

Agenda Item: 7.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Martin P. Cleveland, Construction Engineer

SUBJECT: Big Papio Creek/Levee Project Culverts Repair
Interlocal Cooperation Agreement with City of Omaha

DATE: February 4, 2015

During the periodic inspection of channel and levee project culvert inspections, the District has identified 10 culverts in the Big Papio Creek System (levee/channel projects) that need to be repaired due to deficiencies, primarily with perforated flow lines. FYRA Engineering evaluated these 10 culverts and prepared the Big Papillion Creek Penetration Repair- Alternatives Development, dated October 2014. This preliminary report will be expanded upon in the future as project will be designed and administered by a consultant to be selected by the District Board. The Ad Hoc Subcommittee has recommended that FYRA Engineering be selected to provide the professional services. Enclosed is location map that shows the culverts.

Four of the ten culverts that need to be repaired were installed by the City of Omaha in the Big Papio Creek System. The City has acknowledged responsibility for these four culverts (BP-L20A, BP-L20B, BP-L21 and BP-R41). Furthermore, they have agreed to reimburse the District for engineering, rights-of-way, permits, utility relocations and construction arising out the repairs of the City culverts. The District is ultimately responsible to maintain these culverts, due to Corps of Engineers PL 84-99 requirements for flood control projects, but it is desirable for the City to reimburse the repair costs.

Enclosed is a proposed interlocal agreement with City of Omaha to provide for City reimbursement of City owned culvert repairs. The agreement provides for reimbursement by the City up to a maximum not exceed amount of \$350,000. The overall culvert rehabilitation project is estimated to cost less than \$850,000.

Management recommends that the Programs, Projects and Operations Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the Big Papio Creek Levee/Channel Project Drainage Structure Interlocal Cooperation Agreement with City of Omaha, subject to form as approved by District Legal Counsel.

INTERLOCAL COOPERATION AGREEMENT
Between
THE CITY OF OMAHA, NEBRASKA
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
DRAINAGE STRUCTURE REPAIR FOR
BIG 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 (§§13-801, R.R.S., 1997, et seq.).

WHEREAS, four (4) culverts relating to the Big Papio Creek Levee/Channel Project from Capehart Road in Bellevue to Center Street in Omaha which were installed by the CITY (Structure Nos. BP-L20A, BP-L20B, BP-L21, BP-R41 as identified on the map marked Exhibit "A" that is attached hereto and incorporated herein) (the "**CITY CULVERTS**"), and six (6) other culverts relating to the Big Papio Creek Levee/Channel Project from Capehart Road in Bellevue to Center Street in Omaha (Structure Nos. BP-R16, BP-R18, BP-R25, BP-L27, BP-R28, BP-L48) (the "**EXCLUDED CULVERTS**", and collectively with the CITY CULVERTS, the "**CULVERTS**"), are in need of rehabilitation and repair; and,

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

WHEREAS, the NRD intends to retain and compensate engineers (the "**ENGINEERS**") to design and engineer the PROJECT, and intends to retain and compensate one or more contractors (the "**CONTRACTOR**") to perform the construction required to effect the PROJECT; and,

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

WHEREAS, the NRD has authority under Neb.Rev.Stat. § 2-3229 to “develop and execute, through the exercise of powers and authorities granted by law, plans, facilities, works, and programs relating to * * *, (2) prevention of damages from flood water and sediment, (3) flood prevention and control * * * ,” and the PROJECT is one of such facilities, works and programs.

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 shall enter into a professional services contract with ENGINEERS in the form as determined by the NRD in its sole discretion, pursuant to which the ENGINEERS shall undertake tasks including the preparation and administration of contract documents and supervision and administration of the performance of construction services for 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. RIGHTS-OF-WAY ACQUISITION. Lands, easements and rights-of-way, which the ENGINEERS and the NRD determine are necessary to effect the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT (the “**PROJECT RIGHTS-OF-WAY**”), shall be obtained by the NRD. The costs of the PROJECT RIGHTS-OF-WAY shall be deemed to be a cost of the PROJECT. Any PROJECT RIGHTS-OF-WAY solely associated with CITY CULVERTS

shall be obtained by the NRD on behalf of the CITY. The NRD shall obtain all other PROJECT RIGHTS-OF-WAY on its own behalf.

6. PERMITS. All necessary local, state and federal permits, which the ENGINEERS or the NRD determine are necessary to effect the PROJECT or for the permanent operation, maintenance, repair, replacement, management and regulation of the PROJECT, shall be obtained by the NRD, which shall hold the same. The costs associated with the same shall be deemed a cost of the PROJECT.

7. UTILITY RELOCATIONS. The NRD shall be responsible for relocation of any utilities that are determined to interfere with the PROJECT, or with the operation, maintenance, repair, replacement, management or regulation of the PROJECT. The cost of such utility relocations shall be deemed to be a cost of the PROJECT.

8. GENERAL COSTS. The costs and billings resulting from the Engineering contract referenced in Paragraph 3, above, the PROJECT RIGHTS-OF-WAY referenced in Paragraph 5, above, the permits referenced in Paragraph 6, above, and the utility relocations referenced in Paragraph 7, above, shall constitute the GENERAL COSTS of the PROJECT.

9. CONSTRUCTION CONTRACT FOR PROJECT. Pursuant to the NRD's policies and practices, the NRD shall solicit competitive sealed bids for construction services necessary to effect the PROJECT pursuant to contract documents acceptable to the NRD.

10. COMPETITIVE BIDS. Within a reasonable time after NRD receipt and opening of sealed bids for construction of the PROJECT, the NRD shall deliver a summary thereof to the CITY, together with the identification by the NRD of the bidder who or which the NRD determines is the lowest and most responsible bidder. The NRD shall accept such bid and shall award to such bidder the contract to construct all or one or more portions of the PROJECT. In the event, the lowest responsible bid is in excess of Eight Hundred Fifty Thousand Dollars (\$850,000), the NRD shall have the right, in its sole discretion, to abandon the PROJECT and void or terminate THIS AGREEMENT in its entirety. The NRD, through the CONTRACTOR, shall perform the construction services to effect the PROJECT in accordance with the NRD-approved plans and specifications.

The NRD shall require line item bidding based on each of the individual CULVERTS. The resulting contract shall constitute the CONSTRUCTION COSTS of the PROJECT.

11. CITY CONTRIBUTION. As its contribution(s) 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 CONSTRUCTION COSTS associated with or relating to the CITY CULVERTS. The CITY shall also be responsible for and pay to the NRD two-fifths of the GENERAL COSTS, which is the same ratio of CITY CULVERTS to CULVERTS. The CITY'S contribution shall not exceed Three Hundred Fifty Thousand Dollars (\$350,000), without prior written approval from the CITY.

12. 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 CONSTRUCTION COSTS associated with or relating to the EXCLUDED CULVERTS. The NRD shall also be responsible for and pay three-fifths of the GENERAL COSTS, which is the same ratio of EXCLUDED CULVERTS to CULVERTS.

13. OPERATION AND MAINTENANCE OF THE PROJECT. After completion of PROJECT and NRD acceptance of the PROJECT from the CONTRACTOR:

- a) the CITY, at its own and sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the CITY CULVERTS, as the CITY determines necessary, and in accordance with applicable and generally-accepted engineering practices, FEMA regulations and requirements for continuation of flood insurance, and any applicable USACE requirements necessary to preserve the eligibility of PROJECT for benefits under the Public Law 84-99 maintenance program; and
- b) the NRD, at its own and sole cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate the EXCLUDED CULVERTS, as the NRD determines necessary, and in accordance with applicable and generally-accepted engineering practices, FEMA regulations and requirements for continuation of flood insurance, and any

applicable USACE requirements necessary to preserve the eligibility of PROJECT for benefits under the Public Law 84-99 maintenance program.

14. RISK OF LOSS. The NRD shall have the insurable interest in, and shall bear the sole risk of loss of or damage to, the EXCLUDED CULVERTS and all components associated therewith, whether such loss or damage results from flood or other casualty whatsoever. The CITY shall have the insurable interest in, and shall bear the sole risk of loss of or damage to, the CITY CULVERTS and all components associated therewith, whether such loss or damage results from flood or other casualty whatsoever.

15. INDEMNIFICATION. The CITY shall defend and indemnify the NRD and hold the NRD harmless (1) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorney fees, for personal injuries or property damages in whole or in part arising out of or relating to the PROJECT to the extent it relates to the CITY CULVERTS; and, (2) from and against all claims, demands, causes of action, costs and expenses, including without limitation costs of investigations, court costs and attorney fees, arising from the introduction or presence in or on any PROJECT RIGHTS-OF-WAY, to the extent such PROJECT RIGHT-OF-WAY relates to a CITY CULVERT (a "CITY CULVERT RIGHT-OF-WAY"), of 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 ("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, (3) 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 CITY CULVERT RIGHT-OF-WAY, and also including, without limitation, costs of any studies and investigations necessary to determine an appropriate response to any contamination on such CITY CULVERT RIGHT-OF-WAY, but excepting costs and expenses relating to any such substances or materials introduced solely by the NRD or its employees, officers, contractors or agents.

16. EFFECTIVE DATE AND TERM. THIS AGREEMENT shall be in force and effect upon and after its execution by the parties hereto, and shall have permanent duration.

17. 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.

18. 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.

19. TIME. Time is of the essence of THIS AGREEMENT.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

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

[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 _____, 2015.

THE CITY OF OMAHA

By _____

JEAN STOTHERT, Mayor

Attest:

City Clerk

The NRD has executed THIS AGREEMENT on _____, 2015.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
JOHN WINKLER, General Manager

[SIGNATURE PAGE OF INTERLOCAL COOPERATION AGREEMENT FOR
DRAINAGE STRUCTURE REPAIR FOR
BIG PAPIO CREEK/LEVEE CHANNEL PROJECT]



Big Papillion Creek Penetration Repair Project



MEMORANDUM

TO: The File

FROM: Martin P. Cleveland, Construction Engineer

SUBJECT: Big Papillion Creek Drainage Structure
Penetration Repair Alternatives Development

DATE: January 12, 2015

The District has identified via video inspections, ten drainage structures with invert perforations in the Big Papio Creek Project between Capehart Road and West Center Road, as shown on the attached drainage structure deficiency sheets. FYRA Engineering has prepared "Big Papillion Creek Penetration Repair – Alternatives Development", dated October 2014.

A summary of the deficient drainage structures due to perforations and repair cost estimate is as follows:

	Structure No.	Station	Size	Type	Construction Cost	Engineering Cost	Total Cost
1	BP-R16	208+35R	24"	CMP	\$46,031	\$9,206	\$55,237
2	BP-R18	241+80R	36"	CMP	\$73,550	\$14,710	\$88,260
3	BP-L20A	355+85L	24"	CMP	\$136,157	\$26,243	\$162,400*
	BP-L20B	355+90L	24"	CMP			
4	BP-L21	389+10L	36"	CMP	\$55,594	\$11,119	\$66,713
5	BP-R25	357+80R	15"	CMP	\$86,419	\$17,284	\$103,703
6	BP-L27	456+05L	24"	CMP	\$64,631	\$12,927	\$77,558
7	BP-R28	420+05R	18"	CMP	\$53,981	\$10,796	\$64,777
8	BP-R41	534+70R	42"	CMP/RCP	\$48,200	\$9,640	\$57,840
9	BP-L48	570+45L	18"	CMP	\$25,088	\$5,018	\$30,106
GRAND TOTAL					\$589,651	\$116,943	\$706,594

*Cost estimate is for both BP-L20A and BP-L20B. The construction cost was revised on January 12, 2015.

The above estimate of project cost pre-date US Army Corps of Engineers (USACE) review of alternatives. The USACE may require a change in some or all of the alternatives.

CC: Marlin J. Petermann and Bill Warren, P-MRNRD