

Agenda Item: 6.b.

MEMORANDUM

TO: Program, Planning & Operations Subcommittee

FROM: Dick Sklenar, Program Manager

SUBJECT: Interlocal Agreement Between Papio-Missouri River NRD / City of Blair for the Relocation of Water Mains and Appurtenances Along Highway 133

DATE: October 29, 2012

It is anticipated that in the next couple of years the Nebraska Department of Roads (NDOR) will undertake the third and final phase of converting Hwy. 133 to a four lane corridor between Blair and Omaha. The third phase is a stretch that begins immediately south of Blair, and impacts water main facilities that were installed in 2006 regarding the development of Washington County Rural Water #2 and Blair's water tower.

The City of Blair is proposing that the relocation work of the impacted District and City owned facilities, necessary to accommodate the Hwy. 133 improvements, be jointly coordinated. The attached agreement entails that the City would select the engineering firm and contractor to do the necessary work. This effort is expected to enhance efficiency and lower overall costs. NDOR will be reimbursing the City and the District for costs associated with the relocation work.

Management recommends that the General Manager be authorized to execute the Interlocal Agreement between the City of Blair and the Papio-Missouri River NRD for the relocation of water main facilities and appurtenances along Hwy. 133 with regards to NDOR Project# NH-133-3(103) subject to changes deemed necessary by the General Manager and approved as to form by the District's legal counsel.

AGREEMENT

BETWEEN

**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
AND THE CITY OF BLAIR, NEBRASKA**

FOR

**MODIFICATION OF WATER SUPPLY PIPELINES AFFECTED BY
NDOR HIGHWAY 133 PROJECT STPD-133-3(103)**

THIS AGREEMENT (“**This Agreement**”) is made by and between the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**, a subdivision of the State of Nebraska (“**the NRD**”), and the **CITY OF BLAIR, NEBRASKA** (“**the CITY**”). The NRD and the CITY are hereinafter referred to collectively as “**the Parties**” and individually as a “**Party**.”

WHEREAS, the Parties desire to cooperate in a project (“**the Project**”) to investigate, identify and relocate or extend or otherwise modify conduits, valves and other appurtenances of the separate water supply pipelines of the Parties that will be adversely affected by the Nebraska Department of Roads (“**NDOR**”) Project STPD-133-3(103) (“**the NDOR Project**”), a project to improve Highway 133 in Washington County, Nebraska, south of the CITY; and,

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals and their mutual covenants, the Parties hereby agree as follows:

1. **PURPOSE OF AGREEMENT.** The purpose of This Agreement is to set forth the terms under which the Project will be designed and constructed, and to specify the rights, duties and obligations of the Parties in connection therewith.
2. **NO ENTITY.** The Project will be undertaken without any separate legal entity being created.
3. **TERM, EFFECTIVE DATE AND TERMINATION.** This contract shall be effective upon written signatures of the Parties being affixed hereto and may be

terminated by mutual agreement of the Parties, or upon ninety days written notice by one of the Parties to the other Party.

4. **THE ENGINEERS.** The CITY, as the lead Party for the Project, shall retain engineering consultants (“**the Engineers**”), pursuant to a written contract approved in writing by the NRD (“**the Engineering Contract**”) (such approval to not be withheld or delayed unreasonably), to investigate the NDOR Project and to identify those conduits, valves and other appurtenances of the separate water supply pipelines of the Parties under or alongside Highway 133 or otherwise situated, that in their opinion will be adversely affected by the NDOR Project, and to prepare plans and specifications for the work needed to relocate, extend or otherwise modify those conduits, valves and other appurtenances which, in the opinion of the Engineers, are adversely affected by the NDOR Project, and to administer construction of the Project. Failure of the NRD to approve the CITY’S selection of the Engineers may be cause for termination of this Agreement, at the election of the NRD, upon written notice to the CITY.

5. **PREPARATION OF PLANS FOR PROJECT.** Following commencement of the term of This Agreement the CITY shall direct the Engineers to prepare plans and specifications (hereinafter referred to collectively as “**the Plans**”) and contract documents (“**the Contract Documents**”) for the Project.

6. **APPROVAL OF PLANS.** Upon the Engineers’ completion of preparation of the Plans and the Contract Documents for the Project, they shall be submitted to the Parties for their written approvals. Each of the Parties shall have 21 days to review the same and to approve or disapprove the same in writing or suggest amendments thereto. After approval of the same by the Parties, they shall be submitted to NDOR for their comment and approval.

7. **PROJECT CONTRACTORS.** Within a reasonable time after receipt of all required approvals of the Plans, the CITY shall retain one or more construction contractors (hereinafter referred to collectively as “**the Project Contractors**”) to construct the features of the Project, in accord with the Plans, and may determine to construct the Project in increments or stages.

8. **CONTRACTOR INSURANCE.** All insurance provided by the Engineer, or by the Project Contractor pursuant to the Contract Documents, shall name the NRD as an additional insured.

9. **PROJECT FINANCING.** The CITY shall be solely responsible for obtaining all financing for the Project, and shall be solely responsible for applying to NDOR for reimbursement of costs of the Project which the Parties or either of them may be eligible, or reimbursements for which the CITY may obtain NDOR prior commitments. In the event that the CITY is not able to arrange such financing or reimbursements upon such terms as the CITY, in its sole discretion, determines reasonable, the CITY may terminate This Agreement upon written notice to the other Parties.

10. **CONSTRUCTION OBSERVATION.** The CITY will provide for engineering observation and administration of construction of the Project. Representatives of the Parties shall be given the opportunity to observe such construction at all reasonable hours and the right to request and receive contemporaneous copies of all written communications between or among, or issued by the CITY and/or the Engineers and/or the Project Contractors pertaining to Project construction, including but not limited to statements by the Engineers as to percentage of completion and substantial completion.

11. **ACCEPTANCE OF PROJECT.** The CITY shall not accept the Project without NRD approval, which approval shall not be withheld or delayed unreasonably.

12. **AS-BUILT PLANS AND FINAL COST STATEMENT.** Upon completion of construction of the Project or any separable portions thereof, the CITY shall direct the Engineers to prepare and deliver to the NRD as-built Plans for the Project.

13. **CONTRACTOR'S WARRANTIES.** The CITY shall provide such enforcement of bonds and warranties, given by the Project Contractors pursuant to the Contract Documents, as the NRD from time to time may request.

14. **RECORDS AVAILABILITY.** The CITY's records of Project receipts and expenditures shall be made available to the NRD for inspection and copying at all reasonable hours for a period of ten years after final completion of Project construction.

15. **APPROVAL FROM STATE DEPARTMENT OF HEALTH & HUMAN SERVICES.** The CITY shall have the responsibility for obtaining from the Department of Health & Human Services of the State of Nebraska any approvals for the delivery of water in pipelines modified under this agreement that may be required prior to delivery of any water through such modified pipelines.

16. **PROJECT OWNERSHIP, OPERATION AND MAINTENANCE.** After final completion of construction of the Project or respective separable portions thereof, and acceptance of the same from the Project Contractors, the NRD shall continue to own, operate, maintain, repair, replace and regulate all portions of the Project that, prior to their modification, were part of an NRD Rural Water Project.

17. **INDEMNIFICATIONS.** 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 design and/or construction of the Project, except such personal injuries or property damages as may be caused by the negligence of the NRD.

18. **PROJECT RISK OF LOSS.** After completion of construction of the Project and acceptance thereof from the Project Contractors, the sole risk of loss of or damage to any pipeline or other portion of the Project that was modified by the Project Contractors shall be borne by the Party that, prior to the Project, had the duty to provide operation, maintenance, repair, replacement or regulation of such portion of the Project, whether such loss or damage results from accident or other casualty whatsoever.

19. **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, political or religious opinions, affiliations or national origin.

20. **CAPTIONS.** Captions used in This Agreement are for convenience and are not used in the construction of This Agreement.

21. **APPLICABLE LAW.** In performing This Agreement the Parties shall conform to all applicable state and federal laws, rules and regulations.

22. **MODIFICATION.** This Agreement contains the entire agreement of the Parties. No representations were made or relied upon by any of the Parties other than those expressly set forth herein. No agent, employee or other representative of any of the Parties is empowered to alter any of the terms hereof unless done in writing and signed by an authorized officer of such Party.

23. **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 that the validity of any such covenant, condition, or provision does not materially prejudice any of the Parties in its respective rights and obligations contained in the valid covenants, conditions, or provisions of This Agreement.

24. **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.

25. **TIME IS OF THE ESSENCE.** Time is expressly declared to be of the essence of This Agreement.

26. **DEFAULT.** If the any of the Parties fails to comply with any provision of This Agreement after reasonable request for performance has been served on such Party, the remaining Parties may seek specific performance of This Agreement.

27. **COUNTERPARTS.** This Agreement may be signed in counterparts.

28. **NOTICES.** Notices to the respective parties provided for in This Agreement shall be sufficient if sent by certified or registered mail, postage prepaid, addressed as follows:

To the NRD: John Winkler, General Manager
Papio-Missouri River NRD

8901 South 154th Street
Omaha, Nebraska 68138-3621

To the CITY: Mayor
City of Blair
Blair Nebraska 68608

or to such other respective representative(s) or address(s) as the respective one of the Parties may designate to the other Parties from time to time in writing.

IN WITNESS WHEREOF

THIS AGREEMENT is executed by the NRD on _____, 2012

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

THIS AGREEMENT is executed by the CITY on _____, 2012.

CITY OF BLAIR, NEBRASKA

By _____
Mayor