

Agenda Item: 7.

Memo to: Programs, Projects and Operations Subcommittee  
Subject: Western Douglas County Trails Project – City of Valley Interlocal Agreement  
By: Gerry Bowen  
Date: June 29, 2012

The Western Douglas County Trails Project was initiated by the District, Douglas County, and the Cities of Valley, Omaha, and the Village of Waterloo to construct a series of trails in Western Douglas County in 2005. Congressman Lee Terry obtained a federal earmark of \$4.8 million to assist with this effort.

Consequently, the District hired Ehrhart Griffin & Associates (EGA) to provide professional engineering services on the project. They were proceeding with the design of the first two phases of the project (Phase 1 = Valley to the Twin Rivers YMCA; Phase 2 = Valley to Waterloo) when the Department of Roads (NDOR) and the Federal Highway Administration (FHWA) decided that a change in procedures was needed and the project went on hiatus until the new procedures could be implemented. This delay occurred in 2008. The federal ARRA (Stimulus) projects added further delays to the project.

Unfortunately, the delays on the project have eroded the “buying power” of the federal earmark such that Phases 1 and 2 may be the only trail segments constructed as shown below:

Cost Estimates	Total	Federal	Local
Phase 1 (Valley to YMCA)	\$4,199,350	\$3,359,160	\$840,190
Phase 2 (Valley to Waterloo)	\$3,018,100	\$2,414,480	\$603,620
Total	\$7,217,450	\$5,773,640	\$1,443,810
Total Federal Funds Available		<b>\$4,489,710</b>	

The original project envisioned trails in a larger area resulting in an interlocal agreement that included the City of Valley, Village of Waterloo, City of Omaha (Elkhorn), Douglas County and the District. With the erosion of available federal funds, a new interlocal agreement on the project appears to be appropriate. Since Phase 1 involves only the City of Valley and the District, the attached draft agreement demonstrates a cooperative venture only with these two agencies.

The District continues as the lead agency responsible for administering the federal funds for the project, preparation of plans and specifications, land rights acquisition, construction, and providing the matching funds for the project. The City of Valley may also assist with land rights acquisition and will be responsible for routine maintenance activities on the trail. Operation and maintenance of the proposed bridge across the UPRR tracks and Reichmuth Road will be the responsibility of the District.

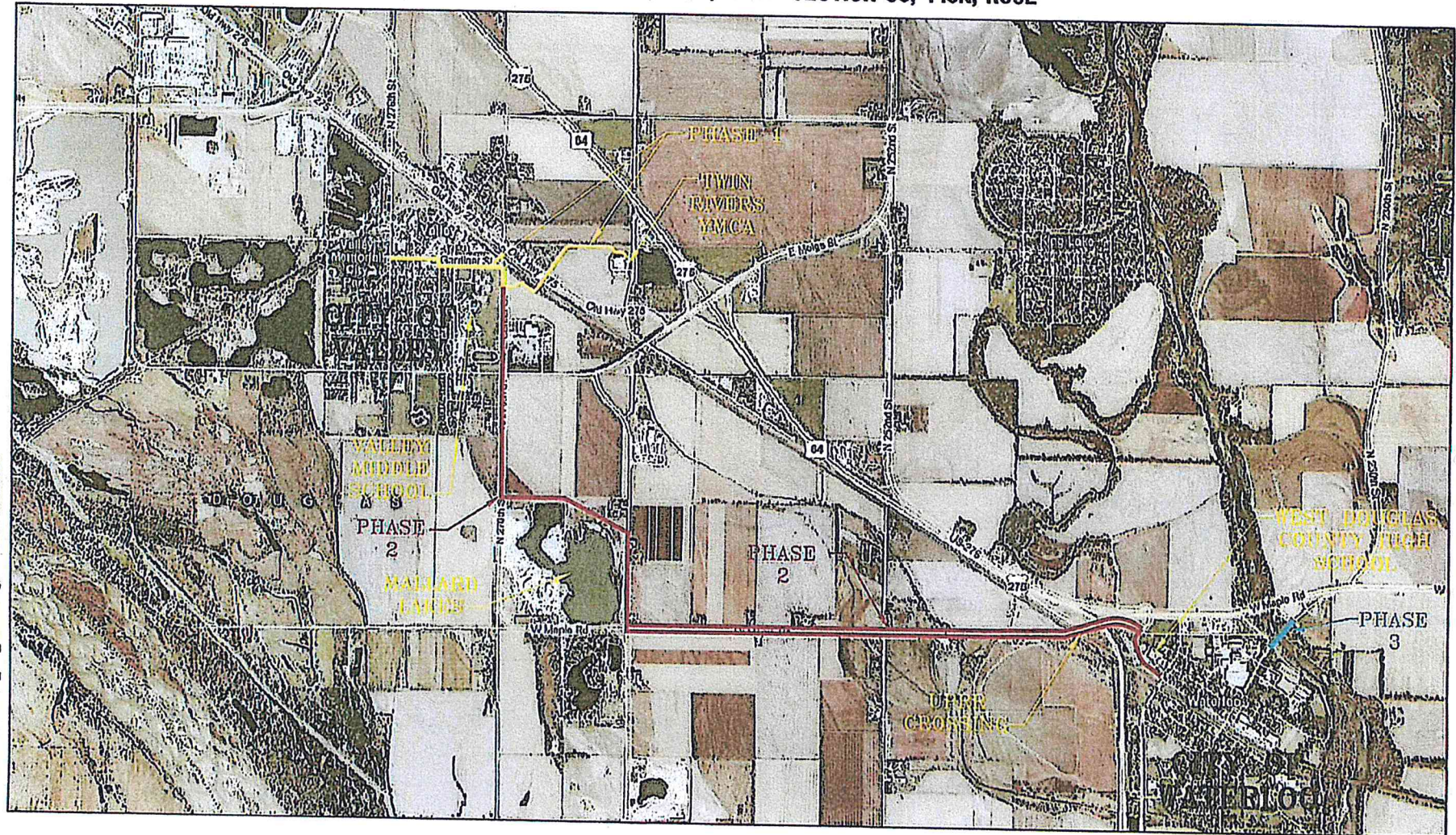
- **It is recommended that the Subcommittee recommend to the Board that the General Manager be authorized to execute an interlocal agreement with the City of Valley for Phase 1 of the Western Douglas County Trails Project, subject to changes deemed necessary by the General Manager and approved as to form by the District Legal Counsel.**





SECTIONs 03, 04, 05, 06, 08, 09, 10, T15N, R10E

**SECTION 31, T16N, R10E      SECTION 36, T16N, R09E**





**INTERLOCAL COOPERATION ACT AGREEMENT**  
**AMONG**  
**PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT**  
**AND**  
**THE CITY OF VALLEY, NEBRASKA**  
**FOR**  
**WESTERN DOUGLAS COUNTY TRAILS CONSTRUCTION, OPERATION**  
**AND MAINTENANCE**

---

THIS AGREEMENT (“**THIS AGREEMENT**”) is made by and between the City of Valley, Nebraska (“**CITY**”) and, the Papio-Missouri River Natural Resources District (“**the NRD**”), (those entities hereinafter being referred to individually as “a Party” and collectively as “the Parties”).

**WHEREAS**, the Parties are governmental bodies organized under the laws of the State of Nebraska; and,

**WHEREAS**, the Parties have completed a Trails Plan for the construction of bicycle and pedestrian trails in western Douglas County, Nebraska; and,

**WHEREAS**, the Parties wish to construct a bicycle and pedestrian trail connecting the CITY’S Park and the Twin Rivers YMCA (hereinafter “**the PROJECT**”); and,

**WHEREAS**, the Parties desire to establish a legal framework for constructing, operating and maintaining the PROJECT, set forth the terms under which the PROJECT will be designed, constructed, operated, maintained, repaired, replaced and regulated, and specify the rights, duties and obligations of the Parties in connection therewith.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants hereinafter expressed, the Parties agree as follows:

**1. AUTHORITY.** THIS AGREEMENT is made pursuant to authority provided in the Nebraska Interlocal Cooperation Act (Neb. Rev. Stat. §13-801, R.R.S., 1943, et seq.), without a separate entity being created, and, whenever possible, THIS AGREEMENT shall be construed in conformity therewith.

**2. ADMINISTRATOR.** The Parties hereby designate the NRD as the administrator of THIS AGREEMENT, which shall serve at the pleasure of the Parties and shall perform duties hereinafter described in THIS AGREEMENT that are Parties.

**3. GENERAL BENEFIT.** The Parties do hereby find that constructing, operating and maintaining the PROJECT will be of general benefit to the Parties, with only an incidental special benefit, and that such activities should be undertaken without any separate entity being created.

**4. THE ENGINEERS.** After the effective date of THIS AGREEMENT, the NRD shall retain engineering consultants (hereinafter referred to as "the ENGINEERS") pursuant to a base written engineering contract ("the ENGINEERING CONTRACT"), to prepare plans and specifications and contract documents for the PROJECT, and to administer construction thereof.

**5. PRELIMINARY PLANS AND SPECIFICATIONS.** The NRD shall call for the ENGINEERS to prepare preliminary plans and specifications ("the PRELIMINARY PLANS") for the PROJECT, subject to the following:

a) The PRELIMINARY PLANS shall be drawn in accordance with design criteria provided by agreement of the PARTIES for the MASTER WORK PLAN trails, which shall be in general compliance with the American Association of State Highway and Transportation Officials' "1999 AASHTO Guide for the Development of Bicycle Facilities" ("the AASHTO Guide") and in accordance with applicable Nebraska state and federal statutes, rules and regulations.

b) The PRELIMINARY PLANS as prepared by the ENGINEERS shall include, without limitation, the ENGINEERS' itemized estimate of the cost of constructing the PROJECT, including the costs of engineering, design, construction and construction administration.

**6. APPROVAL OF PRELIMINARY PLANS.** Upon the ENGINEERS' completion of the PRELIMINARY PLANS, and after approval of the same by the NRD, the PRELIMINARY PLANS shall be submitted to the CITY for written approval. The CITY shall have 30 days to review the PRELIMINARY PLANS and to approve or disapprove the same in writing or suggest amendments thereto. Such approvals shall not be withheld or delayed unreasonably.

**7. PREPARATION OF FINAL PLANS.** Upon the NRD'S receipt of the CITY's written approvals of the PRELIMINARY PLANS, the NRD shall direct the ENGINEERS to prepare final plans and specifications ("the FINAL PLANS") for construction of the PROJECT.

**8. APPROVAL OF FINAL PLANS.** Upon the ENGINEERS' completion of the FINAL PLANS, and after approval of the same by the NRD, the FINAL PLANS shall be submitted to the CITY for written approval. The CITY shall have 30 days to review



the FINAL PLANS and to approve or disapprove the same in writing or suggest amendments thereto. Such approvals shall not be withheld or delayed unreasonably.

**9. RIGHTS-OF-WAY.** After approval of the FINAL PLANS by the CITY, the NRD shall acquire all rights-of-way needed for the project. The CITY shall grant a permanent easement to the NRD over all land owned by the CITY that shall be designated in the FINAL PLANS as necessary right-of-way. Each such permanent easement shall grant to the NRD the permanent right to design, construct, operate, maintain, repair, replace and regulate a bicycle and pedestrian trail in, on, over and across such designated land of the CITY, or contain a grant in such other form as may be determined by agreement of the CITY and NRD. The CITY shall also grant such zoning and subdivision approvals, licenses, permits and consents as may be required for construction and/or for permanent operation, maintenance repair, replacement and regulation of the PROJECT.

**9. THE CONTRACTOR.** The NRD shall retain one or more general contractors ("CONTRACTOR"), approved by the CITY, in writing, to construct the PROJECT. Such approvals shall not be withheld or delayed unreasonably.

**10. CONSTRUCTION CONTRACT DOCUMENTS.** The proposed contract between the NRD on the one hand, and the CONTRACTOR, on the other hand, for construction of the PROJECT ("the CONSTRUCTION CONTRACT DOCUMENTS"), including, without limitation, the proposed schedule of all materials and labor compensation rates that the NRD proposes to pay to the CONTRACTOR for construction of the PROJECT, shall be subject to the prior written approval of the CITY, who shall have a period of 30 days to review the CONSTRUCTION CONTRACT DOCUMENTS and to approve or disapprove the same in writing or suggest amendments thereto, and who shall have an additional period of 30 days to review and approve subsequent amendments thereto. Such approvals shall not be withheld or delayed unreasonably.

**11. PROJECT CONTRACTOR'S BONDS.** The CONSTRUCTION CONTRACT DOCUMENTS shall require the CONTRACTOR to purchase and maintain, during performance of the work, labor and material payment bonds and performance bonds, in the amount of the contract price, naming both the NRD and CITY, as their interests appear, as secured parties.

**12. CONSTRUCTION OF the PROJECT.** Within 30 days after the approvals of the CONSTRUCTION CONTRACT DOCUMENTS, or at such other time as the Parties' authorized representatives agree in writing, the NRD will sign the CONSTRUCTION CONTRACT DOCUMENTS for construction of the PROJECT.

**13. CONSTRUCTION.** The PROJECT shall be constructed by the NRD and the CONTRACTOR in conformance with the CONSTRUCTION CONTRACT DOCUMENTS.

**14. GRANTS.** The NRD shall be responsible for applying for transportation enhancement funding or other state and federal grants for which the PROJECT may be eligible.



**15. CONSTRUCTION OBSERVATION.** The NRD will provide for full-time engineering observation and administration of construction of the PROJECT. Representatives of the CITY shall be given the opportunity to fully observe such construction at all reasonable hours and the right to request and receive from the NRD contemporaneous copies of all written communications between or issued by the NRD and/or the ENGINEERS and/or the CONTRACTOR pertaining to such construction, including but not limited to statements by the ENGINEERS as to percentage of completion and substantial completion.

**16. CONTRACTOR'S WARRANTIES.** The NRD shall enforce all bonds and warranties given by the CONTRACTOR and its subcontractors in the CONSTRUCTION CONTRACT DOCUMENTS.

**17. PROJECT COSTS.** The NRD shall pay all invoices submitted by the CONTRACTOR and ENGINEERS without reimbursement by the CITY.

**18. OPERATION, MAINTENANCE AND REGULATION.** After final completion of construction of the PROJECT and the NRD's acceptance of the same from the NRD's CONTRACTOR:

a) The CITY, at its sole and unreimbursed cost and expense, shall permanently operate, maintain and regulate the PROJECT, except as provided in the succeeding subparagraph. Such maintenance responsibilities shall include, without limitation, control of vegetation, removal of trash, debris, snow and ice, and minor repairs to the PROJECT; provided, however, such minor repairs shall not in any one year require CITY expenditures exceeding the equivalent cost of replacing three 10-foot concrete trail panels.

b) The NRD, at its sole and unreimbursed cost and expense, shall be responsible for other repairs to the PROJECT, and for the operation, maintenance and regulation of the bicycle and pedestrian bridge spanning both the Union Pacific Railroad and Reichmuth Road, such NRD responsibilities to be performed in such manner and at such times as the NRD in its sole discretion determines necessary, and in accordance with generally accepted practices and the AASHTO GUIDE.

**19. INDEMNIFICATIONS.** The NRD shall defend, indemnify, and hold the CITY harmless from and against all costs and expenses, including attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from its design or construction of the PROJECT pursuant to this AGREEMENT, except such personal injuries or property damages as may be caused by the sole negligence of the CITY. The CITY shall defend, indemnify, and hold the NRD harmless from and against all costs and expenses, including attorneys fees, resulting from claims, demands or causes of action for personal injury or property damage arising out of or resulting from its operation, maintenance, repair, replacement, or regulation of



the PROJECT pursuant to this AGREEMENT, except such personal injuries or property damages as may be caused by the sole negligence of another party.

**20. RISK OF LOSS.** After substantial completion of construction of the PROJECT pursuant to this AGREEMENT, the sole risk of loss of or damage to any portion of the PROJECT shall be borne by the party that, under THIS AGREEMENT, has the duty to provide operation, maintenance or regulation of such portion of the PROJECT, whether such loss or damage results from flood or other casualty whatsoever.

**21. 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.

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

**23. APPLICABLE LAW.** In performing THIS AGREEMENT the Parties shall conform to all existing and applicable ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations.

**24. 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 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 respective party.

**25. 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.

**26. NON-WAIVER.** No delay or failure by any 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 any of the PARTIES shall not be deemed to extend the amount of time available to perform any other act required under THIS AGREEMENT.

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

**28. EFFECTIVE DATE AND TERM.** THIS AGREEMENT shall become effective upon its execution by all Parties, and shall be perpetual in duration.

**29. 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:

Ms. Mary Caffey, Mayor  
City of Valley  
203 N. Spruce Street  
Valley, Nebraska 68064

**30. AMENDMENTS AND SUPPLEMENTS.** The Parties may amend or supplement THIS AGREEMENT from time to time as may be deemed necessary to meet the mission and goals of THIS AGREEMENT.

**IN WITNESS WHEREOF,** THIS AGREEMENT is entered into by the Parties pursuant to resolutions duly adopted by their respective governing boards.

Executed by the City of Valley, Nebraska on this \_\_\_\_ day of \_\_\_\_\_, 2012.

THE CITY OF VALLEY, NEBRASKA

BY \_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
CITY CLERK

Executed by the Papio-Missouri River Natural Resources District on this \_\_\_\_ day of \_\_\_\_\_, 2012.

PAPIO-MISSOURI RIVER NATURAL RESOURCES  
DISTRICT

BY \_\_\_\_\_  
GENERAL MANAGER