation and administration of construction of the WP-1 PROJECT and the CITY shall be given the opportunity to fully observe such construction at all reasonable hours and upon its request contemporaneously receive from the NRD copies of all written communications between or issued by the NRD and/or the ENGINEERS and/or the contractors pertaining to such construction, including but not limited to, statements by the ENGINEERS as to percentage of completion and substantial completion.

17. PERMITS. The NRD, at its sole cost and expense, shall obtain all of the parcels of land and all easements comprising the PROJECT LAND and all other permits and rights-of-way, including without limitation, licenses, easements, water rights, and permits or consents from the CORPS or other federal, state or local agencies, as may be required or convenient for construction, and/or for permanent operation and maintenance of the WP-1 PROJECT.

18. OPERATION AND MAINTENANCE. After completion of construction of the WP-1 PROJECT,

- a) the NRD, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the dam structures located at the WP-1 PROJECT (“the **DAM**”), which shall be deemed to consist of all that portion of the PROJECT LAND, and all flood control improvements, located within the footprint of the DAM and within the

footprint of the WP-1 PROJECT water quality basin embankment, as the same are depicted in the FINAL PLANS; and

b) the NRD, at its sole cost and expense, shall operate, maintain, repair, replace and regulate the MITIGATION IMPROVEMENTS during the CORPS-required monitoring period and until they are finally accepted by the CORPS. Thereafter, the CITY, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the MITIGATION IMPROVEMENTS; and,

c) the NRD, at its sole cost and expense, shall operate, maintain, repair, replace and regulate the remaining principal project components of the WP-1 PROJECT for five (5) years after completion of construction or until the CITY annexes any land adjacent to the WP-1 PROJECT portion of the PROJECT LAND which is conceptually depicted in Exhibit "A," whichever occurs first. Upon the occurrence of either of the above-listed events, whichever occurs first, the CITY shall take possession of and, at its sole cost and expense, shall permanently operate, maintain, repair, replace and regulate the remaining principal project components of the WP-1 PROJECT; including without limitation:

i) the reservoir located at the WP-1 PROJECT, which shall be operated as a no-wake lake;

ii) the NRD'S RECREATIONAL IMPROVEMENTS, provided that in the event of a severe erosion damage, the NRD will provide assistance in the repair of such damage;

iii) the water quality basin located at the WP-1 PROJECT (excluding the water quality basin's embankment footprint), without any right or duty to dredge the same for the purposes of maintaining open water; and,

19. INDEMNIFICATION.

a) The CITY shall defend, indemnify, and hold the NRD 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 WP-1 PROJECT (except the DAM) which the CITY has taken on maintenance and operation responsibility pursuant to paragraph 18 or possession of pursuant to paragraph 20 below, and excepting any costs, loss or damage solely caused by the negligence of the NRD.

b) The NRD shall defend, indemnify, and hold 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 NRD'S operation, maintenance, repair, replacement, or regulation of the DAM, and the MITIGATION IMPROVEMENTS (prior to their acceptance by the CORPS), and the WP-1 PROJECT (prior to the CITY taking on maintenance and operation responsibility pursuant to paragraph 18 or possession of the principal project components pursuant to paragraph 20 below) and excepting any costs, loss or damage solely caused by the negligence of the CITY.

20. POST-CONSTRUCTION GRANTS AND CONVEYANCES.

a) Upon final completion of construction of the WP-1 PROJECT, the NRD shall convey the portion of the PROJECT LAND to the CITY upon the CITY's annexation of any land adjacent to the WP-1 PROJECT portion of the PROJECT LAND or five (5) years after completion of construction of the WP-1 PROJECT, whichever occurs first, provided however,

i) in such conveyance the NRD shall reserve for itself and for its successors and assigns the following permanent rights, to-wit:

1) the right to construct, operate, maintain, repair, replace, and regulate the DAM in the PROJECT LAND (including the WP-1 PROJECT water quality basin embankment); and,

2) the right to have unrestricted use and access over and across the PROJECT LAND by any route or means and for any purpose referred to in THIS AGREEMENT; and

3) the right to flow waters and sediment upon, and inundate, all those portions of the PROJECT LAND which have a ground surface elevation lower than the elevation of the top of the DAM (“the **MAXIMUM POOL**”);

4) The right and authority to use any and all unimproved portions of the PROJECT LAND for the borrow and fill of earthen material for use in operation, maintenance, repair, replacement of the DAM, MITIGATION IMPROVEMENTS, and/or the non-recreational appurtenances thereto.

5) the right to periodically adjust the elevation of the permanent pool of the reservoir on the PROJECT LAND in order to perform necessary operation, maintenance, repair, or replacement of the DAM and/or MITIGATION IMPROVEMENTS;

6) The right to enforce the following permanent restrictions, to-wit:

(a) WP-1 PROJECT “REGULATORY POOL STRUCTURE RESTRICTION. The CITY shall not construct, maintain or permit structures, fixtures or other improvements, other than recreational trail improvements, lighting, landscaping, boat docking facilities and signage, in

any areas of the PROJECT LAND, within the watershed of the dam located at the WP-1 PROJECT, having a ground surface elevation lower than 1,190.3 feet above mean sea level, NAVD 1988, which elevation parties agree is approximately one foot (1') above the mean sea level elevation of the 500-year flood pool of the reservoir located at the WP-1 PROJECT.

(b) WP-1 PROJECT REGULATORY POOL EXCAVATION AND FILL RESTRICTION. The CITY shall not fill, nor permit filling of, any areas of the PROJECT LAND, within the watershed of the dam located at the WP-1 PROJECT, having a ground surface elevation lower than 1,190.3 feet above mean sea level, NAVD 1988, without balancing such placement with a permanent borrowing and removal of an equivalent amount of earth fill from such areas, and without the prior written approval of the NRD of the plans for such activities, such approval to not be withheld or delayed unreasonably.

(c) WP-1 PROJECT MAXIMUM POOL EXCAVATION AND FILL RESTRICTION. The CITY shall not fill, nor permit filling of, any areas of the PROJECT LAND, within the watershed of the dam located at the WP-1 PROJECT, having a ground surface elevation higher than 1,190.3 feet above mean sea level and lower than 1,194.0 feet above mean sea level, NAVD 1988 (MAXIMUM POOL), without balancing such placement with a permanent borrowing and removal of an equivalent amount of earth fill from such areas, and without the prior written approval of the NRD of the plans for such activities, such approval to not be withheld or delayed unreasonably.

ii) Such conveyance(s) shall also include and be subject to the following permanent restrictions on the lands occupied by the MITIGATION IMPROVEMENTS required by the CORPS, that shall run with the PROJECT LAND and be binding upon the parties and their heirs, successors and assigns, to-wit:

a) there shall be no construction or placement of structures or mobile homes, fences, signs, billboards or other advertising material, or other structures,

whether temporary or permanent, on the PROJECT LAND occupied by MITIGATION IMPROVEMENTS; and,

b) there shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals or other materials on the PROJECT LAND occupied by MITIGATION IMPROVEMENTS; and

c) there shall be no building of roads or paths for vehicular or pedestrian travel or any change in the topography of the PROJECT LAND occupied by MITIGATION IMPROVEMENTS; and,

d) there shall be no removal, destruction, or cutting of trees or plants, spraying with biocides, insecticides, or pesticides, grazing of animals, farming, tilling of soil, or other agricultural activity on the PROJECT LAND occupied by MITIGATION IMPROVEMENTS; and,

e) there shall be no operation of all-terrain vehicles or any other type of motorized vehicle on the on the PROJECT LAND occupied by MITIGATION IMPROVEMENTS, other than in roads and parking areas; and,

f) these restrictions may be changed, modified or revoked only upon written approval of the District Engineer of the Omaha District of the CORPS and to be effective, such approval must be witnessed, authenticated, and recorded pursuant to the law of the State of Nebraska.

21. RISK OF LOSS. After completion of construction of the WP-1 PROJECT and conveyance of PROJECT LAND to the CITY, the risk of loss of or damage to components or facilities of the WP-1 PROJECT shall be borne by the party that has an obligation hereunder to

operate and maintain such components or facilities, whether such loss or damage results from flood or other casualty whatsoever.

22. APPROVALS. Wherever THIS AGREEMENT speaks of approval and/or consent:

a) such approval and/or consent by the CITY shall be provided by act of the CITY'S Mayor, Public Works Director or Parks, Recreation, and Public Property Director; and,

b) such approval and/or consent by the NRD shall be provided by act of the General Manager of the NRD; and,

23. NONDISCRIMINATION. The PARTIES shall not, in the performance of THIS AGREEMENT, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, disability under the Americans with Disabilities Act, political or religious opinions, affiliations or national origin.

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

25. APPLICABLE LAW. The PARTIES to THIS AGREEMENT shall conform to all existing and applicable state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under THIS AGREEMENT.

26. MERGER. THIS AGREEMENT shall not be merged into any other oral or written agreement, lease or deed of any type.

27. MODIFICATION. THIS AGREEMENT contains the entire agreement of the PARTIES. No representations were made or relied upon by either of the PARTIES other than those that may be expressly set forth herein. No agent, employee or other representative of any

PARTY is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of such PARTY.

28. STRICT COMPLIANCE. All provisions of THIS AGREEMENT and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from an authorized representative.

29. INVALID PROVISIONS. In the event that any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision herein contained shall not affect the validity of the remainder of the covenants, conditions or provisions of THIS AGREEMENT, which shall in all respects remain a legally binding agreement with the invalid portion being deleted; provided, however, that the validity of any such covenant, condition, or provision does not materially prejudice either of the PARTIES in its respective rights and obligations contained in the valid covenants, conditions, or provisions of THIS AGREEMENT.

30. NON-WAIVER. No delay or failure by either of the PARTIES to exercise any right under THIS AGREEMENT, and no partial or single exercise of that right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein. A valid waiver by either of the PARTIES shall not be deemed to extend the amount of time available to perform any other act required under THIS AGREEMENT.

31. FURTHER AGREEMENTS. Each of the PARTIES will, whenever and as often as the other may request, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all such further conveyances, assignments or other instruments and documents as the requesting party may believe to be necessary, expedient or proper in order to complete any and all conveyances, transfers, and assignments herein provided and to do any and

all other acts and to execute, acknowledge and deliver any other documents so requested in order to carry out the intent and purposes of THIS AGREEMENT.

32. TIME IS OF THE ESSENCE. Time is expressly declared to be of the essence of THIS AGREEMENT.

33. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall become effective upon its execution by all of the PARTIES, and shall be perpetual in its duration.

34. FUNDING. THIS AGREEMENT shall be conditional and dependent upon the NRD'S determination that it has adequate funding for the WP-1 PROJECT.

35. NOTICES. Any notice required under the terms of THIS AGREEMENT shall be deemed to have been given within forty-eight (48) hours after written notice has been deposited in the United States mail; and

a) Notices to the CITY provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid, addressed to:

[Omaha]

b) Notices to the NRD provided for in THIS AGREEMENT shall be sufficient if sent by certified or registered mail, postage prepaid addressed to:

General Manager
Papio-Missouri River NRD
8901 South 154th Street
Omaha, Nebraska 68138-3621

or to such other respective address(s) as the PARTIES may designate to each other from time to time in writing.

36. INTERLOCAL COOPERATION ACT PROVISIONS. THIS AGREEMENT shall not create any separate legal or administrative entity. 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 termination, 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.

IN WITNESS WHEREOF

THIS AGREEMENT is executed by the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** on this ____ day of _____, 2023, pursuant to resolution duly adopted by its Board of Directors.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By _____
General Manager

STATE OF NEBRASKA)
) SS.
COUNTY OF _____)

On this ____ day of _____, 2023, before me, a Notary Public, personally came **JOHN WINKLER**, General Manager of the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and he/she acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said district.

WITNESS my hand and Notarial Seal the date last aforesaid.

Notary Public

