

Agenda Item: 7.

Memorandum

To: Programs, Projects, & Operations Subcommittee
From: Lori Laster, Stormwater Management Engineer
Date: June 2, 2014
Re: Papio Dam Site 15A County Roads Interlocal Agreement with Douglas County

District staff and legal counsel have prepared the attached Interlocal Agreement with Douglas County outlining the proposed roadway improvements and right-of-way dedications necessary to be reserved for County Roads due to the Papio Dam Site 15A project (DS15A) to be located near 168th and Fort Streets (see attached map).

The DS15A regional detention reservoir and recreation area will require improvements to Ida Street. Ida Street is currently a 2-lane paved roadway. The District will need to replace the current bridge over North Branch West Papillion Creek. Future plans for Ida Street call for a 4-lane paved roadway.

Due to limitations attached to federal funding, roads cannot be constructed on land determined to be park land. As the DS15A project will touch several roads that may be needed for future development in this area, permanent easements will be granted to the County for HWS Cleveland Boulevard, 180th Street, 186th Street, Ida Street, and State Street, within the right-of-way necessary for the project.

The following is a summary of the provisions in the agreement:

- The District, as part of the DS15A project, will construct a new, 2-lane bridge on Ida Street over North Branch West Papillion Creek.
- The District, as part of the DS15A project, will replace two lanes of paved roadway.
- The District, along with other Ida Street improvements, will grade a 4-lane roadway for Ida Street.
- Douglas County will reimburse the District for the additional earthwork required for the 4-lane roadway.
- The District will grant permanent easements to the County for HWS Cleveland Boulevard, 180th Street, 186th Street, Ida Street, and State Street, within the right-of-way necessary for the project.

Management recommends that the Subcommittee recommend to the Board of Directors that the General Manager be authorized to execute the proposed Papio Watershed Dam Site 15A Project County Roads Interlocal Agreement with Douglas County, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.

INTERLOCAL COOPERATION ACT AGREEMENT
Between
THE COUNTY OF DOUGLAS, NEBRASKA,
And
PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT
For
PAPIO WATERSHED DAMSITE 15A PROJECT COUNTY ROADS

THIS AGREEMENT (**"THIS AGREEMENT"**) is entered into by and among the **COUNTY OF DOUGLAS, NEBRASKA** (**"the COUNTY"**), and the **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT** (**"the NRD"**).

The COUNTY and the NRD are referred to collectively herein as **"the PARTIES,"** and individually and respectively as a **"PARTY"**.

RECITALS:

WHEREAS, the NRD proposes to construct the Dam Site 15A multi-purpose flood control and recreational dam and reservoir project on a site near 168th and Fort Streets in Douglas County (**"the PROJECT"**), conceptually depicted in the drawing attached hereto as Exhibit "A" and incorporated herein by reference;

WHEREAS, certain existing COUNTY roads will be modified as a result of the PROJECT and easements over certain portions of the land within the boundaries of the PROJECT acquired by the NRD (**"the EASEMENTS"**) will be needed by the COUNTY as rights-of-way for a system of COUNTY roads within and through the PROJECT lands (**"the COUNTY ROADS SUB-PROJECT"** or **"the SUB-PROJECT"**).

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. NO SPECIAL BENEFITS. The PARTIES do hereby find, determine and agree that the SUB-PROJECT will be of general benefit to the NRD, with only incidental special benefits.

2. COUNTY ROADS SUB PROJECT. As a part of its administration of lands and rights-of-way acquired by the NRD at NRD cost and expense for the PROJECT, the NRD will grant permanent easements to the COUNTY in, on, over, under and across portions of the lands within PROJECT boundaries for purposes of the COUNTY ROADS SUB-PROJECT, to-wit:

a) Easements for an expansion of the width of the roadbed of existing 2-lane Ida Street within the PROJECT boundaries from 66 feet to a minimum of 100 feet, in order to obtain sufficient width for a 4-lane road for Ida Street; and,

b) Easements for an expansion of the width of the roadbeds of existing 2-lane 186th Street and existing 2-lane State Street within the PROJECT boundaries from 66 feet to a minimum of 100 feet, in order to obtain sufficient width for future 4-lane roads for 186th Street and State Street; and,

c) Easements at least 150 feet in width, for future 180th Street within the PROJECT boundaries, in order to obtain sufficient width for a 6-lane road; and,

d) Easements at least 100 feet in width within the PROJECT boundaries in order to obtain sufficient width for a 4-lane road for future H.W.S Cleveland Boulevard.

3. IDA STREET. As part of the SUB-PROJECT, the NRD shall perform the earthwork for a 4-lane roadbed for IDA Street, pave two (2) of such lanes, and construct a new 2-lane bridge, all within the PROJECT BOUNDARIES. In return for such work,

the COUNTY shall reimburse the NRD in the amount of one half of the ordinary and necessary costs incurred by the NRD in obtaining performance of the afore-mentioned earthwork, as determined by the NRD.

4. ENGINEERING. The roadbeds for the SUB-PROJECT roads will be designed by the NRD'S ENGINEERS, subject to written approval of the COUNTY.

5. PROJECT PARTICIPANTS. The SUB-PROJECT shall be undertaken without any separate entity being created, and the duties and responsibilities of the PARTIES with respect to the design, construction, operation, maintenance, repair, replacement, management and regulation of the SUB-PROJECT shall be as defined by THIS AGREEMENT.

6. PROJECT DESIGN. The NRD shall retain and compensate the NRD'S ENGINEERS to design and administer construction of the SUB-PROJECT.

7. SUB-PROJECT PLANS. The plans and specifications for the SUB-PROJECT shall be drawn by the NRD'S ENGINEERS in accordance with written design criteria provided by the NRD, and the preliminary and final plans and specifications for the SUB-PROJECT all shall be subject to written approval by the COUNTY, none of such approvals to be withheld or delayed unreasonably.

8. RIGHTS-OF-WAY ACQUISITION. Lands that the NRD'S ENGINEERS or the NRD have determined are necessary for the PROJECT shall be obtained by the NRD, without cost or expense to the COUNTY. Legal title to all such lands shall be held solely by the NRD or its successor(s).

9. PERMITS. All necessary local, state and federal permits that the NRD'S ENGINEERS or the NRD determine are necessary for the SUB-PROJECT shall be obtained by the NRD without cost or expense to the COUNTY.

10. CONTRACT FOR SUB-PROJECT CONSTRUCTION. Following the NRD'S ENGINEER'S preparation of final plans and specifications for construction of the SUB-PROJECT, and approval of the same by the COUNTY, such approvals to not be withheld or delayed unreasonably, the NRD shall solicit competitive sealed bids for construction of the SUB-PROJECT elements and tasks, identified in paragraph 3, above.

11. SUB-PROJECT CONSTRUCTION. The NRD, through its contractor, shall construct the SUB-PROJECT in accordance with the plans and specifications approved by the NRD and the COUNTY.

12. SUB-PROJECT COSTS INDEMNIFICATION. Except as otherwise specifically provided in THIS AGREEMENT, the NRD shall defend and indemnify the COUNTY and hold the COUNTY harmless from and against any and all costs of construction of the SUB-PROJECT.

13. TRANSFER DATE. Within 60 days after the NRD'S ENGINEER certifies substantial completion of the Ida Street portion of the SUB-PROJECT (hereinafter referred to as "the **TRANSFER DATE**"), the NRD shall grant easements to the COUNTY for the rights of way for the SUB-PROJECT roads.

14. OPERATION AND MAINTENANCE OF SUB-PROJECT. After the **TRANSFER DATE** the COUNTY, at its own cost and expense, shall permanently operate, maintain, repair, replace, manage and regulate all of the aspects and portions of the SUB-PROJECT in such manner as the COUNTY in its sole discretion determines necessary, and in accordance with any applicable and generally-accepted engineering practices.

15. SUB-PROJECT RISK OF LOSS.

a) Prior to the TRANSFER DATE the NRD shall have and bear the sole risk of loss of or damage with respect to the elements of the Ida Street portion of the SUB-PROJECT, identified in paragraph 3, above, regardless whether such loss or damage results from flood or other casualty whatsoever.

b) After the TRANSFER DATE, the COUNTY shall have and bear the sole risk of loss of or damage to the SUB-PROJECT, and all of its roadbeds, roads, bridges and other road improvements, regardless whether such loss or damage results from flood or other casualty whatsoever.

16. INDEMNIFICATIONS. Except as otherwise specifically provided in THIS AGREEMENT, and after the TRANSFER DATE provided in THIS AGREEMENT, the COUNTY shall defend and indemnify the NRD and hold the NRD harmless (1) from and against any and all costs of operation, maintenance, repair, replacement, management and regulation of the SUB-PROJECT; and, (2) from and against any and all claims, demands, causes of action, costs and expenses, including court costs and attorneys fees, for personal injuries or property damages in whole or in part arising out of the operation, maintenance, repair, replacement, management and regulation of the SUB-PROJECT.

17. REIMBURSEMENT OF COSTS. Reimbursement by the COUNTY for the NRD'S actual costs of design, construction, engineering observation and administration of construction of the earthwork for 2 lanes of the 4-lane roadbed for the Ida Street element of the SUB-PROJECT shall be due and payable to the NRD in three (3) equal annual installments, to-wit: the first installment shall be due and payable sixty (60) days after issuance of the engineering certificate of substantial completion of the Ida Street

portion of the SUB-PROJECT; and, the second and third installments shall be due and payable on the respective subsequent anniversaries of the due date of the first installment.

18. AUTHORITY FOR APPROVALS.

a) Approvals by the COUNTY, and other COUNTY discretionary actions contemplated by THIS AGREEMENT, are authorized to be provided by the County Engineer of the COUNTY; and,

b) Approvals by the NRD, and other NRD discretionary actions contemplated by THIS AGREEMENT, are authorized to be provided by the General Manager of the NRD.

19. TERM AND DURATION. THIS AGREEMENT shall be in force and effect from and after its execution by all PARTIES and shall have permanent duration.

20. NON-DISCRIMINATION. 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, disability, color, sex, age, political or religious opinions, affiliations or national origin.

21. APPLICABLE LAW. The PARTIES shall follow all applicable federal and Nebraska state statutes, case law and regulations in carrying out the faithful performance and terms of THIS AGREEMENT. Each of the PARTIES shall, whenever applicable, require performance under the Fair Labor- Standards Act.

22. 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 and 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.

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

24. PRIOR AGREEMENTS. This Agreement shall not be construed to modify other prior agreements between any of the PARTIES.

IN WITNESS WHEREOF

The COUNTY executed THIS AGREEMENT on _____, 2014, pursuant to resolution duly adopted by its Board of Commissioners.

**THE COUNTY OF DOUGLAS,
NEBRASKA**

By _____
**Chairperson, Board of County
Commissioners**

Attest:

County Clerk

Approved as to form:

Deputy Douglas County Attorney

The NRD executed THIS AGREEMENT on _____, 2014, pursuant to resolution duly adopted by its Board of Directors.

**PAPIO-MISSOURI RIVER NATURAL
RESOURCES DISTRICT**

By _____
General Manager

Preliminary Master Plan
DAM SITE 15A

Omaha, Nebraska April 2014



NOT TO SCALE

